

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

J R WINGS INC D/B/A WINGS N MORE  
PERMIT NO. BG-444068  
HARRIS COUNTY, TEXAS  
(TAB. CASE NO. 598851)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission brought this enforcement action against J R Wings Inc. d/b/a Wings N More (the Permittee) alleging that the Permittee, its agent, servant or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of the TEX. ALCO. BEV. CODE ANN. §61.73(b). The staff also alleged that the Permittee, its agent, servant or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. §25.09 and 11.61 (b)(2). The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be suspended for a period of 10 days or payment of a civil penalty of \$1,500.

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

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

**II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

TEX. ALCO. BEV. CODE ANN. §11.61(b)(2) authorizes the Commission to suspend a license for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the Permittee violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV. CODE ANN. 25.09 provides that "No wine and beer retailer's permittee, nor officer of the permittee, may possess distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises.

TEX. ALCO. BEV. CODE ANN. §61.73(b) authorizes authorizes the Commission to suspend a license for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the Permittee gave a check, as maker or endorser, as full or partial payment for beer which is dishonored when presented for payment.



The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence, (Exhibit TABC A) that the Wine and Beer Retailer's Permit, BG-444068 was issued to J R Wings Inc d/b/a Wings and More, 6006 Gulf Freeway, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission.

The staff attorney introduced Notice of Hearing to the Permittee Certified Mail Receipt, (Exhibit TABC B) showing that the notice was sent to the Permittee's last known address as shown on the referring agency's record, 6006 Gulf Freeway, Houston, Harris County, Texas, 77023-5418, showing receipt by Permittee on June 13, 2002.

### III. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction. Because the Permittee did not appear at the hearing the Staff requested a default decision. The notice of hearing contained a statement of the matters asserted against the Permittee, the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, the notice contained, in 10-point type, the language required by the State Office of Administrative Hearings (SOAH) default rule.

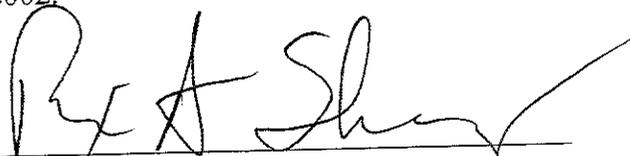
### IV. FINDINGS OF FACT

1. Wine and Beer Retailer's Permit, BG-444068 was issued to J R Wings Inc d/b/a Wings and More, 6006 Gulf Freeway, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission. On January 8, 1999.
2. The Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing regarding alleged violations of the Texas Alcoholic Beverage Code to the Permittee at 6006 Gulf Freeway, Houston, Harris County, Texas, its address of record, by certified mail, return receipt requested on June 10, 2002 and the notice was signed for on June 13, 2002.
3. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
4. The allegation that Permittee gave a check, as maker or endorser, as full or partial payment for beer which was dishonored when presented for payment is deemed admitted and taken as true.
5. The allegation that Permittee, its agent, servant or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises is deemed admitted and taken as true..
6. The hearing was held on July 19, 2002 at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Lindy To. The Permittee or representative did not appear.

## V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2001 *et seq.*
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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. The Permittee has violated TEX. ALCO. BEV. CODE ANN. §61.73 (b) in that the Permittee gave a check, as maker or endorser, as full or partial payment for beer which is dishonored when presented for payment.
6. The Permittee has violated TEX. ALCO. BEV. CODE ANN. §25.09 in that the Permittee its agent, servant or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises.

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

  
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REX A. SHAVER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 598851**

IN RE J R WINGS INC.  
D/B/A WINGS N MORE  
PERMIT NO. BG444068

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

HARRIS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-2913)

**ORDER**

**CAME ON FOR CONSIDERATION** this 11th day of December 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on July 19, 2002, and adjourned on July 19, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 18, 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 No. BG444068 is hereby **SUSPENDED** for ten (10) days.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 5th day of March, 2003, all rights and privileges under the above described permit will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 12th day of March, 2003.

This Order will become final and enforceable on January 1, 2003, 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 11 day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Rex A. Shaver  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (713) 812-1001**

J R WINGS INC.  
D/B/A WINGS N MORE  
**RESPONDENT**  
16637 Gulf Fwy.  
Houston, Texas 77060  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 8098**

Lindy To  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division  
Houston District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 598851**

**REGISTER NUMBER:**

**NAME: J R WINGS INC.**

**TRADENAME: WINGS N MORE**

**ADDRESS: 6006 Gulf Freeway, Houston, Texas 77023-5418**

**DATE DUE: March 5, 2003**

**PERMITS OR LICENSES: BG444068**

**AMOUNT OF PENALTY: \$1,500.00**

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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 5TH DAY OF MARCH 2003, 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.

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Signature of Responsible Party

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

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

\_\_\_\_\_  
City

\_\_\_\_\_  
State

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

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