

SOAH DOCKET NO. 458-07-2293

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	
	§	
JAMES GRADY FERGUSON, JR.	§	OF
D/B/A FERGY'S	§	
PERMIT NO. BG557460	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NOS. 555045, 556501),	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against James Grady Ferguson, Jr. d/b/a Fergy's (Respondent), alleging:

1. On or about August 24, 2006, Permittee or Permittee's agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment in violation of the Texas Alcoholic Beverage Code (Code) §§ 61.73, 61.71(a)(1), 102.31 and/or 16 Tex. Admin. Code (TAC) 45.121; and
2. On or about May 17, 2006, Permittee applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively and failed to file with the Commission an approved performance surety bond in the amount of \$2,000.00. Failure to post the required \$2,000.00 performance surety bond is a violation of §§ 11.61 (b-1) and 61.17 (j) of the Code.

Staff recommended that Respondent's permit/license be suspended six days, or in lieu of suspension, that Respondent pay a civil penalty of \$900.00 for the first violation and be canceled for the second violation. The Administrative Law Judge (ALJ) agrees with these recommendations.

## I. PROCEDURAL HISTORY

The hearing in this matter convened on April 27, 2007, 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. ALJ Roshunda Pringle presided.

On March 30, 2007, Petitioner issued its notice of hearing, directed to James Grady Ferguson, Jr. d/b/a Fergy's, 1908 N. Main Street, Highlands, Texas 77562, via certified mail, return receipt requested, to Respondent's last known mailing address. The letter was "unclaimed" by Respondent as evidenced by the certified mail receipt. After the taking of evidence, Staff moved for a default judgment pursuant to 1 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. James Grady Ferguson, Jr. d/b/a Fergy's (Respondent), located 1908 N. Main Street, Highlands, Harris County, Texas 77562, holds a Wine and Beer Retailer's On-Premise Permit; BG 557460.
  2. On March 30, 2007, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 1908 N. Main Street, Highlands, Texas 77562. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and a short plain statement of the matter asserted.
  3. The Notice of Hearing also contained language in 12-point, bold-face type statement informing Respondent that if he failed to appear at the hearing, the factual allegations against him 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 held April 27, 2007. Respondent did not appear at the hearing, and the record was closed on the same day.
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5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. Respondent:
  1. Issued a check or draft for the purchase of beer that was dishonored when presented for payment.
  2. Failed to file with the Commission an approved performance surety bond in the amount of \$2,000.00 when Respondent applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, and § 11.61 of the TEX. ALCO. BEV. CODE ANN. (CODE).
  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 CODE § 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. §§ 61.73, 61.71(a)(1), 102.31 and/or 16 TAC § 45.121.
  6. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b-1) and 61.17 (j).
  7. 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.
  8. Based on the foregoing Findings of Fact and Conclusions of Law, the six day suspension, or in lieu of suspension, a civil penalty of \$900.00 is warranted.
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9. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permit is warranted.

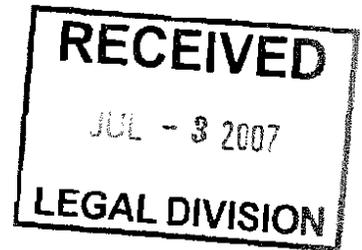
**SIGNED June 29, 2007.**

  
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**ROSHUNDA PRINGLE**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



June 29, 2007

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

VIA REGULAR MAIL

**RE: Docket No. 458-07-2293; Texas Alcoholic Beverage Commission v. James Grady Ferguson, Jr. D/B/A Fergy's**

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 cursive script that reads "Roshunda Pringle".

Roshunda Pringle  
Administrative Law Judge

RP/jh

Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008  
VIA REGULAR MAIL  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 -  
VIA REGULAR MAIL  
James Grady Ferguson, Jr. d/b/a Fergy's, 1908 N. Main Street, Highlands, Texas 77562 -VIA REGULAR MAIL  
James Grady Ferguson, Jr. d/b/a Fergy's, 705 West Houston Street, Highlands, Texas 77562 -VIA REGULAR MAIL