

DOCKET NO. 520816

IN RE LUCKY W. FOOD INC.	§	BEFORE THE TEXAS
D/B/A LUCKY WAY FOOD STORE #2	§	
PERMIT NO. BQ540636	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1726)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6th day of October 2006, 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 May 5, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 8, 2006. Petitioner filed Exceptions to the Proposal for Decision on August 14, 2006 and Respondent did not reply. Judge Shaver issued an Amended Proposal for Decision on August 18, 2006. This Amended Proposal for Decision was properly served on all parties who were provided an opportunity to file Exceptions and Replies as part of the record herein. As of this date, no exceptions were filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Amended Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended 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 Respondent's permit is herein **SUSPENDED** for **twelve (12) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,800.00** on or before the **5th day of December 2006**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **twelve (12) days beginning at 12:01 A.M. on the 13th day of December 2006**.

This Order will become final and enforceable on October 27, 2006 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 6th day of October 2006.

On Behalf of the Administrator



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Lucky W. Food Inc.
D/B/A Lucky Way Food Store #2
RESPONDENT
1015 ½ Michigan "A"
South Houston, Texas 77587
CERTIFIED MAIL NO. 7005 3110 0000 6409 2011
RETURN RECEIPT REQUESTED

Licensing Division

Houston District Office
Compliance Section

jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings (SOAH) default rule .TEX. ADMIN. CODE § 155.55.

At the hearing, the TABC presented the TABC License and Violations History for Respondent, and the certified mail envelope containing the notice of this hearing which was sent to the Respondent's mailing address and was returned to TABC as unclaimed by the postal service. The TABC also presented a U. S. Postal service Track & Confirm page for the Certified mail envelope containing the notice of this hearing.

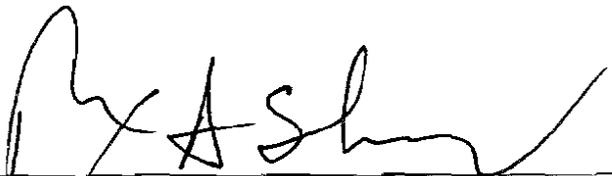
II. FINDINGS OF FACT

1. Respondent, with premises at 10804 S. Gessner Dr., Houston, Texas, 77071, holds Wine and Beer Retailer's Off-Premise Permit No. BQ-540636 issued by the TABC on July 25, 2003 and which has been continuously renewed.
2. On March 20, 2006, the TABC sent notice of the hearing to be held May 5, 2006, at 9:00 a.m., at the SOAH field office located at 2020 North Loop West, Suite 111, Houston, Texas 77018 to Respondent at its mailing address, 10804 S. Gessner Dr., Houston, Texas, 77071 by certified mail, return receipt requested, alleging that the Respondent was in violation of the Code in that on or about November 23, 2005, Respondent, its agent, servant, or employee, issued or delivered a check to make payment to a distributor for beer and that check was dishonored by the drawee due to insufficient fund in violation of §§ 102.31 and 11.61(b)(2) of the Code.
3. The hearing on the merits before ALJ Rex Shaver convened May 5, 2006, at 9:00 a.m., at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Ramona Perry. The Respondent did not appear and was not represented at the hearing. The record closed the same day.
4. Because the Respondent did not appear, TABC Staff's motion for default was granted, and the allegations were admitted as true.
5. On or about November 23, 2005, Respondent, its agent, servant, or employee issued or delivered a check to make payment to a distributor for beer and that check was dishonored by the drawee due to insufficient funds.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§6.01, 11.61, 61.71, 61.73 and 102.31 of the Code.
2. SOAH has jurisdiction to conduct the 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. 2003.
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. Based upon Finding of Fact No.5, Respondent, its agent, servant, or employee violated §§102.31 and 61(b)(2)of the Code.
5. Based on Findings of Fact Nos. 1-4, and Conclusions of Law 1-4 the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions the Respondent's Wine and Beer Retailer's Permit, BQ-504636 should be suspended for a period of 12 days with consideration that the Respondent be allowed to pay \$1500 in lieu of suspension.

SIGNED August 8, 2006



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

State Office of Administrative Hearings

RP+
BQ 12



Shelia Bailey Taylor
Chief Administrative Law Judge

August 8, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-1726; Texas Alcoholic Beverage Commission v. Lucky W. Food Inc. d/b/a Lucky Way Food Store #2

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mc
Enclosure

xc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL
Lucky W. Food Inc. d/b/a Lucky Way Food Store#2, 10804 S. Gessner Drive, Houston, Texas 77071 - VIA REGULAR MAIL