

DOCKET NO. 458-08-1666

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	
SWASTIK CORPORATION	§	OF
D/B/A SUSHINE'S FOOD STORE	§	
PERMIT NO. Q-238996	§	
BASTROP COUNTY, TEXAS	§	
(TABC CASE NO. 568548),	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC), brought this enforcement action against Swastik Corporation d/b/a Sunshine's Food Store, (Respondent), alleging that Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE §§ 61.73 and 102.31. Based on Respondent's failure to appear, the Administrative Law Judge (ALJ) finds the allegations deemed admitted as true and agrees with TABC's recommendation of a 10 day suspension, or a \$150.00 per day civil penalty in lieu of suspension.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on April 14, 2008, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Judith Kennison, Staff Attorney, who moved for a default based on Respondent's failure to appear, which motion was granted.

Staff offered competent evidence establishing jurisdiction and demonstrating that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

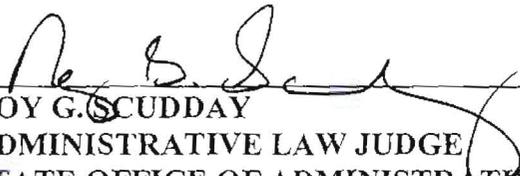
1. Respondent, Swastik Corporation d/b/a Sunshine's Food Store (Respondent), holds Permit No. Q238996, issued by the Texas Alcoholic Beverage Commission (TABC).
2. On February 13, 2008, TABC's staff (Staff) sent a Notice of Hearing seeking suspension of Respondent's license by certified mail to Respondent at 306 Hwy 71 W, Bastrop, Texas 78602. The return receipt was signed for on behalf of Respondent.
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 contained the following language in at least 12-point boldface type: "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 herein may be granted by default. (1 TAC § 155.55)"
5. The hearing on the merits was convened on April 14, 2008. Respondent did not appear and was not represented at the hearing. The record closed on that date.
6. On or about August 1, 2007, Respondent or Respondent's agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§ 6.01, 11.46, 11.61, 61.71 and 61.73 of the TEX. ALCO. BEV. CODE (Code).
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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon Finding of Facts Nos. 5 and 6, the Respondent violated Code §§ 61.73 and 102.31.
5. Based on the Findings of Fact and Conclusions of Law, the TABC is entitled to a default decision against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.

6. Based on the foregoing findings and conclusions, a 10 day suspension of Respondent's permit is warranted.
7. Pursuant to Code § 11.64, Respondent should be allowed to pay a \$1,211.65 civil penalty (\$150 per day) in lieu of suspension of its permit.

SIGNED April 22, 2008



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS