

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

JOHN OLIVER PHELPS  
D/B/A BOB'S ICEHOUSE  
GALVESTON COUNTY, TEXAS

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against John Oliver Phelps d/b/a Bob's Icehouse (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 10 days, or in lieu of suspension, that Respondent pay a civil penalty of \$1,500. The Administrative Law Judge (ALJ) agrees with this recommendation.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b). The State Office of Administrative Hearings (SOAH) 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.

On July 30, 2002, Petitioner issued its notice of hearing, directed to John Oliver Phelps d/b/a Bob's Icehouse, 3530 FM 1765, Texas City, Texas, 77590, via certified mail, return receipt requested and was "unclaimed" by Respondent on August 8, 2002, as evidenced by the return receipt. On August 23, 2002, a hearing convened before SOAH ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing, via telephone, by Gayle Gordon, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on August 23, 2002.

DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV.

CODE ANN. § 11.63. 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.

### PROPOSED FINDINGS OF FACT

1. Respondent, John Oliver Phelps d/b/a Bob's Icehouse, holds a Wine and Beer Retailer's Permit, BG-437432 and Retail Dealer's On-Premise Late Hours License BL-437433, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3520 FM 1765, Texas City, Galveston County, Texas.
2. On July 30, 2002, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on August 23, 2002. This notice of hearing was sent back as "unclaimed" per the return receipt on or before August 8, 2002.
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 short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Timothy J. Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 23, 2002. Respondent did not appear and was not represented at the hearing.
6. On or about March 29, 2001, August 16, 2001 and on April 18, 2002, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment.

### PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b).
2. SOAH 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, Petitioner 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. §§ 61.73(b) and 102.31.
6. Based upon Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, 61.71(a)(1), 61.73(b), and 102.31, Respondent's permit and license should be suspended for a period of 10 days.
7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1,500 in lieu of suspension of the permit and license.

SIGNED this 18<sup>th</sup> day of October, 2002.

  
Timothy J. Horan  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 596750**

IN RE JOHN OLIVER PHELPS  
D/B/A BOB'S ICEHOUSE  
PERMIT NO. BG437432  
LICENSE NO. BL437433

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

GALVESTON COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3701)

**ORDER**

**CAME ON FOR CONSIDERATION** this 18th day of November, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on August 23, 2002, and adjourned August 23, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 18, 2002. 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. BG437432 and License No. BL437433 are herein **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1500.00 on or before the 11th day of December, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 18th day of December, 2002.

This Order will become final and enforceable on **DECEMBER 9, 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 and by mail as indicated below.

**SIGNED** on this the 18th day of November, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Timothy J. Horan  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (713) 812-1001**

John Oliver Phelps  
**RESPONDENT**  
d/b/a Bob's Icehouse  
3530 FM 1765  
Texas City, Texas 77590  
**CERTIFIED MAIL/RRR NO. 7001 2510 0000 7278 6288**

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

Regulatory Division - Licensing  
-Compliance  
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 596750

REGISTER NUMBER:

NAME: John Oliver Phelps

TRADENAME: Bob's Icehouse

ADDRESS: 3520 FM 1765, Texas City, Texas, 77590

DATE DUE: DECEMBER 11, 2002

PERMITS OR LICENSES: BG-437432; BL437433

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 11TH DAY OF DECEMBER, 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

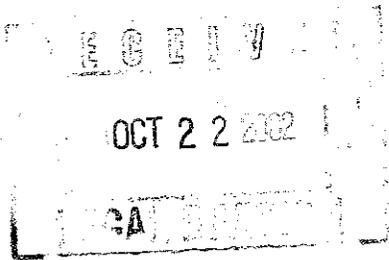
\_\_\_\_\_  
Zip Code

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

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge



October 18, 2002

VIA REGULAR MAIL

Mr. Rolando Garza, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

**RE: Docket No. 458-02-3701; TABC vs. John Oliver Phelps d/b/a Bob's Icehouse**

Dear Mr. Garza:

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 John Oliver Phelps d/b/a Bob's Icehouse, (Respondent). For reasons discussed in the Proposal for Decision, this proposal recommends that Respondent's permit and license be suspended for 10 days, or in lieu of suspension, that Respondent pay a civil penalty of \$1,500.

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,

A handwritten signature in black ink, appearing to read "Timothy J. Horan".

Timothy J. Horan  
Administrative Law Judge

TJH:mc  
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - VIA REGULAR MAIL  
John Oliver Phelps d/b/a Bob's Icehouse, 3520 FM 1765, Texas City, Texas 77590 - VIA REGULAR MAIL