

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	OF
ROSE MARIE RANDALL D/B/A R & B RHYTHM & BLUES PERMIT/LICENSE NOS. BG614814, BL HARRIS COUNTY, TEXAS (TABC CASE NO. 562697)	§ § § § § §	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Rose Marie Randall d/b/a R & B Rhythm & Blues (Permittee) alleging that on or about November 27, 2006, Permittee applied for a renewal license under Chapter 25 (Wine and Beer Retailer’s Permit) or 69 (Retail Dealer’s On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively, failed to file with the Commission a surety bond in the amount of \$2,000.00, and does not hold a valid Food and Beverage Certificate. The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be cancelled and the renewals be denied.

**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 (SOAH) in Houston, Harris County, Texas. TABC’s Staff was represented by its counsel, Sandra Patton. Because the hearing proceeded on a default basis and TABC’s factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact.

The Commission and SOAH 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

CODE § 11.61 authorizes the Commission to cancel a license or permit if it is found, after notice and hearing, that the Permittee violated a provision of the Code or the rules. As described in the findings of fact, the Permittee violated CODE §§ 11.61 (b-1) and 61.71 (j).

The staff attorney introduced three exhibits into evidence. Exhibit 1 is the affidavit of Amy Harrison, Licensing Department Director, that Wine and Beer Retailer's Permit BG-614814, which includes the Retail Dealer's On-Premise Late Hours License, was issued to Permittee. Permittee's business address is 6921 Cullen Boulevard, Houston, Texas. Permittee's mailing address is 2839 Almeda Plaza Dr., Houston, Texas 77045. Exhibit 2 is the Notice of Hearing mailed to Permittee at 2839 Almeda Plaza Dr., Houston, Texas 77045 by certified mail and returned to sender unclaimed. Exhibit 3 is the Notice of Hearing mailed to Permittee's business address by regular mail and returned to sender as a vacant address/unable to forward.

## 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 this notice will be deemed admitted as true, and the relief sought may be granted by default.**" TABC's rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records. Because Permittee failed to attend the hearing, the allegations that Permittee violated CODE §§ 11.61 (b-1) and 61.71 (j) are admitted as true. The relief sought should be granted, and the permits should be cancelled and renewals should be denied.

#### IV. FINDINGS OF FACT

1. Permit BG-614814 with BL was issued to Rosc Marie Randall d/b/a R & B Rhythm & Blues (Permittee) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Permittee is 2839 Almeda Plaza Dr., Houston, Texas 77045.
2. TABC's Staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified mail, return receipt requested, and mailed the notice to Permittee's address on June 15, 2007. Permittee was properly noticed of the hearing, but did not accept the Notice of Hearing, and the notice was returned to sender.
3. TABC's Staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee's business address by regular mail on June 15, 2007, and the notice was returned to sender as a vacant location.
4. The Notice of Hearing contained a statement of the time, location, date, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.
5. The notice of hearing contained the following language in capital letters in 12-point boldface type:  
  
**If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**
6. The hearing on the merits was held on July 20, 2007, at the offices of the State Office of Administrative Hearings (SOAH), Houston, Harris County, Texas. Staff was represented by its counsel, Sandra Patton. The Permittee did not appear and was not represented at the hearing.
7. On or about November 27, 2006, Permittee applied for a renewal license under Chapter 25 (Wine and Beer Retailer's Permit) or 69 (Retail Dealer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively, failed to file with the Commission a surety bond in the amount of \$2,000.00, and does not hold a valid Food and Beverage Certificate.

#### V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61 and

61.71.

2. SOAH 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 SOAH rule, 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 7, Permittee violated TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b-1) and 61.71 (j).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a cancellation of the permit and license is warranted, and the renewals should be denied.

SIGNED this 24~~th~~ day of July, 2007.



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**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

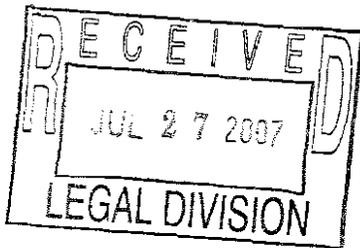
VIA REGULAR MAIL

**RE: Docket No. 458-07-3194/Texas Alcoholic Beverage Commission vs. Rose Marie Randall d/b/a R & B Rhythm & Blues**

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 "Don Smith".

Don Smith  
Administrative Law Judge

DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Sandra 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, Austin, TX 78731-  
VIA REGULAR MAIL  
Rose Marie Randall d/b/a R & B Rhythm & Blues, Respondent, 2839 Alameda Plaza Drive, Houston, Texas 77045 -  
VIA REGULAR MAIL