

**DOCKET NO. 590180**

|                               |   |                         |
|-------------------------------|---|-------------------------|
| TEXAS ALCOHOLIC BEVERAGE      | § | BEFORE THE STATE OFFICE |
| COMMISSION                    | § |                         |
|                               | § |                         |
| VS.                           | § |                         |
|                               | § | OF                      |
| EMEL CORPORATION              | § |                         |
| D/B/A QUIKPIK                 | § |                         |
| PERMIT NO. BQ-284141          | § |                         |
| BEXAR COUNTY, TEXAS           | § |                         |
| (SOAH Docket No. 458-01-1023) | § | ADMINISTRATIVE HEARINGS |

**ORDER**

**CAME ON FOR CONSIDERATION** this 8th day of March, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on January 16, 2001, 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 February 8, 2001. 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 Permit No.BG-284141 is herein **CANCELED FOR CAUSE**.

**IT IS FURTHER ORDERED** that the above described permit are herein **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on March 29, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 8th day of March, 2001.

On Behalf of the Administrator,



---

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

Emel Corporation  
d/b/a Quikpik  
5204 SW Military Dr.  
San Antonio, Texas 78242-1211  
**CERTIFIED MAIL NO. 7000 0520 0024 8846 7601**

Administrative Law Judge  
State Office of Administrative Hearings  
San Antonio, Texas  
**VIA FACSIMILE: (210) 308-6854**

San Antonio District Office  
Licensing Division



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333  
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March 6, 2001

Mr. Randy Yarbrough  
Assistant Administrator  
Texas Alcoholic Beverage Commission  
P. O. Box 13127  
Austin, Texas 78711-3127

Re: Docket No. 590180  
TABC v. Emel Corporation  
d/b/a Quikpik

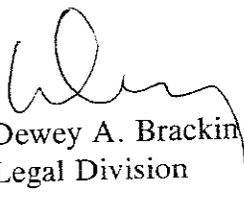
Dear Mr. Yarbrough:

Please find enclosed a Proposal for Decision and exhibits in the above-referenced cause. No exceptions to the Proposal have been filed.

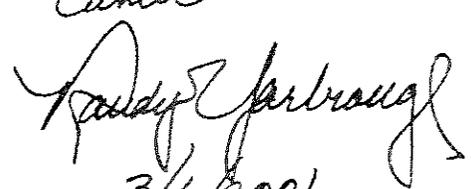
After your review, please inform this office of your decision. We will then draft an Order conforming with your judgment.

Thank you for your attention to this matter.

Yours truly,

  
Dewey A. Brackin  
Legal Division

DAB/yt

Adopt PFD  
Cancel  
  
3/6/2001

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

EMEL CORPORATION  
d/b/a QUIKPIK,  
BEXAR COUNTY, TEXAS  
PERMIT NO. BQ-284141  
(TABC CASE NO. 590180)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff, Commission) brought this action seeking suspension or cancellation of the Wine and Beer Retailer's Off-Premises Permit of EMEL Corporation d/b/a Quikpik (Respondent) because Respondent allowed an unauthorized person to use or display the permit. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the permit be canceled.

**I. PROCEDURAL HISTORY**

The hearing on the complaint convened January 16, 2001, via telephone conference call initiated by Administrative Law Judge (ALJ) Sharon Cloninger from the State Office of Administrative Hearings, 300 West 15<sup>th</sup> Street, Suite 502, Austin, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Gayle Gordon. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, which was granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

**II. FINDINGS OF FACT**

1. EMEL Corporation d/b/a Quikpik (Respondent), holds a Wine and Beer Retailer's Off-Premise Permit issued by the Texas Alcoholic Beverage Commission (Commission).
2. Respondent allowed or consented to an unauthorized person using or displaying Respondent's Wine and Beer Retailer's Off-Premise Permit.
3. On August 2, 2000, the Commission sent a notice to Respondent by certified mail at the address as listed in the Commission's records, alleging that because of the violations referenced in Finding of Fact No. 2, Respondent's permit is subject to suspension or cancellation.

4. Notice of the hearing in this matter, dated November 27, 2000, was properly addressed and sent by first-class mail and by certified mail to Respondent at its San Antonio, Texas, mailing address as listed in Commission records.
5. Respondent did not claim the notice of hearing sent by certified mail and it was returned to the Commission. The notice sent by first-class mail was returned to the Commission "not deliverable as addressed."
6. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
7. Although the notice of hearing notified Respondent that the hearing would be held at 10 a.m. January 16, 2001, at the State Office of Administrative Hearings (SOAH) site in San Antonio, the hearing was held via telephone conference call.
8. At 10 a.m. January 16, 2001, Administrative Law Judge Sharon Cloninger contacted SOAH staff at SOAH's San Antonio site and was informed that Respondent was not present.
9. The notice of hearing also contained language in 10-point type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
10. Respondent did not attend and was not represented at the hearing in this matter held January 16, 2001.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos. 4 through 10, and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.

5. Pursuant to the Code §§ 11.05 and 109.53, Respondent's permit is subject to cancellation.
6. Based on the foregoing, the Commission is authorized to cancel the permit.

SIGNED this 8<sup>th</sup> day of February 2001.

  
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SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS