

**DOCKET NO. 525615 & 533771**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
DALLAS ENTERPRISE INC. D/B/A ALL AMIGO'S BEER & WINE PERMIT/LICENSE NO(s). Q415390	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-08-3305)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 10<sup>th</sup> day of October 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing convened on August 1, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 9, 2008. 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.

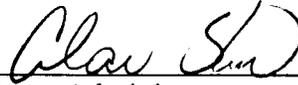
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 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 Respondent's permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on November 3, 2008 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 10<sup>th</sup> day of October,  
2008, at Austin, Texas.



\_\_\_\_\_  
Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150-A  
Dallas, Texas 75235  
**VIA FACSIMILE TO: (214) 956-8611**

Dallas Enterprise Inc.  
d/b/a All Amigo's Beer & Wine  
**RESPONDENT**  
4910 Military Parkway  
Dallas, TX 75227  
**VIA FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas Enforcement District Office

SKP/aa

**STATE OFFICE OF ADMINISTRATIVE HEARINGS****DALLAS OFFICE**

6333 Forest Park Road Suite 150a

Dallas, Texas 75235

Phone: (214) 956-8616

Fax: (214) 956-8611

DATE: 09/09/2008  
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 06  
REGARDING: PROPOSAL FOR DECISION  
DOCKET NUMBER: 458-08-3305

JUDGE MICHELLE KALLASFAX TO:FAX TO:

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SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE  
COMMISSION)

(713) 426-7965

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DALLAS ENTERPRISE, INC. D/B/A ALL AMIGO'S BEER  
& WINE

VIA REGULAR MAIL

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ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE  
COMMISSION)

(512) 206-3350

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Lou Bright Director of Legal Services (Alcoholic Beverage  
Commission, Texas)

(512) 206-3498

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**NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(lda) (214) 956-8616**

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# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 9, 2008

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

**VIA FACSIMILE 512/206-3203**

**RE: Docket No. 458-08-3305 Texas Alcoholic Beverage Commission V. Dallas Enterprise Inc. D/B/A All Amigos Beer & Wine**

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 cursive script that reads "Michelle Kallas".

Michelle Kallas  
Administrative Law Judge

MK/lan  
Enclosure

xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**  
Dallas Enterprise Inc D/B/A All Amigos Beer & Wine, **VIA REGULAR MAIL 4910 Military Parkway, Dallas Texas 75227**

**SOAH DOCKET NO. 458-08-3305**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>v.</b>		<b>OF</b>
<b>DALLAS ENTERPRISE INC. d/b/a ALL AMIGOS BEER &amp; WINE, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Dallas Enterprises, Inc. (Respondent) alleging that Respondent, with criminal negligence, sold, served, or delivered an alcoholic beverage to a minor on the licensed premises. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permit and license be cancelled. The Administrative Law Judge (ALJ) recommends that Respondent's permit and license be cancelled.

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

TABC has jurisdiction over this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §106.13. 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 June 6, 2008, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address, 4910 Military Parkway, Dallas, Texas, 75227, via certified mail, return receipt requested.<sup>1</sup> 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

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<sup>1</sup> Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the Commission's records. A certificate of service to such address is prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

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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, as required by TEX. GOV'T CODE ANN. § 2001.052. 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."

On August 1, 2008, a hearing convened before SOAH ALJ Michelle Kallas at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing, via telephone, by Sandra Patton, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on August 1, 2008.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's permit and license be cancelled.

## III. FINDINGS OF FACT

- 1 Dallas Enterprise Inc. (Respondent) holds a Wine Only Package Store Permit, Q-415390, and a Beer Retailers Off Premise License, BF-415391, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 4910 Military Parkway, Dallas, Dallas County, Texas.
- 2 Respondent's last known designated mailing address, as reflected in Petitioner's records, is 4910 Military Parkway, Dallas, Texas, 75227.

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3. On or about March 17, 2006, Respondent and/or its agent, servant, or employee, with criminal negligence, sold, served, or delivered an alcoholic beverage to a minor on the licensed premises.
4. On or about May 26, 2006, Respondent and/or its agent, servant, or employee, with criminal negligence, sold, served, or delivered an alcoholic beverage to a minor on the licensed premises.
5. On June 6, 2008, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for August 1, 2008.
6. 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.
7. 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."
8. A hearing convened before Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 1, 2008, Petitioner appeared, via telephone, through its Staff Attorney, Sandra Patton. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 106.13.
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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TAC § 155.55 and 16 TAC § 37.3.