

# State Office of Administrative Hearings



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

September 19, 2007

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-07-3742; Texas Alcoholic Beverage Commission v. Bigeco, Inc.  
D/B/A Big E's #3**

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 that reads "Rex A. Shaver". The signature is written in a cursive style with a long, sweeping tail on the letter "h".

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 West 20<sup>th</sup> 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**  
Bigeco, Inc. d/b/a Big E's #3, 2501 Sam Houston Avenue, Huntsville, Texas 77340- **VIA REGULAR MAIL**  
Bigeco, Inc. d/b/a Big E's #3, P.O. Box 6726, Huntsville, Texas 77342- **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-07-3742

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,

Petitioner

v

BIGECO, INC. D/B/A BIG E'S #3  
PERMIT NO. BG 618629

WALKER COUNTY, TEXAS  
(TABC CASE NO. 563503),

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Bigeco, Inc., d/b/a Big E's #3 (Respondent), doing business at 2501 Sam Houston Avenue, Huntsville, Walker County, Texas, 77340, alleging that Respondent, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises, in violation of the Texas Alcoholic Beverage Code (Code). The sale to a minor was alleged to have occurred on March 12, 2007. Petitioner requested a 60-day suspension of Respondent's permit, or in lieu of suspension, a civil penalty of \$9,000. The Administrative Law Judge (ALJ) finds that Petitioner's allegations are deemed admitted as true. Based on the violation history of this permittee, the ALJ recommends a 30-day suspension of Respondent's permit. In lieu of suspension, TABC should allow Respondent to pay a \$4,500 civil penalty.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on August 17, 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. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Rex A. Shaver presided.

On August 2, 2007, Petitioner issued its notice of hearing, directed to Bigeco, Inc., d/b/a Big E's #3, doing business at 2501 Sam Houston Avenue, Huntsville, Walker County, Texas, 77340 via certified mail, return receipt requested, which was accepted by Respondent on August 8, 2007, as evidenced by the certified mail receipt. 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

Bigeco, Inc., d/b/a Big E's #3 (Respondent), located at 2501 Sam Houston Avenue, Huntsville, Walker County, Texas, 77340, holds Wine and Beer Retailer's Off Premise Permit, BG 618629.

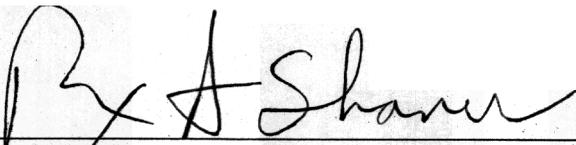
On August 2, 2007, the staff of the Texas Alco. Bev. Comm. timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known address at 2501 Sam Houston Avenue, Huntsville, Walker County, Texas, 77340. The Notice of Hearing contained information regarding the date, 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-faced 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 held August 17, 2007. 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 On March 12, 2007, Respondent sold, served, dispensed or delivered with criminal negligence an alcoholic beverage to a minor.

### III. CONCLUSIONS OF LAW

- The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 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. § 61.71 (a) (1) and (5) and § 106.13.
  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 suspension of Respondent's permits for a period of 60 days is warranted pursuant to TEX. ALCO BEV. CODE ANN. §§ 61.71 and 106.13.
  8. Respondent's permit and license should be suspended for 30 days. TEX. ALCO. BEV. CODE ANN. §§ 61.71 and 106.13 and 16 TEX. ADMIN. CODE § 37.60.
  9. As an alternative to suspension, Respondent should be permitted to pay a \$4,500 civil penalty. TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED September 19, 2007.

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