

DOCKET NO. 520832

THE WHISKEY MILL KATY INC.
D/B/A THE WHISKEY MILL
PERMIT NO(s). MB578155, LB578156

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

HARRIS COUNTY, TEXAS
(*SOAH DOCKET NO.458-06-1939*)

ORDER

CAME ON FOR CONSIDERATION this 28th day of July 2006, 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 April 28, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 29, 2006. The Proposal For Decision, attached 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 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 your permit(s) are hereby **SUSPENDED for four (4) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$600.00 on or before the **5th day of September, 2006**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **four (4) days**, beginning at 12:01 A.M. on the **13th day of September 2006**.

This Order will become final and enforceable on August 18, 2006, unless a Motion for Rchearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 28th day of July 2006, at Austin, Texas.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox". The signature is written in a cursive style and is positioned above a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Timothy J. Horan
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
Via Facsimile 713-812-1001

The Whiskey Mill Katy Inc.
RESPONDENT
d/b/a The Whiskey Mill
20940 Katy Frwy #1
Katy, TX 77449
CERTIFIED MAIL NO. 7005 3110 0000 6409 1175

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
THE WHISKEY MILL KATY INC. D/B/A THE WHISKEY MILL HARRIS COUNTY, TEXAS	§ § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against The Whiskey Mill Katy Inc. d/b/a The Whiskey Mill (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 be suspended four days, or in lieu of suspension, that Respondent pay a civil penalty of \$600. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. 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, and 61.71(a)(1). 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 April 7, 2006, Petitioner issued its notice of hearing, directed to The Whiskey Mill Katy Inc. d/b/a The Whiskey Mill, 20940 Katy Freeway # 1, Katy, Texas 77449, via certified mail, return receipt requested. The notice was returned "unclaimed", as evidenced by the certified mail receipt. On April 28, 2006, 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 Sandra Patton,

TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed on May 5, 2006.

II. 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. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

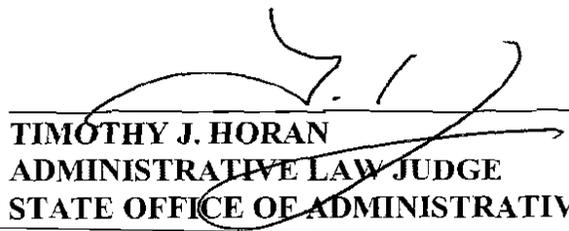
1. Respondent, The Whiskey Mill Katy Inc. d/b/a The Whiskey Mill holds a Mixed Beverage Permit MB-578155 and Mixed Beverage Late Hours Permit LB-578156 issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 20940 Katy Fwy # 1, Katy, Texas 77449.
2. On April 7, 2006, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on April 28, 2006. The notice of hearing was sent via certified mail to Respondent's last known address and was returned "unclaimed" as evidenced by the certified mail receipt.
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 April 28, 2006. Respondent did not appear and was not represented at the hearing. The record was closed on May 5, 2006.
6. On or about November 15, 2005, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment.

IV. 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, and 61.71(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. 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. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of four days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$600 in lieu of suspension of the permit/license.

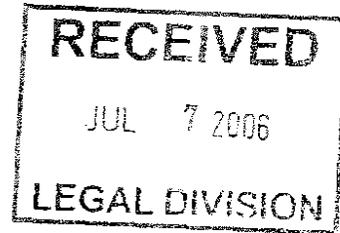
SIGNED June 29, 2006.


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

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



June 29, 2006

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

VIA REGULAR MAIL

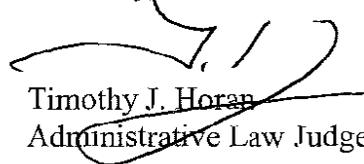
RE: Docket No. 458-06-1939; Texas Alcoholic Beverage Commission v. The Whiskey Mill Katy Inc. d/b/a The Whiskey Mill

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,



Timothy J. Horan
Administrative Law Judge

TJH/mc
Enclosure

xc: Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL
The Whiskey Mill Katy Inc. d/b/a The Whiskey Mill, 20940 Katy Freeway #1, Katy, Texas 77449 -VIA REGULAR MAIL