

II. Procedural History

The hearing was convened on September 11, 2002, before ALJ Deborah L. Ingraham at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Staff attorney Dewey Bracken represented the Commission. Respondent did not appear. After proffering evidence of notice, Staff moved for a default by deemed admissions pursuant to 1 TEX. ADMIN. CODE § 155.55. Based on the evidence showing proper notice and Respondent's failure to appear, the ALJ accepted Staff's factual allegations as true. At the hearing, Staff was instructed to examine the factual allegations to ensure that they constituted adequate findings under § 155.55 and to submit computer copies of both notices of hearing if he concluded the allegations were adequate. The record closed September 20, 2002, after receipt of those copies. Because the hearing proceeded on a default basis and the factual allegations were deemed admitted, the ALJ has incorporated those allegations into the findings of fact.

III. Findings of Fact

1. The Texas Java Company d/b/a The Austin Java Company (Respondent) holds a Mixed Beverage Permit and a Food and Beverage Certificate issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 2901 Capital of Texas Highway South, Room C-12A, Austin, Travis County, Texas, 78746.
2. Respondent holds a Wine and Beer Retailer's Permit and Food and Beverage Certificate issued by the Commission for the premises located at 1206 Parkway, Austin, Travis County, Texas, 78703.
3. The mailing address on file with the Commission for both of Respondent's Austin Java Company locations is 1106 West 38th Street, Suite 200, Austin, Texas, 78705.
4. On August 20, 2002, the Commission sent Respondent a notice of hearing by certified mail to 1106 West 38th Street, Suite 200, Austin, Texas, 78705, notifying Respondent that its permits or licenses issued for the 2901 Capital of Texas Highway South location may be canceled or suspended; also on August 20, 2002, the Commission sent Respondent a notice of hearing by certified mail to 1106 West 38th Street, Suite 200, Austin, Texas, 78705, notifying Respondent that its permits or licenses issued for the 1206 Parkway location may be canceled or suspended.
5. The notices of hearing issued for each restaurant location advised Respondent of the conduct alleged, the rules and statutes involved, the legal authority under which the contested hearing was to be held, and the date, time, and location of the hearing.
6. Both notices of hearing contained language printed in a bolded 12 point font stating that if Respondent failed to appear at the hearing, the allegations in the notices would be deemed admitted as true, and the relief sought by the Commission may be granted by default.
7. The notice of the hearing pertaining to the 1206 Parkway location was delivered to Respondent by certified mail on August 22, 2002; the notice of the hearing pertaining to the

Proposal for Decision

Docket No. 458-02-3817

- 2901 Capital of Texas Highway location was delivered to Respondent by certified mail on August 22, 2002.
8. At the contested hearing convened on September 11, 2002, Respondent failed to appear either personally or through a representative.
 9. Respondent allowed and consented to the use and display of its Mixed Beverage Permit and Food and Beverage Certificate Nos. MB-465664 and FB-487972 by an unauthorized person at the 2901 Capital of Texas Highway location.
 10. At the 1206 Parkway location, Respondent permitted the use and display of its Wine and Beer Retailer's Permit and Food and Beverage Certificate Nos. BG-463848 and FB-463849 in the conduct of the business for the benefit of a person who is not authorized by law to have an interest in the license.
 11. Respondent allowed and consented to the use and display of its Wine and Beer Retailer's Permit by an unauthorized person at the 1206 Parkway location.

IV. 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, 11.61, and 61.71 of the TEX. ALCO. BEV. CODE (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. GOVT. CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was affected upon The Texas Java Company d/b/a The Austin Java Company (Respondent) pursuant to the Code § 11.63; TEX. GOVT. CODE ANN. §§ 2001.051, 2001.052, and 2001.054(c); and 1 TEX. ADMIN. CODE § 155.55.
4. Based on Findings of Fact Nos. 10-12 and Code §§ 61.71(a)(15), 11.05, 11.61(b)(2), and 109.53, Respondent's Wine and Beer Retailer's Permit (BG-463848), Mixed Beverage Permit (MB-465664), and Food and Beverage Certificates (FB-487972 and FB-463849) should be canceled.

ISSUED this 15th day of November, 2002.



 DEBORAH INGRAHAM
 ADMINISTRATIVE LAW JUDGE
 STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600547 & 600548

IN RE TEXAS JAVA COMPANY	§	BEFORE THE
D/B/A THE AUSTIN JAVA COMPANY	§	
PERMIT NOS. MB-465664 & FB-487972;	§	
BG-463848 & FB-463849	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3817)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of March, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Deborah Ingraham. The hearing convened on September 11, 2002, and the record was closed September 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 15, 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. Exceptions to the Proposal 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 MB-465664 & FB-487972; BG-463848 & FB-463849 are hereby **CANCELLED**.

IT IS FURTHER ORDERED that all rights and privileges under the above described permits and license will be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on April 2, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 12th day of March, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Deborah Ingraham
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

The Texas Java Company, Inc.
d/b/a The Austin Java Company
RESPONDENT
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