

DOCKET NO. 572555

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|------------------------------------|---|---------------------|
| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE TEXAS |
| COMMISSION | § | |
| | § | |
| VS. | § | |
| | § | |
| BEER BELLIES REAL SPORTS BAR AND | § | |
| GRILL LLC | § | |
| D/B/A BEER BELLIES REAL SPORTS BAR | § | ALCOHOLIC |
| AND GRILL | § | |
| PERMIT/LICENSE NO(s). MB613219 | § | |
| EL PASO COUNTY, TEXAS | § | |
| (SOAH DOCKET NO.458-08-2619) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 19th day of August, 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on 12th day of June 2008 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 10th day of July 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. No exceptions were filed.

The 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, which 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 your permit(s) are hereby **SUSPENDED** for **five (5) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **15th** day of **October 2008**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **five (5) days, beginning at 12:01 A.M. on the 22nd day of October 2008**.

This Order will become final and enforceable on September 12, 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 19th day of August, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Administrative Law Judge
State Office of Administrative Hearings
El Paso, Texas
VIA FACSIMILE: (915) 834-5657

BEER BELLIES REAL SPORTS BAR AND GRILL LLC
RESPONDENT
d/b/a BEER BELLIES REAL SPORTS BAR AND GRILL
9000 VIRGO LANE
EL PASO, TX 79904

JUDITH L. KENNISON
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement District Office

07 10 2008 14:21 FAX 8155345051 SOAH 41002

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 10, 2008

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA FACSIMILE NO. 512-206-3350
AND REGULAR MAIL

RE: Docket No. 458-08-2619

TABC 572555
***Texas Alcoholic Beverage Commission v. Beer Bellies Real Sports Bar
& Grill d/b/a Beer Bellies Sports Bar & Grill***

Dear Ms. Fox:

Please find enclosed the Proposal for Decision-Default on the above referenced case. My recommendation is a five day suspension, or a \$750.00 civil penalty, for the issuance of one dishonored check.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera", is written over the typed name and title.

Veronica S. Najera
Administrative Law Judge
State Office of Administrative Hearings
El Paso Regional Office

VSN/cr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA Docket Change Form

Judith Kennison, Attorney, TABC Legal Division- VIA Facsimile No. 512-206-3498

Beer Bellies Sports Bar & Grill, Respondent, 9000 Virgo Lane, El Paso, Texas 79904 - VIA Regular Mail.

El Paso State Office Building
401 East Franklin Ave., Suite 580 ♦ El Paso, Texas 79901
(915) 834-5650 ♦ (915) 834-5657 Fax
<http://www.soah.state.tx.us>

Post Office certified mail, return receipt requested. The TABC offered into evidence the U.S. Post Office's return receipt "green card" number 7003 2260 0000 6465 7653, with signature indicating delivery. Furthermore, the Notice of Hearing is presumed to have been received.¹

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, the Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. The 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 incorporates these allegations into the Findings of Fact below. Further, the ALJ recommends a five day suspension, or in lieu of the suspension, Respondent be ordered to pay \$750.00 in civil penalty for the issuance of the dishonored check.

III. FINDINGS OF FACT

1. Beer Bellies Real Sports Bar & Grill d/b/a Beer Bellies Sports Bar & Grill (Respondent) holds a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission under number MB-613219, for the premises located at 9420 Montana Avenue, El Paso, El Paso County, Texas.
2. On April 22, 2008, the TABC issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 9000 Virgo Lane, El Paso, Texas 79904.
3. This notice was sent by U.S. Post Office certified mail, return receipt requested. The "green card" number 7003 2260 0000 6465 7653 was returned to the TABC with signature indicating delivery.
4. The notice 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.

¹ 1 TEX. ADMIN. CODE (TAC) § 155.25(d) provides that if a document was sent by regular mail, certified mail, or registered mail, the judge shall presume that it was received no later than three days after mailing.

5. The Notice of Hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought may be granted by default.
6. A hearing was convened before ALJ Veronica S. Najera at the SOAH El Paso Regional Office, located at the State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas, on June 12, 2008. TABC's staff was represented at the hearing by Judith L. Kennison, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
7. On October 23, 2007, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings 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 and TEX. ALCO. BEV. CODE ANN. § 5.43.
3. Based upon Findings of Fact Nos. 2-5, the TABC issued its Notice of Hearing in compliance with 1 TEX. ADMIN. CODE (TAC) §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN § 11.63
4. The hearing proceeded on a default basis as authorized by TAC § 155.55.
5. Based upon Finding of Fact No. 7, Respondent violated Respondent violated TEX. ALCO. BEV. CODE ANN. § 102.31.
6. Respondent's permit should be suspended for a period of five days, or in lieu of the suspension, Respondent shall pay a \$750.00 civil penalty.

SIGNED July 10, 2008.



VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



STATE OFFICE OF ADMINISTRATIVE HEARINGS

El Paso State Office Building
401 East Franklin Ave., Suite 580
El Paso, Texas 79901
Telephone No. (915) 834-5650
Facsimile No. (915) 834-5657

Date: July 10, 2008.

No. of Pages: 5
 (Including cover sheet)

SOAH Docket No. 458-08-2619
TABC v. Beer Bellies Real Sports Bar & Grill d/b/a Beer Bellies Sports Bar & Grill

From: Veronica S. Najera
 Administrative Law Judge

Service List:

| FAX TO | FAX NO. |
|---|------------------|
| Judith Kennison, Attorney, TABC | 512- 206-3498 |
| Respondent | Via regular mail |
| Jeannene Fox, Asst. Administrator, TABC | 512-206-3350 |

MESSAGE:

Proposal for Decision

Note: If you have any problem with this facsimile transmittal, please contact Celia Rodriguez at (915) 834-5650.

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