

**DOCKET NO. 585528**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	ALCOHOLIC BEVERAGE
PETRA ENTERPRISE INC.	§	
D/B/A RENE'S DRIVE INN	§	
PERMIT NO. Q 249522	§	
LICENSE NO. BF301420	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2261)	§	COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 28th day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened on October 20, 2000, and adjourned on October 20, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 22, 2000. 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. As of this date no exceptions have been filed.

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 the above-referenced Permit No. Q 249522 and License No. BF301420 are hereby **SUSPENDED**.

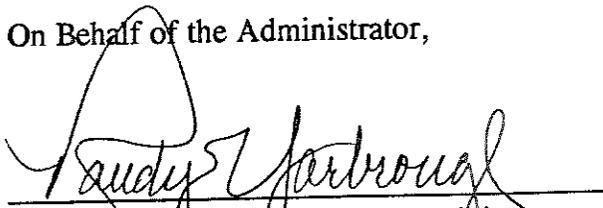
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1500.00 on or before the 28th day of February, 2001, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 7th day of March, 2001.

**This Order will become final and enforceable on January 18, 2001, 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.

**SIGNED** on this the 28th day of December, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

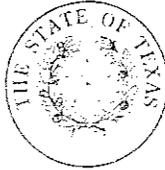
The Honorable Carrie L. McLarty  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (713) 812-1001**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
Austin, Texas  
**VIA FACSIMILE (512) 475-4994**

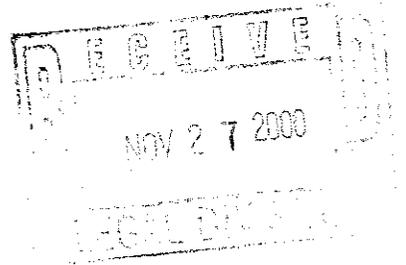
Petra Enterprise Inc.  
d/b/a Rene's Drive Inn  
4634 Tidwell Rd  
Houston, Texas 77016-4515  
**CERTIFIED MAIL/RRR NO. Z 280 626 873**

Houston District Office  
Licensing Division  
Compliance Division

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge



November 21, 2000

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

VIA REGULAR MAIL

**RE: Docket No. 458-00-2261; TABC vs. Petra Enterprise Inc., d/b/a Rene's Drive Inn;  
Permit No. Q-249522; License No. BF-301420**

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 to Petra Enterprise, Inc., d/b/a Rene's Drive Inn (Respondent). For reasons discussed in the Proposal for Decision, the Staff of TABC (the Staff) sought to have the Respondent's permit suspended for 10 days or, in lieu of suspension, to assess a civil penalty against Respondent in the amount of \$150.00 per day of violation for a total of \$1,500.00. This proposal agrees with the recommendation of the Staff.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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 reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

*C. McLarty R. T. H.*

Carrie L. McLarty  
Administrative Law Judge

CM/mc  
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA REGULAR MAIL  
Petra Enterprise, Inc., d/b/a Rene's Drive Inn, 4634 Tidwell Rd., Houston, Texas 77016-4515 - VIA REGULAR MAIL  
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA FACSIMILE

**DOCKET NO. 458-00-2261**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**VS.**

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

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks suspension of Permit No. Q-249522 and License No. BF-301420, held by Petra Enterprise, Inc., d/b/a Rene's Drive Inn (Respondent), for allegedly making two payments for beer, by check or draft, that were subsequently dishonored when presented for payment. Petitioner seeks to suspend Respondent's permit for 10 days or, in lieu of suspension, to assess a civil penalty against Respondent in the amount of \$150.00 per day of violation for a total of \$1,500.00. The Administrative Law Judge recommends that Petitioner's action be sustained.

**Procedural History, Notice, and Jurisdiction**

The hearing in this case was convened on October 20, 2000, at the State Office of Administrative Hearings in Houston, Texas, before Carrie L. McLarty, Administrative Law Judge. Gayle Gordon, Staff Attorney, represented Petitioner. Respondent did not attend the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued on a default basis pursuant to 1 TEX. ADMIN. CODE §155.55 (1998). There are no contested issues of jurisdiction or notice, and the allegations against Respondent are deemed admitted. Therefore, these matters are addressed as proposed findings of fact and conclusions of law without further discussion here.

**Applicable Law**

1. Section 11.61(b)(2) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: (2) the permittee violated a provision of this code or a rule of the commission; . . ." TEX. ALCO. BEV. CODE ANN. §11.61 (Vernon 1998).

2. Section 11.64(a) of the Texas Alcoholic Beverage Code states, in pertinent part: "When the commission or administrator is authorized to suspend a permit or license under this code,

the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended. . . ." TEX. ALCO. BEV. CODE ANN. §11.61 (Vernon 1998).

3. Section 11.71(a)(1) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee: (1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period; . . ." TEX. ALCO. BEV. CODE ANN. §11.71 (Vernon 1998).

4. Section 2003.021(b) of the Texas Government Code states in pertinent part:

(b) The office:

(1) shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency;

(2) shall conduct administrative hearings in matters for which the office is required to conduct the hearing under other law; . . .

TEX. GOV'T CODE ANN. §2003.021 (Vernon 1998).

5. Section 2001.051 of the Texas Government Code states: "In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case." TEX. GOV'T CODE ANN. §2001.051 (Vernon 1998).

6. Section 61.73(b) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment." TEX. ALCO. BEV. CODE ANN. §61.73 (Vernon 1998).

7. Section 155.55 of Title 1 of the Texas Administrative Code states, in pertinent part:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may

proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

1 TEX. ADMIN. CODE §155.55 (1998).

### **Proposed Findings of Fact**

1. The hearing in Docket No. 458-00-2261 was convened on October 20, 2000, before Administrative Law Judge Carrie L. McLarty at the State Office of Administrative Hearings in Houston, Texas. Gayle Gordon, Staff Attorney, appeared on behalf of the Texas Alcoholic Beverage Commission (Petitioner). Petra Enterprise, Inc. d/b/a Rene's Drive Inn (Respondent) did not appear.

2. Respondent was notified of the date, time, and location of the scheduled hearing by Petitioner's Notice of Hearing dated September 15, 2000.

3. Respondent holds Wine Only Package Store Permit No. Q-249522 and Beer Retailer's Off-Premise License No. BF-301420, issued by the Texas Alcoholic Beverage Commission.

4. On June 25, 1999, Respondent issued a check for \$678.20 to Faust Distributing Co. of Houston, Texas.

5. On July 13, 1999, Petitioner's \$678.20 check to Faust Distributing Co. was dishonored for insufficient funds by Bank of Galveston, drawee.

6. On July 2, 1999, Respondent issued a check for \$740.00 to Faust Distributing Co. of Houston, Texas.

7. On July 15, 1999, Petitioner's \$740.00 check to Faust Distributing Co. was dishonored for insufficient funds by Bank of Galveston, drawee.

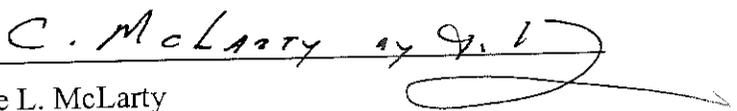
### Proposed Conclusions of Law

1. Petitioner has jurisdiction over this case pursuant to TEX. ALCO. BEV. CODE ANN. §11.61 (Vernon 1998).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with proposed findings of fact and proposed conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 1998).
3. Respondent received proper and timely notice of the hearing in this case.
4. Respondent violated TEX. ALCO. BEV. CODE ANN. §61.73 (Vernon 1998) because he issued a check for \$678.20 to Faust Distributing Co. of Houston, Texas, that was dishonored for insufficient funds by Bank of Galveston, drawee.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §61.73 (Vernon 1998) because he issued a check for \$740.00 to Faust Distributing Co. of Houston, Texas, that was dishonored for insufficient funds by Bank of Galveston, drawee.
6. Petitioner's adverse action of suspending Respondent's Permit No. Q-249522 and License No. BF-301420 for 10 days or, in lieu of suspension, assessing an administrative penalty against Respondent in the amount of \$150.00 per day of violation for a total of \$1,500.00, is proper.

### Recommendation

The Administrative Law Judge recommends that the Texas Alcoholic Beverage Commission sustain its staff's adverse action against Respondent.

SIGNED this 22 day of November, 2000.

  
Carrie L. McLarty  
Administrative Law Judge  
State Office of Administrative Hearings