

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 31, 2007



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

VIA REGULAR MAIL

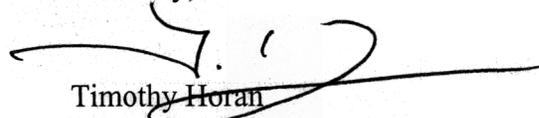
RE: Docket No. 458-07-3962/ Texas Alcoholic Beverage Commission vs. 1097 Investments Inc. d/b/a Bikini Beach

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,


Timothy Horan
Administrative Law Judge

TJH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 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**
1097 Investments Inc. d/b/a Bikini Beach, Respondent, 2626 Tanglewilde, Houston, TX 77063 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-07-3962

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

1097 INVESTMENTS INC.
D/B/A BIKINI BEACH
HARRIS COUNTY, TEXAS

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BEFORE THE STATE OFFICE

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against 1097 Investments Inc. d/b/a Bikini Beach (Respondent), alleging that Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended twenty-one days, or in lieu of suspension, that Respondent pay a civil penalty of \$3,150. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 1.61(b)(2), 24.06, and 61.71(a)(1). 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 7, 2007, Petitioner issued its notice of hearing, directed to 1097 Investments Inc. d/b/a Bikini Beach, 2626 Tanglewilde, Houston, Texas 77063, via certified mail, return receipt requested as evidenced by the certified mail tracking receipt. On September 21, 2007, a hearing convened before SOAH ALJ Timothy Horan 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 was closed

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 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. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

Respondent, 1097 Investments Inc. d/b/a Bikini Beach holds a Mixed Beverage Permit MB-574889, which includes the Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3403 FM 1960 W., Suite E, Houston, Harris County, Texas.

- 2 On September 7, 2007, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on September 21, 2007. The notice of hearing was sent via certified mail to Respondent's last known address as evidenced by the certified mail tracking receipt.
- 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.

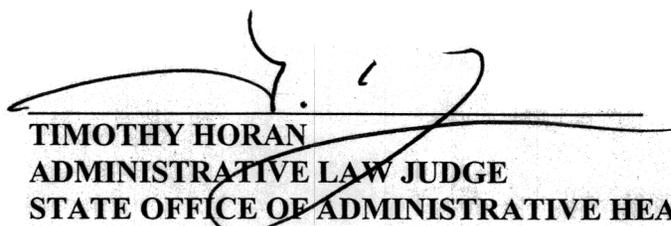
5. A hearing convened before Timothy Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on September 21, 2007. Respondent did not appear and was not represented at the hearing and the record was closed.
6. On or about April 27, 2007, May 4, 2007, July 20, 2007 and August 17, 2007, Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment.

IV. CONCLUSIONS OF LAW

TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).

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. Petitioner issued its notice of hearing in compliance with TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of twenty-one 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 \$3,150 in lieu of suspension of the permit/license.

SIGNED October 31, 2007.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS