

**DOCKET NO. 612865**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
RITA'S EATERIE AND CANTINA D/B/A RITA'S EATERIE AND CANTINA PERMIT/LICENSE NO(s). N193578, FB261200	§	ALCOHOLIC
	§	
	§	
NACOGDOCHES COUNTY, TEXAS ( <i>SOAH DOCKET NO. 458-06-0274</i> )	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 18<sup>th</sup> day of December 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on October 13, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 21, 2006. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules that Permit No. N193578 and Certificate No. FB261200 are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on January 15, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this the 18<sup>th</sup> day of December 2006, at Austin, Texas.

On Behalf of the Administrator,



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Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

Rita's Eaterie And Cantina  
d/b/a Rita's Eaterie And Cantina

**RESPONDENT**

2804 N. Street

Nacogdoches, TX 75965

**CERTIFIED MAIL NO./RRR 7003 0500 0003 1524 4206**

Lindy B. Hendricks

**ATTORNEY FOR PETITIONER**

TABC Legal Section

Licensing Division

Lufkin Outpost

DOCKET NO. 458-07-0274

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>RITA’S EATERIE AND CANTINA INC.,</b>	§	<b>OF</b>
<b>D/B/A RITA’S EATERIE AND CANTINA</b>	§	
<b>PERMITS NOS. N193578 and FB261200</b>	§	
<b>NACOGDOCHES COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 612865),</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Rita’s Eaterie and Cantina Inc. d/b/a Rita’s Eaterie and Cantina (Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. § 1.01 et seq. (Code) or the Texas Alcoholic Beverage Commission Rules, 16 TEX. ADMIN. CODE § 31.1 et seq. (the Rules), or both. The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be cancelled.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The hearing in this matter convened on October 13, 2006, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. TABC was represented by its counsel, Lindy Hendricks. Because the hearing proceeded on a default basis and Staff’s factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.



## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 11.61 authorizes the Commission to cancel a license/permit if it is found, after notice and hearing, that the Permittee violated a provision of the Code or a rule of the Commission. As described in the findings of fact, the Permittee violated CODE §§ 11.05, 11.61 (b) (2), 32.17 (a) (8), and 109.53.

The staff attorney introduced two exhibits into evidence. Exhibit 1 is the affidavit of Amy Harrison, Licensing Department Director, that Permits N-193578 and FB-261200 were issued to Permittee. Permittee's mailing address is 2804 N Street, Nacogdoches, Texas 75961. Exhibit 2 is a Track and Confirm from the United States Postal Service that on October 3, 2006, the Notice of Hearing sent to Permittee was returned to the sender unclaimed.

## III. RECOMMENDATION

The notice of hearing, in 12-point boldface lettering, states "if you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's address, as shown by the agency's records. Therefore, the allegations that Permittee violated CODE §§ 11.05, 11.61 (b) (2), 32.17 (a) (8), and 109.53 are deemed as true. The relief sought should be granted, and the permit/license should be cancelled.

## IV. FINDINGS OF FACT

1. Permits N-193578 and FB-261200 were issued to Rita's Eaterie and Cantina Inc. d/b/a Rita's Eaterie and Cantina by the Texas Alcoholic Beverage Commission. The mailing address of Permittee is 2804 N Street, Nacogdoches, Texas 75961.

2. The staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee on September 22, 2006, by certified mail, return receipt requested, and mailed the notice to Permittee's address as shown in the agency's records.
3. The notice of hearing contained the following language in capital letters in 12-point boldface type:

**If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**

4. The hearing on the merits was held on October 13, 2006, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Lindy Hendricks. The Permittee did not appear and was not represented at the hearing.
5. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

On or about September 30, 2004, Permittee, Rita's Eaterie and Cantina, Inc., or its agent, servant, or employee, allowed or consented to an unauthorized person using or displaying the permit. By allowing or consenting to an unauthorized person using or displaying the permit, Permittee violated TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61 (b) (2), 32.17 (a) (8), and 109.53.

## V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE § 155.55.
5. Based upon finding of fact No. 5, Permittee violated TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61 (b) (2), 32.17 (a) (8), and 109.53.

6. Based on the foregoing Findings of Fact and Conclusions of Law, a cancellation of the permit and license is warranted.

**SIGNED November 21, 2006.**

  
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**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



*in folder*

**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

November 21, 2006

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-07-0274; Texas Alcoholic Beverage Commission vs. Rita's Eaterie and Cantina Inc., D/B/A Rita's Eaterie and Cantina**

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](http://www.soah.state.tx.us).

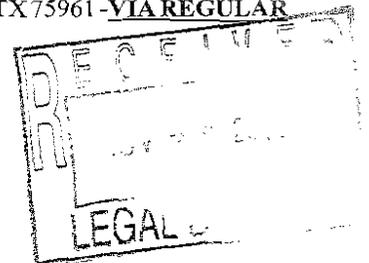
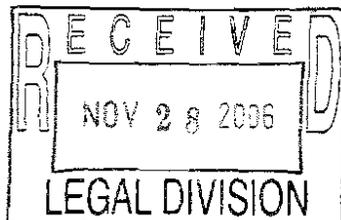
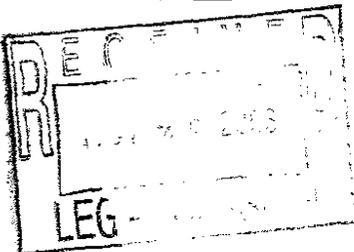
Sincerely,

A handwritten signature in black ink that reads "Don Smith".

Don Smith  
Administrative Law Judge

DS/jh  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**,  
Lindy B. Hendricks, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> 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**  
Rita's Eaterie and Cantina d/b/a Rita's Eaterie and Cantina, 2804 N. Street, Nacogdoches, TX 75961 -**VIA REGULAR MAIL**



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