

SOAH DOCKET NO. 458-07-2437

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| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION, | § | |
| Petitioner | § | |
| V. | § | |
| | § | |
| MODI & MODI | § | OF |
| D/B/A PARASMANI FOOD | § | |
| PERMIT/LICENSE NO. BQ 538916, | § | |
| HARRIS COUNTY, TEXAS | § | |
| (TABC CASE NO. 557885), | § | |
| Respondents | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Sachin Shashikant Modi and Priti Shashakant Modi d/b/a Parasmani Food (Respondents), alleging that on or about September 22, 2006, Respondents or Respondents' agent, servant or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment. Staff argued that by giving the dishonored check, Respondents violated Texas Alcoholic Beverage Code §§ 61.73 and 102.31 and recommended that Respondents permit/license be suspended for a period of seven days, or in lieu of suspension, Respondents be ordered to pay a penalty of \$1,050.00. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened on May 4, 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 Sandra Patton represented the Petitioner. Respondents did not appear and were not represented at the hearing. Administrative Law Judge (ALJ) Rex A. Shaver presided.

On April 12, 2007, Petitioner issued its notice of hearing, directed to Modi & Modi d/b/a Parasmani Food, at Respondents' last known address, 2243 Highway 6 South, Houston, Texas 77077, via certified mail, return receipt requested. That notice was returned as "Unclaimed." Notice was also sent by regular mail to Modi & Modi d/b/a Parasmani Food at the same address.

Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE § 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.

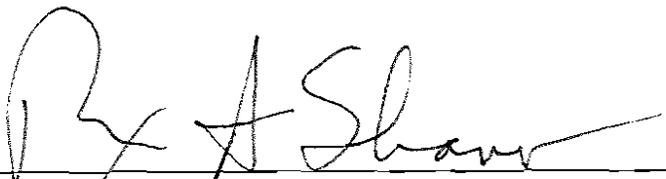
II. FINDINGS OF FACT

1. Sachin Shashikant Modi and Priti Shashakant Modi d/b/a Parasmani Food,(Respondents) located at 2243 Highway 6 South, Houston, Texas 77077, hold Wine and Beer Retailer's Off-Premise Permit BQ-538916.
2. On April 12, 2007, TABC sent a Notice of Hearing by certified mail, return receipt requested, to Respondents' last known mailing address at 2243 Highway 6 South, Houston, Texas 77077. 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 Respondents that if they failed to appear at the hearing, the factual allegations against them 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 May 4, 2007. Respondents 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. Respondents or Respondents' agent, servant or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.

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 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 decision under State Office of Administrative Hearings Rules, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondents violated TEX. ALCO BEV. CODE ANN. §§ 61.73 and 102.31 by giving a check or draft for the purchase of beer that was dishonored when presented for payment.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default decision against Respondents pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondents' permit/license should be suspended for seven days and in lieu of suspension, Respondents be allowed to pay a penalty of \$1,050.00.

SIGNED May 21, 2007



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 21, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-07-2437; Texas Alcoholic Beverage Commission v. Modi & Modi D/B/A Parasmani Food

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.

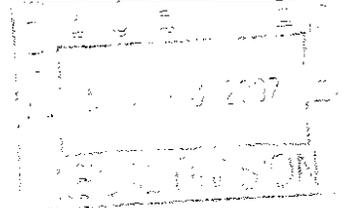
Sincerely,

A handwritten signature in cursive script that reads "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/jh
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra K. Patton, Attorney, Texas Alcoholic Beverage Commission, 427 W. W20th 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**
Modi & Modi d/b/a Parasmani Food, 2243 Highway 6 South, Houston, Texas 77077- **VIA REGULAR MAIL**



2020 North Loop West, Suite 111 ♦ Houston, Texas 77018

(713) 957-0010 Fax (713) 812-1001

<http://www.soah.state.tx.us>