

SOAH DOCKET NO. 458-08-0136

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
	§	
V.	§	
	§	
CBCI, INC. D/B/A KENNY'S	§	OF
GRILL & SPORTS BAR	§	
PERMIT LICENSE NO(s)	§	
MB553259, LB553260	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO(s). 565962, 565968, 565971	§	
 Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against CBCI, Inc. d/b/a Kenny's Grill & Sports Bar (Respondent), alleging that Respondent, his agent, servant, or employee consumed an alcoholic beverage or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours. In addition, Petitioner alleged that Respondent, his agent, servant, or employee refilled, on two separate occasions, a container that contained distilled spirits on which tax had been paid. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested a cancellation of Respondent's permits. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 44.03. 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 18, 2007, Petitioner issued its notice of hearing, directed to Respondent at Respondent's physical address of 9788 Bissonnet, Houston, Harris County, Texas, 77036, and also at its mailing address of P.O. Box 710131, Houston, Texas 77271, via certified mail, return receipt requested¹ and regular mail. 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, as required by TEX. GOV'T CODE ANN. § 2001.052. 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."

On October 26, 2007, a hearing convened before SOAH ALJ, Roshunda Pringle, at 2020 North Loop West, Ste. 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Sandra Patton, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on October 26, 2007.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's

¹ Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be *prima facie* evidence of adequate service on the permittee. 16 TAC § 37.3.

permits be canceled.

III. FINDINGS OF FACT

1. CBCI, Inc. d/b/a Kenny's Grill & Sports Bar (Respondent) holds a Mixed Beverage Permit (MB-553259), which includes the Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission's Staff (Petitioner) for the premises located at 9788 Bissonnet, Houston, Harris County, Texas 77036.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is P.O. Box 710131, Houston, Harris County, Texas 77271.
3. On September 18, 2007, Petitioner issued its notice of hearing by certified mail, return receipt requested, and regular mail to Respondent at Respondent's last known address, setting the hearing on the merits for October 26, 2007.
4. 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.
5. 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."
6. A hearing convened before Roshunda Pringle, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 26, 2007. Petitioner appeared through its Staff Attorney, Sandra Patton. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about April 14, 2007, Respondent, his agent, servant, or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
8. On or about June 2, 2007, Respondent, his agent, servant, or employee refilled a container that contained distilled spirits on which tax had been paid.
9. On or about June 14, 2007, Respondent, his agent, servant, or employee refilled a container that contained distilled spirits on which tax had been paid.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 44.03.
2. SOAH has jurisdiction to conduct the 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. 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 judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 105.06 and 11.61(b)(2) and (22).
6. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 28.08 and 11.61(b)(2).
7. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

SIGNED November 20, 2007.

**ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**