

**DOCKET NO. 536173**

SPITFIRE GRILL-FOUNTAINS LLC	§	BEFORE THE TEXAS
d/b/a SAM'S BOAT ON THE FOUNTAIN	§	
PERMIT/LICENSE NO(s). MB445393, LB445394, PE445395 & CB445396	§	ALCOHOLIC
	§	
FORT BEND COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2774)	§	BEVERAGE COMMISSION

**WAIVER ORDER**

On this day the above-numbered and styled case came on for consideration. The following findings of fact and conclusions of law are hereby made:

SPITFIRE GRILL-FOUNTAINS LLC, Respondent, is the holder of a Mixed Beverage Permit, Mixed Beverage Late Hours Permit, Beverage Cartage Permit and Caterer's Permit issued by the Texas Alcoholic Beverage Commission ("Commission") for the premises known as SAM'S BOAT ON THE FOUNTAIN, located 12720 S. W. Freeway, Stafford, Fort Bend County, Texas 77477 and whose mailing address is the same.

Respondent has waived hearing on the violation(s) listed on the attached Settlement Agreement and Waiver of Hearing, and accepts the penalty assessed below.

It is found that Respondent violated Sections 11.61 (b) (5), 11.61 (b) (2), 11.61 (c) (2) of the Texas Alcoholic Beverage Code.

**In accordance with the agreed waiver, Respondent's permit(s) and/or license(s) will be SUSPENDED for five (5) days.**

**IT IS THEREFORE ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **20<sup>th</sup> day of March 2007**, all rights and privileges granted by the Commission under the above described permit(s) and/or license(s) will be **SUSPENDED for five (5) days starting at 12:01 A.M. on the 28<sup>th</sup> day of March 2007.**

This Order is final and enforceable on the date it is signed.

On this date of signature, service shall be made upon parties in the manner indicated below.

**SIGNED** on February 2, 2007.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

Spitfire Grill-Fountains Llc  
d/b/a Sam's Boat On The Fountain

**RESPONDENT**

12720 SW Freeway  
Stafford, TX 77477

**CERTIFIED MAIL NO. 7005 3110 0000 6411 4416**

Ramona M. Perry

**ATTORNEY FOR THE COMMISSION**

Legal Services Division

Licensing Division

Richmond Outpost

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 536173**

**REGISTER NUMBER:**

**NAME: SPITFIRE GRILL-FOUNTAINS LLC**

**TRADENAME: SAM'S BOAT ON THE FOUNTAIN**

**ADDRESS: 12720 SW FREEWAY, STAFFORD, TX 77477**

**DUE DATE: MARCH 20, 2007**

**PERMITS OR LICENSES: MB445393, LB445394, PE445395 & CB445396**

**AMOUNT OF PENALTY: \$750.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_  
*You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.*

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711  
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City                      State                      Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

SOAH DOCKET NO. 458-06-2774

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	§	
<b>Petitioner</b>	§	
<b>V.</b>	§	
	§	
<b>SPITFIRE GRILL-FOUNTAINS LLC</b>	§	<b>OF</b>
<b>D/B/A SAM'S BOAT ON THE</b>	§	
<b>FOUNTAIN</b>	§	
<b>PERMIT NO. MB-445393, LB-445394, PE-</b>	§	
<b>445395, &amp; CB-445396</b>	§	
<b>HARRIS COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 536173)</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Spitfire Grill-Fountains LLC d/b/a Sam's Boat On The Fountains (Respondent), alleging:

1. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this code or rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act) in violation of the Texas Alcoholic Beverage Code (Code) §§ 11.61 (b)(5) and 11.61 (b)(2); and,
2. Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code) in violation of §§ 11.61 (c)(2) and 11.61 (b)(2) of the Texas Alcoholic Beverage Code (Code).

Staff recommended that Respondent's permits/licenses be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

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## I. PROCEDURAL HISTORY

The hearing in this matter convened on October 20, 2006, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy J. Horan presided.

On September 1, 2006, Petitioner issued its Amended Notice of Hearing, directed to Spitfire Grill-Fountains LLC d/b/a Sam's Boat On The Fountain, 12720 S. W. Freeway, Stafford, Texas 77477 via certified mail, return receipt requested, to Respondent's last known mailing address and was signed and received by Respondent as evidenced by the certified mail receipt. The hearing was originally set to be heard on September 15, 2006. An Agreed Motion for Continuance was filed and was granted, resetting this matter to October 20, 2006. Respondent failed to appear at the hearing. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

## II. FINDINGS OF FACT

1. Spitfire Grill-Fountains LLC d/b/a Sam's Boat On The Fountain (Respondent), located at 12720 SW Freeway, Stafford, Fort Bend County, Texas, holds Mixed Beverage Permit MB-445393, Mixed Beverage Late Hours Permit LB-445394, Beverage Cartage Permit PE-445395 and Caterer's Permit CB-445396.
2. On September 1, 2006, TABC timely sent an Amended Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 12720 S. W. Freeway, Stafford, Texas 77477. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.

3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was set to be heard on September 15, 2006. An Agreed Motion for Continuance was filed and granted, resetting the case to October 20, 2006. Respondent did not appear at the hearing and the record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. Respondent violated the Texas Alcoholic Beverage Code by:
  1. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this code or rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act) in violation of the Texas Alcoholic Beverage Code (Code) §§ 11.61 (b)(5) and 11.61 (b)(2), and;
  2. Respondent is shown on the records of the Comptroller of Public account as being subject to a final determination of taxes due and payable under the Limited Sales, excise and Use Tax act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (chapter 321, Tax code) in violation of §§ 11.61 (c)(2) and 11.61 (b)(2) of the Texas Alcoholic Beverage Code (Code).

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.

4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC §155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b)(5), 11.61 (b)(2), and 11.61 (c)(2).
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits is warranted.

**SIGNED December 12, 2006.**



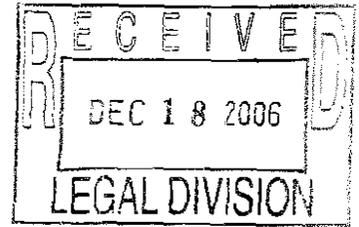
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**TIMOTHY J. HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



December 12, 2006

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

VIA REGULAR MAIL

**RE: Docket No. 458-06-2774/Texas Alcoholic Beverage Commission vs. Spitfire Grill-Fountain LLC d/b/a Sam's Boat on the Fountain**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Horan", written over a horizontal line.

Timothy J. Horan  
Administrative Law Judge

TJH/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona M. Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600 Houston, TX 77008- VIA REGULAR MAIL  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Spitfire Grill-Fountains LLC d/b/a Sam's Boat on the Fountain, 12720 S.W. Freeway, Stafford, TX 77477-VIA REGULAR MAIL