

DOCKET NO. 576468

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
AJC BEVERAGE LLC	§	
D/B/A COWBOYS SPORTS CAFE	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB651501, LB & FB	§	
	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-1359)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this day, 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 February 6, 2009 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 April 3, 2009. 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 June 1, 2009 unless a Motion for Rehearing is filed before that date.

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

SIGNED this the 8th of May, 2009, 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 (214) 956-8611

AJC Beverage LLC
d/b/a Cowboys Sports Cafe
RESPONDENT
9454 N Macarthur Boulevard
Irving, TX 75063
VIA FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

District Enforcement Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 3, 2009

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

VIA FACSIMILE 512/206-3203

**Docket No. 458-09-1359 Texas Alcoholic Beverage Commission V. AJC
Beverage d/b/a Cowboys Sports Cafe
TABC No. 576468**

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 § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/Jan
Enclosure

xc Shelia A. Lindsey, 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**
AJC Beverage, **VIA REGULAR MAIL 9454 MacArthur Blvd. Irving, Texas 75063**

DOCKET NO. 458-09-1359

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
	§	
V.	§	
	§	OF
AJC BEVERAGE LLC d/b/a	§	
COWBOYS SPORTS CAFE,	§	
 Respondent	§	
	§	
TABC NO. 576468	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against AJC Beverage LLC (Respondent) alleging that Respondent, or its agent, servant, or employee, violated the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be cancelled, and the Administrative Law Judge (ALJ) agrees with that recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61, 28.06, 28.08, 28.15, and 104.01, as well as 16 TEX. ADMIN. CODE (TAC) §§ 35.31 and 41.50. 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 January 6, 2009, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address, 9454 N. MacArthur Boulevard, Irving, Texas, 75063, via certified mail, return receipt requested.¹ The notice of hearing contained a statement of

¹ 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 TAC § 37.3.

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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 February 6, 2009, 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 Shelia Lindsey, 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 February 6, 2009.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, 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 permits be cancelled.

III. FINDINGS OF FACT

- 1 AJC Beverage LLC (Respondent) holds a Mixed Beverage Permit, MB-651501, which includes a Food and Beverage Certificate and a Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC, Petitioner) for the premises located at 9454 N. MacArthur Boulevard, Irving, Dallas County, Texas.

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2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 9454 N. MacArthur Boulevard, Irving, Texas, 75063.
3. On April 8, 2008, Respondent and/or its agent, servant, or employee, sold a narcotic on the licensed premises and possessed or permitted the possession of a narcotic on the licensed premises.
4. On April 8, 2008, Respondent and/or its agent, servant, or employee, refilled a container containing distilled spirits on which tax had been paid.
5. On April 8, 2008, Respondent and/or its agent, servant, or employee, possessed or permitted another to possess, on the licensed premises, distilled spirits in a container not bearing a serially numbered identification stamp.
6. On April 8, 2008, Respondent and/or its agent, servant, or employee, possessed or permitted possession of alcoholic beverages not covered by invoice.
7. On January 6, 2009, 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 February 6, 2009.
8. 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.
9. 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."
10. A hearing convened before Michelle Kallas, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), on February 6, 2009, Petitioner appeared, via telephone, through its Staff Attorney, Shelia Lindsey. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

IV. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61, 28.06, 28.08, 28.15, and 104.01, as well as 16 TEX. ADMIN. CODE (TAC) §§ 35.31 and 41.50.

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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 § 155.501 and 16 TAC § 37.3.
4. A default decision should be entered against Respondent pursuant to 1 TAC § 155.501
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61, 28.06, 28.08, 28.15, and 104.01, and 16 TAC §§ 35.31 and 41.50.
6. Respondent's permits should be cancelled.

SIGNED April 3, 2009.

MICHELLE KALLAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS