

**DOCKET NO. 596263**

IN RE KAPHOF CORPORATION	§	BEFORE THE
D/B/A THE BLARNEY STONE	§	
PERMIT NOS. MB440733, LB440734	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2823)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 26th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on July 11, 2002 and adjourned on July 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 31, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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 Nos. MB440733, LB440734 are hereby **SUSPENDED for sixty (60)**.

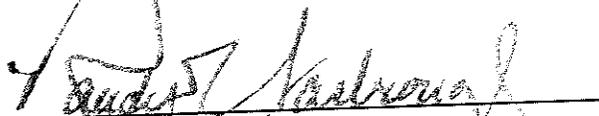
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$9,000.00 on or before the 16th day of October, 2002**, all rights and privileges under the above described permits will be **SUSPENDED for a period of sixty (60) days, beginning at 12:01 A.M. on the 23rd day of October, 2002**.

**This Order will become final and enforceable on September 16, 2002**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this the 26th day of August, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (817) 377-3706**

**KAPHOF CORPORATION**  
**D/B/A THE BLARNEY STONE**  
**RESPONDENT**  
PO Box 940486  
Plano, Texas 75094-0486  
**CERTIFIED MAIL NO. 7001 2510 0000 7277 6326**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 596263**

**REGISTER NUMBER:**

**NAME: KAPHOF CORPORATION**

**TRADENAME: THE BLARNEY STONE**

**ADDRESS: 2116 Greenville Avenue, Dallas, Texas 75206**

**DATE DUE: October 16, 2002**

**PERMITS OR LICENSES: MB440733, LB440734**

**AMOUNT OF PENALTY: \$9,000.00**

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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 16TH DAY OF OCTOBER 2002, 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.

DOCKET NO. 458-02-2823

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner

V.

KAPHOF CORPORATION  
D/B/A THE BLARNEY STONE, Respondent  
DALLAS COUNTY, TEXAS  
(TABC No. 596263)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Kaphof Corporation d/b/a The Blarney Stone (Respondent), alleging that Respondent consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours, in violation of the Texas Alcoholic Beverage Code (Code). A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that Staff's allegations are true and recommends that Respondent's permits be suspended for 60 days or, in the alternative, that it pay a civil penalty of \$9000.00.

**I. PROCEDURAL HISTORY**

On July 11, 2002, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing was concluded and the record closed on the same day.

**II. REASONS FOR PROPOSED DECISION**

Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and § 11.63 of the Code. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

Staff further requested that the ALJ recommend a penalty in this case of a 60-day suspension



of Respondent's permits, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$9,000.00. In support of this request, Staff presented evidence that Respondent's manager, Barry Dunphy, had been warned three times prior to this instance about allowing after-hours consumption on the premises. On August 12, 2001, Mr. Dunphy was observed drinking a Miller Lite beer on the licensed premises approximately three hours after the premises' closing time.

### III. PROPOSED FINDINGS OF FACT

1. Respondent, Kaphof Corporation d/b/a The Blarney Stone, holds a Mixed Beverage Permit, MB 440773, and a Mixed Beverage Late Hours Permit, LB 440734, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2116 Greenville Avenue, Dallas, Dallas County, Texas.
2. On May 6, 2002, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record, P. O. Box 940486, Plano, Texas 75094-0486. The Notice was sent by certified mail (7001 2510 0000 7278 9081), return receipt requested. The Notice was received by Respondent on May 9, 2002, as evidenced by the signature on the return receipt.
3. The Notice of Hearing contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.
4. The Notice of Hearing also properly disclosed that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On July 11, 2002, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or about August 12, 2001, Respondent's agents or employees allowed or permitted Barry Dunphy to consume an alcoholic beverage on the licensed premises during prohibited hours, after having received several warnings concerning after-hours consumption on the premises.

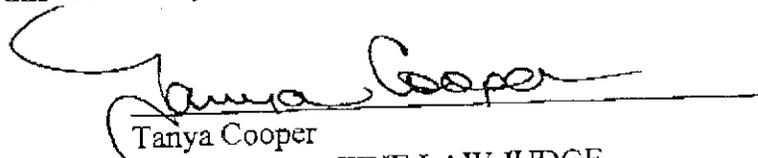
### IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding

pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 25.04, and 61.71.

2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.61(b)(2) and 105.06.
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permits should be suspended for 60 days, or in the alternative, Respondent should pay a civil penalty of \$9000.00.

SIGNED on this the 31<sup>st</sup> day of July 2002.



Tanya Cooper  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS