

DOCKET NO. 523611

SHEIKH INVESTMENT GROUP L.L.C.	§	BEFORE THE TEXAS
d/b/a Buy Low Kwik Stop	§	
PERMIT NOS. Q-497247 & BF497248	§	
	§	ALCOHOLIC
	§	
GREGG COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2347)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 4th day of December, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on June 23, 2006, and closed on the same day. Respondent failed to appear and was not represented. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 22, 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.

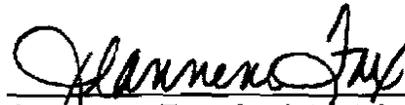
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits be canceled for cause.**

This Order will become final and enforceable on January 18, 2007, 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 4th day of December, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Jerry Van Hamme
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611

SHEIKH INVESTMENT GROUP L.L.C.
d/b/a Buy Low Kwik Stop
RESPONDENT
2809 Wyndham Ln.
Richardson, TX 75082
CERTIFIED MAIL NO. 7003 2260 0000 6465 5420
RETURN RECEIPT REQUESTED

Jerry McClain
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-678-4050

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-06-2347

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

V.

SHEIKH INVESTMENT GROUP L.L.C.
d/b/a BUY LOW KWIK STOP,
Respondent

TABC CASE NO. 523611

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this enforcement action against Sheikh Investment Group L.L.C. d/b/a Buy Low Kwik Stop (Respondent) alleging Respondent had not paid delinquent ad valorem taxes. Respondent did not appear at the hearing and was not represented by counsel. The Administrative Law Judge (ALJ) recommends that Respondent's permit and license be canceled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On June 23, 2006, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Jerry McClain, attorney for the Texas Alcoholic Beverage Commission (Commission). Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Accordingly,

Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

Each year, the collector for each taxing unit shall prepare a current and a cumulative delinquent tax roll for the unit. TEX. TAX CODE ANN. § 33.03. Also, at least once each year the collector for a taxing unit shall deliver a notice of delinquency to each person whose name appears on the current delinquent tax roll. TEX. TAX CODE ANN. §33.04.

The commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages if it finds that the permit holder has not paid delinquent ad valorem taxes due on the permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. A permit holder is presumed delinquent in the payment of taxes due if the permit holder is placed on a delinquent tax roll prepared under TEX. TAX CODE ANN. § 33.03, has received a notice of delinquency under TEX. TAX CODE ANN. § 33.04, and has not made a payment required under TEX. TAX CODE ANN. § 42.08 related to the forfeiture of remedies for the nonpayment of taxes. TEX. ALCO. BEV. CODE ANN. §§ 11.38(e) and 61.36(d).

A party may be defaulted for failing to appear at the hearing. A default proceeding requires a showing that proper notice under TEX. GOV'T. CODE ANN. ch. 2001 and 1 TAC § 155.27 was provided to the defaulting party and that such notice included a disclosure, in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and that the relief sought in the notice of hearing might be granted by default against the defaulting party who fails to appear at the hearing. 1 TAC § 155.55.

Unless applicable law provides otherwise, an agency referring a contested case to SOAH shall provide notice to all parties in accordance with TEX. GOV'T. CODE ANN. § 2001.052, which states, in pertinent part, that a notice of hearing in a contested case must include a statement of the

time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. 1 TAC § 155.27(a).

III. ANALYSIS

As reflected in Findings of Fact numbers 6 and 7, the notice sent to Petitioner complied with TEX. GOV'T. CODE ANN. § 2001.052 and 1 TAC §§ 155.27 & 155.55. Findings of Fact numbers 2 - 5 show Respondent was placed on a delinquent tax roll prepared under Section 33.03 of the Tax Code, received a notice of delinquency under Section 33.04 of the Tax Code, and failed to pay the delinquent taxes. TEX. ALCO. BEV. CODE ANN. §§ 11.38(e) and 61.36(d). The cancellation of Respondent's license and permit should, therefore, be upheld.

IV. FINDINGS OF FACT

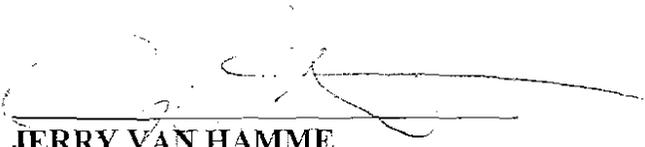
1. Sheikh Investment Group L.L.C. d/b/a Buy Low Kwik Stop, 2815 Estes Parkway, Longview, Gregg County, Texas, holds a Wine Only Package Store Permit, Q-497247, and a Beer Retailer's Off-Premise License, BF-497248, issued by the Commission on July 20, 2001.
2. On July 21, 2005, Respondent owed \$1,163.19 in delinquent property taxes to the Gregg County Tax Assessor-Collector and had been placed on a delinquent tax roll under TEX. TAX CODE ANN. § 33.03.
3. By letter dated July 21, 2005, Respondent was notified by the Office of the Gregg County Tax Assessor-Collector that Respondent owed delinquent property taxes and had been placed on a delinquent tax roll.
4. The letter was sent certified mail to Respondent's mailing address on file with the Commission and signed for on July 30, 2005.
5. Respondent failed to pay the delinquent property taxes.
6. On June 9, 2006, Staff sent Respondent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records. The Notice of Hearing informed Respondent of the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referred to the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.

7. The Notice of Hearing also contained language in 12-point type stating that if Respondent failed to appear at the hearing Staff's factual allegations could be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
8. On June 23, 2006, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Jerry McClain, attorney for the Commission. Respondent *did not appear* and was not represented at the hearing. The record was closed on the same day.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).
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. Based on Finding of Fact Nos. 2 - 5, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.38(e) and 61.36(d).
4. Based on Findings of Fact Nos. 6 and 7, proper and timely notice of the hearing was effected on Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TAC § 155.55.
5. Based on Finding of Fact Nos. 6 - 8, a default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions, the Commission is warranted in canceling Respondent's license and permit.

SIGNED August 22, 2006.

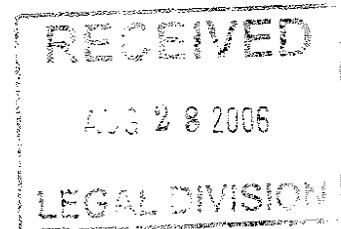

JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

no mdr
JM
Cancel

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



August 22, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Ste. 160
Austin, Texas 78731

RE: Docket No. 458-06-2347
TABC vs. Sheikh Investment Group L. L. C. d/b/a Buy Low Kwik Stop

Dear Ms. Fox:

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,

Jerry Van Hamme
Administrative Law Judge

JVH/sc
Enclosure

cc: Jerry McClain, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**
Sheikh Investment Group L. L. C., d/b/a Buy Low Kwik Stop, Respondent, **Via Regular Mail**