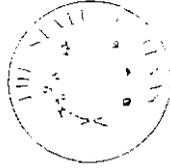


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 10, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-98-1960; Texas Alcoholic Beverage Commission vs. RC Restaurants Inc. d/b/a Chinatown Downtown (TABC Case No. 578644)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to RC Restaurants Inc., d/b/a Chinatown Downtown, Respondent. For reasons discussed in the proposal, I recommend Respondent's permits be canceled.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Marquardt", with a long, sweeping underline.

Barbara C. Marquardt
Senior Administrative Law Judge

BCM/dms

Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - **HAND DELIVERY**
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - **HAND DELIVERY**
RC Restaurants, Inc. d/b/a Chinatown Downtown, 215 E. 6th Street, Ausitin, Texas 78701 - **CERTIFIED MAIL**
NO. Z 456 825 807, RETURN RECEIPT REQUESTED

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
RC RESTAURANTS INC.	§	OF
D/B/A CHINATOWN DOWNTOWN	§	
PERMIT NO. BG-424231 &	§	
CERTIFICATE NO. FB-424232	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 578644)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking cancellation of the permits held by RC Restaurants Inc., d/b/a Chinatown Downtown (Respondent), because it has not paid a local permit fee levied by Travis County for the permit year 1997. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the permits be cancelled.

I. Procedural History

On December 1, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Dewey Brackin, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE §155.55, and the motion was granted.

II. Reasons for Decision

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

III.

PROPOSED FINDINGS OF FACT

1. RC Restaurants Inc., d/b/a Chinatown Downtown (Respondent), is the holder of Wine and Beer Retailer's Permit BG424231 and Food and Beverage Certificate FB424232 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises known as Chinatown Downtown located at 215 E. 6th Street, Austin, Travis County, Texas 78701-3625.

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LEGAL DIVISION

2. On October 27, 1998, Staff sent, by certified mail, a Notice of Hearing to Respondent, which 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 statutes and rules involved; and a statement of the matters asserted.
 - a. The Notice of Hearing was sent to Respondent at its mailing address of record, 215 E. 6th Street, Austin, Texas 78701-3625 by certified mail (No. P 419 580 196), return receipt requested, and it was received at that address on October 28, 1998.
 - b. The notice disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought could be granted.
3. On December 1, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings in the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Dewey Brackin, an attorney with the Commission's Legal Division, but Respondent failed to appear and was not represented by an attorney.
4. Respondent has not paid a local permit fee levied by Travis County for the permit year 1997.

IV.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§11.38 and 11.61 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. As referenced in Finding 2, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to the Code §11.61(c), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE §§155.27 and 155.55.
4. Based on the foregoing, Respondent has not paid a local permit fee authorized by § 11.38(a) of the Code, which warrants cancellation of the permits referenced in Finding 1 under § 11.38(b) of the Code.

SIGNED this 16th day of February, 1999.


BARBARA C. MARQUARDT
Senior Administrative Law Judge
State Office of Administrative Hearings