

DOCKET NO. 581914

IN RE PETRA ENTERPRISES, INC.  
D/B/A RENE'S DRIVE INN  
PERMIT NO. Q-249522  
LICENSE NO. BF-301420

HARRIS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-99-0123)

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS ALCOHOLIC  
BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on October 28, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 22, 1999. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Respondent filed his exceptions on December 13, 1999.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that all rights and privileges under Permit No. Q-249522 and License No. BF-301420 will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 15th day of March, 2000.** unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the **8th day of March, 2000.**

**This Order will become final and enforceable on January 17, 2000.** unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 28th day of  
December, 1999.



On Behalf of the Administrator,

*Randy Yarbrough*

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001

Shanee Woodbridge, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
VIA FACSIMILE (512) 475-4994

Petra Enterprises, Inc.  
d/b/a Rene's Drive Inn  
**RESPONDENT**  
4634 Tidwell Road  
Houston, Texas 77016-4515  
**CERTIFIED MAIL/RRR NO. Z 473 039 185**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office

Z 473 039 185

US Postal Service  
**Receipt for Certified Mail**  
No Insurance Coverage Provided.  
Do not use for International Mail (See reverse)

Sender	
Petra Enterprises	
Street & Number	
Holliston	
Post Office, State, & ZIP Code	
# 581914	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
<b>TOTAL Postage &amp; Fees</b>	<b>\$</b>
Postmark or Date	
12/22/99	

PS Form 3800, April 1995

FOR

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 581914  
NAME: Petra Enterprises, Inc.

REGISTER NUMBER:  
TRADENAME: Rene's Drive Inn

ADDRESS: 4634 Tidwell Road, Houston, Texas  
DATE DUE: March 8, 2000

PERMITS OR LICENSES: Q-249522, BF-301420  
AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 8TH DAY OF MARCH, 2000, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 22, 1999

Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**CERTIFIED MAIL NO. Z 409 580 963**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-99-0123; TABC vs. Petra Enterprise, Inc. d/b/a Rene's Drive Inn, TABC Case No. 581914**

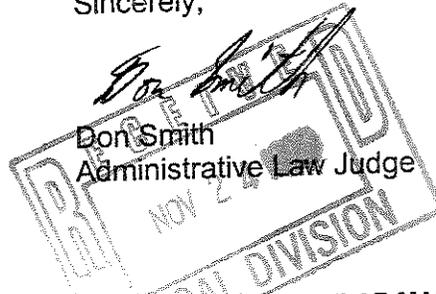
Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Petra Enterprise, Inc., d/b/a Rene's Drive Inn. For reasons discussed in the Proposal for Decision, I have recommended that the Permittee should be allowed to pay a \$1,500.00 civil penalty in lieu of suspension of its permits and licenses.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

  
Don Smith  
Administrative Law Judge



DS/rfm  
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**  
Petra Enterprises, Inc, 4634 Tidwell Rd., Houston, TX 77016-4575 -  
**VIA CERTIFIED MAIL NO. Z 409 580 962, RETURN RECEIPT REQUESTED**  
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**

North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

V.S.

OF

PETRA ENTERPRISE, INC.  
D/B/A RENE'S DRIVE INN  
PERMIT NOS. Q-249522 & BF-301420  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 581914)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Petra Enterprise, Inc. d/b/a Rene's Drive Inn (the Permittee) for five offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code.

This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The Permittee did not make an appearance at the hearing on March 10, 1999. A Proposal for Decision was sent to the TABC. Permittee requested a rehearing. TABC granted a rehearing. The second hearing was held on October 28, 1999. Ms. Gayle Gordon appeared for TABC and announced ready. Mr. Ali Telfah appeared for Permittee and announced ready.

**II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

TEX. ALCO. BEV. CODE ANN. §61.73(b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee gave a distributor a check for payment which is dishonored when presented for payment. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) five times by writing checks to distributors that were subsequently returned for insufficient funds.

The following seven exhibits were admitted into evidence:

Exhibit TABC 1 is the Notice of Hearing for March 10, 1999 to Petra Enterprises, Inc., with attached green card showing Permittee received notice.

Exhibit TABC 2 is an affidavit of Brian L. Guenther, Licensing Department Director, that the Permit Nos. Q-249522 and BF-301420 were issued to Petra Enterprise Inc., doing business as Rene's Drive Inn, by the Texas Alcoholic Beverage Commission. The affidavit attaches the true and correct copies of the permit, license, and violation history of Petra Enterprise Inc.

Exhibit TABC 3 are affidavits from Hillman International Brands Ltd., Faust Distributing Company, and Silver Eagle Distributors, Inc. concerning dishonored checks received from permittee during the delivery of beer in its original containers and packages.

Exhibit TABC 4 is the Order Re-Setting the Hearing to October 28, 1999.

Exhibit TABC 5 is Petitioner's Motion to Reset Hearing date for October 28, 1999.

Exhibit TABC 6 are fax confirmations.

Exhibit TABC 7 is Order Granting Rehearing.

The Administrative Law Judge (ALJ) took judicial notice of the Court's file, which shows the hearing was originally held on March 10, 1999. The Permittee did not appear at the hearing, and the ALJ proceeded on a default basis. On July 14, 1999, Permittee requested a rehearing. TABC granted a rehearing for the limited purposes of receiving evidence as to any defense Petra Enterprises, Inc. may have. Petitioner made a Motion to Reset the Hearing Date to October 28, 1999. The Motion was granted, and on September 28, 1999, the State Office of Administrative Hearings sent notice to both parties that the hearing would be held at 9:00 a.m. on October 28, 1999. Permittee received the notice on September 30, 1999.

Permittee did not contest the allegations. Permittee informed the Court that there were circumstances why he wrote checks, knowing there were insufficient funds in the bank. The circumstances were that his wife had a heart attack, his mother died, he was robbed, his business was slow, and if he is forced to have to pay for his deeds, it will cause his business to fail.

### **III. RECOMMENDATION**

Because the Permittee made five separate payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code, the license should be suspended for a period of ten days, or in lieu of suspension, Permittee should pay a fine of 1500.00.

### **IV. FINDINGS OF FACT**

1. Permit Nos. Q-249522 and BF-301420 were issued to Petra Enterprise Inc., doing business as Rene's Drive Inn, by the Texas Alcoholic Beverage Commission.
2. The staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice.
3. The Hearing was convened on March 10, 1999. The Permittee did not appear and the hearing proceeded on a default basis.
4. Permittee requested a rehearing. TABC granted a re-hearing. Hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. TABC was represented by its counsel, Gayle Gordon. Permittee was represented by Ali Telfah. Don Smith, Administrative Law Judge, presided.

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Permittee has five violations of the TEX. ALCO. BEV. CODE ANN. §61.73(b) in that the Permittee made five separate payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code.
5. Based on the foregoing Findings of Fact and Conclusions of Law, a ten day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64, the Permittee should be allowed to pay a \$1,500.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 22 day of November, 1999.



---

DON SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DS:rfm\d:99-0123