

**DOCKET NO. 458-07-3189**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE</b>
	§	
	§	
<b>V.S.</b>	§	
	§	
<b>ARCHIE NOEL PATTERSON, JR. D/B/A THE HEIGHTS SPORTS LOUNGE PERMIT NO. MB569424; LB569425 HARRIS COUNTY, TEXAS (TABC CASE NO. 558833)</b>	§	<b>OFFICE OF</b>
	§	
	§	
	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Archie Noel Patterson, Jr. d/b/a The Heights Sports Lounge (Permittee) alleging that on or about November 22, 2006, Permittee, its agent, servant, or employee gave a check or draft in the amount of \$204.27 for the purchase of beer that was dishonored when presented for payment. in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) and § 102.31.

The Permittee did not make an appearance at the hearing on July 20, 2007. This Proposal for Decision finds the allegations by the TABC to be proven, and adopts the recommendation of the staff that the license be suspended for a period of 10 days, or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on July 20, 2007, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Sandra Patton. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this

matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. § 61.73(b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee gave a distributor a check for payment which was dishonored when presented for payment. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. § 61.73(b) by writing a check to a distributor that was subsequently returned for insufficient funds.

The staff attorney introduced two exhibits into evidence. Exhibit 1 is an affidavit of Amy Harrison, Licensing Department Director, that the Mixed Beverage Permit, MB569424, which includes the Mixed Beverage Late Hours Permit, were issued to Archie Noel Patterson Jr., doing business as The Heights Sports Lounge, by the Texas Alcoholic Beverage Commission. The mailing address of Archie Noel Patterson Jr. is 908 Westheimer, Houston, Texas 77006. Attached to the affidavit is the permit. Exhibit 2 is the Notice of Hearing sent by certified mail to Archie Noel Patterson Jr. with attached green card showing the letter was returned unclaimed.

The ALJ took judicial notice of the ALJ's file which shows the hearing was scheduled for July 20, 2007. Notice was properly sent to Permittee. The hearing convened on July 20, 2007, and Permittee did not appear.

## III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states, **“if you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in the notice will be deemed**

**admitted as true, and the relief sought may be granted by default.** ” Because the Respondent failed to attend the hearing, the allegations that Permittee made payment for beer with a dishonored check in violation of Section 61.73(b) and Section 102.31 of the Code is deemed admitted as true. The license should be suspended for a period of ten days, or in lieu of suspension, Permittee should pay a fine of \$1,500.00.

#### IV. FINDINGS OF FACT

1. Permit No. MB569424 and LB569425 were issued to Archie Noel Patterson Jr., doing business as The Heights Sports Lounge (Permittee), by the Texas Alcoholic Beverage Commission. The mailing address of Archie Noel Patterson Jr. is 908 Westheimer, Houston, Texas 77006.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee at Permittee’s address by certified mail.
3. The hearing on the merits was held on July 20, 2007, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Sandra Patton. The Permittee did not appear and was not represented at the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.
5. Permittee made payment for beer with a dishonored check on or about November 22, 2006, when Permittee, its agent, servant, or employee gave a check or draft in the amount of \$204.27 for the purchase of beer that was dishonored when presented for payment.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 61.71.
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 findings of fact and conclusions of law pursuant to TEX. GOV’T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052.

4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE § 155.55.
5. Permittee violated TEX. ALCO. BEV. CODE ANN. § 61.73(b) and § 102.31 by making payment for beer with a dishonored check.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten day suspension of the permit and license is warranted.
7. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$1,500.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 24<sup>th</sup> day of July, 2007.



---

**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

July 24, 2007

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

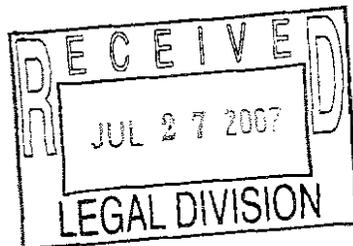
**VIA REGULAR MAIL**

**RE: Docket No. 458-07-3189/Texas Alcoholic Beverage Commission vs. Archie Noel Patterson, Jr. d/b/a The Heights Sports Lounge**

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,

*Don Smith*  
Don Smith  
Administrative Law Judge

DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra K. Patton, 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, Anstin, TX 78731-  
**VIA REGULAR MAIL**  
Archie Noel Patterson, Respondent, 908 Westheimer, Houston, Texas 77006 -**VIA REGULAR MAIL**