

# State Office of Administrative Hearings



572802

Cathleen Parsley  
Chief Administrative Law Judge

September 29, 2008

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

**VIA FACSIMILE 512/206-3203**

**RE: Docket No. 458-08-3553 Texas Alcoholic Beverage Commission V. Jitendra Kantilal Ravani D/B/A Nuway Convenience Store**

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 "Michelle Kallas".

Michelle Kallas  
Administrative Law Judge

MK/lan  
Enclosure

cc: Susan Stith, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**  
Jitendra Kantilal Ravani, d/b/a Nuway Convenience Store, **VIA REGULAR MAIL, 2432 Winterstone Drive**  
**Plano, Texas 75023**

**DOCKET NO. 458-08-3553**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>JITENDRA KANTILAL RAVANI d/b/a</b>	§	
<b>NUWAY CONVENIENCE STORE,</b>	§	
<b>Respondent</b>	§	
	§	
<b>TABC NO. 572802</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Jitendra Kantilal Ravani (Respondent) alleging that Respondent, or its agent, servant, or employee, issued a check for the purchase of beer which was dishonored when presented for payment. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permit be suspended for 5 days or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$750.00. The Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended for 5 days and the Respondent be allowed to pay a civil penalty in the amount of \$750.00 in lieu of suspension.

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

TABC has jurisdiction over this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 61.73 and 102.31. 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 July 1, 2008, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address, 2432 Winterstone, Plano, Texas, 75023, via

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PROPOSAL FOR DECISION

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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 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 14, 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 Susan Stith, 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 14, 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 be suspended for a period of 5 days or, in lieu of suspension, that Respondent be permitted to

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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.

pay a civil penalty in the amount of \$750.00.

### III. FINDINGS OF FACT

1. Jitendra Kantilal Ravani (Respondent) holds a Wine and Beer Retailer's Off-Premise Permit, BQ-631539, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 907 Hurst St., Center, Shelby County, Texas.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 2432 Winterstone Dr., Plano, Texas, 75023.
3. On November 23, 2007, Respondent and/or its agent, servant, or employee, issued R & K Distributors, Inc. a check as payment for beer.
4. On November 29, 2007, the check was dishonored, on the basis of insufficient funds, when presented for payment.
5. Respondent has two additional cash law violations. These cases have already been settled and closed.
6. On July 1, 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 14, 2008.
7. 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.
8. 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."
9. A hearing convened before Michelle Kallas, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 14, 2008, Petitioner appeared, via telephone, through its Staff Attorney, Susan Stith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

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PROPOSAL FOR DECISION

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**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 §§ 61.73 and 102.31.
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 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. A default decision should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73 and 102.31.
6. Respondent's permit should be suspended for a period of 5 days. Respondent may pay a civil penalty in the amount of \$750.00 in lieu of a suspension of the permit. TEX. ALCO. BEV. CODE ANN. § 11.64.

**SIGNED September 29, 2008.****MICHELLE KALLAS****ADMINISTRATIVE LAW JUDGE****STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DALLAS OFFICE**

**6333 Forest Park Road Suite 150a**

**Dallas, Texas 75235**

**Phone: (214) 956-8616**

**Fax: (214) 956-8611**

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REGARDING: COVER LETTER

DOCKET NUMBER: 458-08-3553

JUDGE MICHELLE KALLAS

**FAX TO:**

**FAX TO:**

SUSAN STITH (TEXAS ALCOHOLIC BEVERAGE  
COMMISSION)

(512) 206-3498

JITENDRA KANTILAL RAVANI

VIA REGULAR MAIL

ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE  
COMMISSION)

(512) 206-3350

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

(512) 206-3498

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

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# State Office of Administrative Hearings



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MK/lan  
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