

SOAH DOCKET NO. 458-08-0030

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,**

Petitioner

V.

**RODNEY GENE RICE
D/B/A THE GULLY ICE HOUSE
PERMIT LICENSE NO(s) BG610019
HARRIS COUNTY, TEXAS
(TABC CASE NO. 565687),**

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Rodney Gene Rice d/b/a The Gully Ice House (Respondent), alleging that Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 10 days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty of \$1,500.00. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN ch. 2003.

On September 11, 2007, Petitioner issued its notice of hearing, directed to Rodney Gene Rice d/b/a The Gully Ice House at its mailing address of P.O. Box 2381, Crosby, Harris County, Texas

77532, via certified mail, return receipt requested and regular mail. The certified letter was returned unclaimed, but the letter sent by regular mail did not return. On September 28, 2007, a hearing convened before SOAH ALJ, Roshunda Pringle, at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on that same date.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

III. FINDINGS OF FACT

1. Respondent, Rodney Gene Rice d/b/a The Gully Ice House, holds a Wine and Beer Retailer's Permit, BG-610019, which includes the Retail Dealer's On-Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 19521 FM 2100, Crosby, Harris County, Texas 77532. Respondent's mailing address is P.O. Box 2381, Crosby, Texas 77532.
2. On September 11, 2007, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on September 28, 2007. The certified letter was returned unclaimed, but the letter sent by regular mail was not returned.
3. The notice of hearing contained a statement of the time, place, 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 matters asserted.

4. The notice of hearing also contained the following language in 12-point or larger boldface type, "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default".
5. A hearing convened before Roshunda Pringle, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on September 28, 2007. Respondent did not appear and was not represented at the hearing.
6. On or about May 9, 2007, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, and §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b).
 2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with 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 effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55, and 16 TAC § 37.3.
 4. A default decision should be entered against Respondent pursuant to 1 TAC § 155.55.
 5. Based upon Findings of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 28.12, 61.73, and 102.31.
 6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, 61.71(a)(1), 61.73(b), and 102.31, Respondent's permit and license should be suspended for a period of 10 days.
 7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1,500.00 in lieu of suspension of the permit and license.
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SIGNED November 20, 2007.



ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 20, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-08-0030; Texas Alcoholic Beverage Commission v. Rodney Gene Rice D/B/A The Gully Ice House

Dear Mr. Steen:

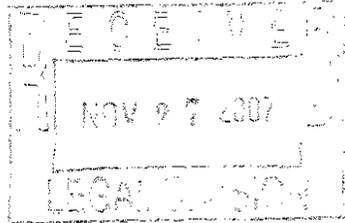
Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

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 black ink 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 West 20th 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
Rodney Gene Rice d/b/a The Gully Ice House, 19521 FM 2100, Crosby, TX 77532 -VIA REGULAR MAIL
Rodney Gene Rice d/b/a The Gully Ice House, P. O. Box 2381, Crosby, TX 77532 -VIA REGULAR MAIL