

DOCKET NO. 521620

IN RE TREE AMIGOS	§	BEFORE THE TEXAS
d/b/a Trees	§	
PERMIT NOS. MB225565 & LB225565	§	
	§	
	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1859)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6th day of September, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on June 21, 2006 and closed on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 11, 2006. 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 were not 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.

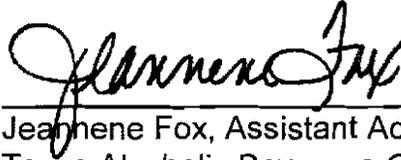
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits shall be SUSPENDED for SIX DAYS commencing at 12:01 a. m., November 8, 2006.**

This Order will become final and enforceable on September 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 6th day of September, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611

TREE AMIGOS
d/b/a Tree
RESPONDENT
2546 Elm Street, 2nd Floor
Dallas, TX 75226
CERTIFIED MAIL NO. 7003 2260 0000 6465 8575
RETURN RECEIPT REQUESTED

Diane Brown
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-678-4050

Licensing Division

Dallas District Office

DOCKET NO. 458-06-1859

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**TREE AMIGOS
D/B/A TREES
PERMIT NOS. MB-225565 AND
LB-225565
DALLAS COUNTY TEXAS
(TABC NO. 521620)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Tree Amigos, d/b/a Trees (Respondent) seeking a six-day suspension of Respondent's Mixed Beverage Permit MB-225565 and Mixed Beverage Late Hours Permit LB-225565. TABC alleged that between August 20, 2005, and October 15, 2005, Respondent, its agent, servant, or employee, issued five separate checks for purchases of beer, which were dishonored when presented for payment to wholesale distributors, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2), 61.71 (a)(1), 61.73 (b) and/or 102.31.

This Proposal for Decision finds the Respondent's permits should be suspended for six days.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on June 21, 2006. Attorney Diane Brown represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On October 16, 1991, Respondent was issued Mixed Beverage Permit MB225565 and Mixed Beverage Late Hours Permit LB-225565.

(b) On May 10, 2006, Petitioner sent a notice of hearing, by certified mail, return receipt requested, to Respondent's address of record asserting that the TABC was seeking to suspend Respondent's permit and license. The notice of hearing was returned to Petitioner with the notation, "return to sender, unclaimed, unable to forward."

(c) The notice of hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ALCO. BEV.CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on or off premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ALCO. BEV.CODE § 11.61 (b) (2) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following

is true: the permittee violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV. CODE § 61.73 (b) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

1. Tree Amigos, d/b/a Trees (Respondent) is the holder of Mixed Beverage Permit MB-225565 and Mixed Beverage Late Hours Permit LB-225565.
2. Respondent was notified of the factual allegations against Respondent in the notice of hearing issued by Petitioner on May 10, 2006. The notice of hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."
3. Respondent was notified of the date, time, and location of the scheduled hearing by the notice of hearing dated May 10, 2006.
4. On June 21, 2006, the hearing in this matter convened before ALJ Kyle J. Groves. Diane Brown appeared for Petitioner. Respondent failed to appear.
5. Between August 20, 2005, and October 15, 2005, Respondent, its agent, servant, or employee, issued five separate checks for purchases of beer, which were dishonored when presented for payment to wholesale distributors, in violation of TEX. ALCO. BEV. CODE ANN §§ 11.61 (b)(2), 61.71 (a)(1), 61.73 (b) and/or 102.31.

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Tree Amigos D/B/A Trees

DOCKET NUMBER: 458-06-1859

AGENCY CASE NO: 521620

Diane Brown
Staff Attorney
8700 N. Stemmons Frwy. #460
Dallas, TX 75247
Telephone No:
Fax No:

AGENCY COUNSEL
VIA FAX

Tree Amigos
D/B/A Trees
2546 Elm Street 2nd Floor
Dallas, Texas 75226

RESPONDENT
VIA REGULAR MAIL

as of July 11, 2006

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

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SR

July 11, 2006

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

Re: Docket # 458-06-1859 TABC Vs. Tree Amigos
D/B/A Trees

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 "Kyle J. Groves".

Kyle J. Groves
Administrative Law Judge

KJG/sr

cc: Diane Brown, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**;
Tree Amigos, Respondent, **Via Regular Mail**;