

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 11, 1999

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

**HAND DELIVERY**

**RE: Docket No. 458-98-1959; Texas Alcoholic Beverage Commission vs. Shuman-Hughey, Inc. d/b/a Electric Lounge (TABC Case No. 579686)**

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 Shuman-Hughey, Inc., d/b/a Electric Lounge, Respondent in this matter. For reasons discussed in the proposal, I recommend Respondent's permits be suspended for ten days or, in the alternative, that it pay a civil penalty of \$1,500.

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 cursive script, appearing to read "B. Marquardt".

Barbara C. Marquardt  
Administrative Law Judge

BCM:et  
Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - **HAND DELIVERY**  
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - **HAND DELIVERY**  
Shuman-Hughey, Inc. d/b/a Electric Lounge, 302 Bowie Street, Austin, Texas 78703 - **CERTIFIED MAIL NO. Z 300 865 968, RETURN RECEIPT REQUESTED**

William P. Clements Building  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025  
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

SOAH DOCKET NO. 458-98-1959

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
SHUMAN-HUGHEY, INC.	§	
D/B/A ELECTRIC LOUNGE	§	
PERMIT NOS. MB-410846 & LB-410847	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 579686)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking suspension of the permits held by Shuman-Hughey, Inc., d/b/a Electric Lounge (Respondent), because it paid for beer by a check that was dishonored for insufficient funds when presented for payment. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that Respondent's permits be suspended for ten days or, in the alternative, that it pay a civil penalty of \$1,500.

**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

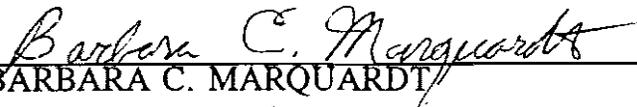
1. Shuman-Hughey, Inc., d/b/a Electric Lounge (Respondent), is the holder of Mixed Beverage Permit MB-410846 and Mixed Beverage Late Hours Permit LB-410847 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises known as Electric Lounge located at 302 Bowie Street, Austin, Travis County, Texas.
2. On October 28, 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, 302 Bowie Street, Austin, Texas 78701 by certified mail (No. P 419 580 202), return receipt requested, and it was received at that address on October 29, 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. On or about June 4, 1998, Respondent gave a check for \$248 to Capitol Beverage Company of Austin, Texas in payment for beer.
5. On June 18, 1998, the check referenced in Finding 4 was returned by Drawee, Bank One of Austin, Texas for insufficient funds.

IV.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §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 paid for beer by a check that was dishonored for insufficient funds in violation of §61.73(b) of the Code, which warrants suspension of the permits referenced in Finding 1 for ten days, or payment of a civil penalty in the amount of \$1,500.

SIGNED this 14th day of February, 1999.

  
BARBARA C. MARQUARDT  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS