

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

SPACE HOLDINGS LLC ET AL
D/B/A SPACE HOLDINGS LLC
HARRIS COUNTY, TEXAS

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Space Holdings LLC ET AL d/b/a Space Holdings LLC (Respondent), alleging that Respondent with criminal negligence sold served, dispensed or delivered an alcoholic beverage to a minor and Respondent with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on the premises, both being in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 14 days, or in lieu of suspension, that Respondent pay a civil penalty of \$2,100. 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, 61.71, 106.13 and 106.13(a). 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 August 30, 2002 and on September 25, 2002, Petitioner issued its notice of hearing, directed to Space Holdings LLC ET AL d/b/a Space Holdings LLC, 2222 Rusk, Houston, Texas 77003 and to 10042 Briar Drive, Houston, Texas 77042, via certified mail, return receipt requested. They were returned to Petitioner on September 30, 2002 and on October 2, 2002, and were marked "returned to sender" and "unclaimed" as evidenced by the return receipts. On October 11, 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 by Lindy To, 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 October 18, 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, Space Holdings LLC ET AL d/b/a Space Holdings LLC, holds a Mixed Beverage Permit, MB-507737 and Mixed Beverage Late Hours Permit LB-507738, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 799 Saint Emanuel, Houston, Harris County, Texas.
2. On August 30, 2002 and on September 25, 2002, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on October 11, 2002. The notices of hearing were sent back as "returned to sender" and "unclaimed" per the return receipts on or before September 30, 2002 and October 2, 2002.
3. The notices 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 notices 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 October 11, 2002. Respondent did not appear and was not represented at the hearing.
6. On or about March 21, 2002, Respondent, with criminal negligence sold, served, dispensed or delivered an alcoholic beverage to a minor and on or about March 21, 2002, Respondent, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on the premises.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61, 61.71, 106.13 and 106.13(a).

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. §§ 106.13 and 106.13(a).
6. Based upon Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61, 61.71, 106.13 and 106.13(a), Respondent's permit and license should be suspended for a period of 14 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 \$2,100 in lieu of suspension of the permit and license.

SIGNED this 13th day of December, 2002.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599786

IN RE SPACE HOLDINGS LLC ET AL	§	BEFORE THE
D/B/A SPACE HOLDINGS LLC	§	
PERMIT NOS. MB507737, LB507738	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-4083)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of January 2003, 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 October 11, 2002, and adjourned on October 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 13, 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. MB507737 and LB507738 are hereby **SUSPENDED for fourteen (14) days**.

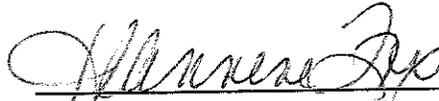
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,100.00** on or before the **3rd day of April, 2003**, all rights and privileges under the above described permits will be **SUSPENDED for a period of fourteen (14) days, beginning at 12:01 A.M. on the 10th day of April, 2003**.

This Order will become final and enforceable on January 24, 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 3rd day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

**SPACE HOLDINGS LLC ET AL
D/B/A SPACE HOLDINGS LLC
RESPONDENT
10042 Briar Drive
Houston, Texas 77042
CERTIFIED MAIL NO. 7001 2510 0003 8688 7749**

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 599786

REGISTER NUMBER:

NAME: SPACE HOLDINGS LLC ET AL

TRADENAME: SPACE HOLDINGS LLC

ADDRESS: 799 Saint Emanuel, Houston, Texas 77002

DATE DUE: April 3, 2003

PERMITS OR LICENSES: MB507737, LB507738

AMOUNT OF PENALTY: \$2,100.00

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 3RD DAY OF APRIL 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.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.