

DOCKET NO. 579338

DONNA LEE MORROW	§	BEFORE THE TEXAS
D/B/A 30 WEIGHT	§	
PERMIT/LICENSE NO(s). BG666695, BL	§	
	§	ALCOHOLIC
WICHITA COUNTY, TEXAS	§	
(<i>SOAH DOCKET NO. 458-09-2526</i>)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 29th day of May, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis W. Cranz. The hearing convened on April 7, 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 24, 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 22, 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 on May 29, 2009 .



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Hon. Phyllis W. Cranz
Administrative Law Judge
State Office of Administrative Hearings
6777 Camp Bowie Blvd., Suite 400
Forth Worth, Texas 76116
VIA FACSIMILE (817) 377-3706

Donna Lee Morrow
d/b/a 30 Weight
RESPONDENT
1123 Ireland
Wichita Falls, TX 76301
VIA U.S. FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 24, 2009

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**Re: Docket No. 458-09-2526; Texas Alcoholic Beverage Commission,
v, Donna Lee Morrow d/b/a 30 Weight (TABC 579338)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phyllis W. Cranz", written over a light blue circular stamp.

Phyllis W. Cranz

PC/ll
attachments

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A hearing was convened as scheduled before ALJ Phyllis Crazz at the State Office of Administrative Hearings, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas 76107, on April 7, 2009. TABC Staff was represented at the hearing by Sandra Patton, a TABC Staff Attorney, via telephone conference call. Respondent did not appear and was not represented at the hearing.

During the hearing, documents were offered by TABC Staff and admitted into evidence to support a recommendation for default against Respondent. The hearing concluded on April 7, 2009, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and cancellation, as discussed below.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.401 and 155.501, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 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.

TABC Staff requested that the ALJ recommend cancellation of Respondent's permit and license. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its request.

III. PROPOSED FINDINGS OF FACT

- The Donna Lee Morrow (Respondent) holds a wine and beer retailer's on premise permit and retailer's on premise late hours license, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 608 7th Street, Wichita Falls, Wichita County, Texas.
2. On February 13, 2009, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permit and license: 1123 Ireland, Wichita Falls, Texas 76301-7838.. This notice was sent by certified mail (7006 0810 0000 2143 5630), return receipt requested, and was returned by the U.S. Post Office on March 9, 2009.
 3. 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 statement of the matters asserted.
 4. The Notice of Hearing also 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 as true, and the relief sought may be granted by default.
 5. On April 7, 2009, a hearing was convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas 76107. TABC Staff was represented at the hearing by Sandra Patton, a TABC Staff Attorney via telephone conference call. Respondent did not appear and was not represented at the hearing.
 6. Respondent, through its agent, servant, or employee did not pay sales tax and had no sales tax permit as noted on July 17, 2008 in the TABC violation history. (TABC Exhibit B)

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§6.01 and 11.61.
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.
3. Based upon Proposed Findings of Fact Nos. 2 - 4 Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE

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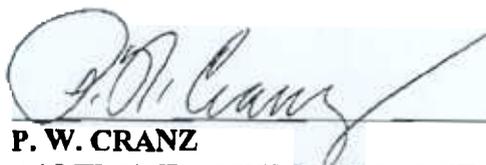
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ANN § 11.63

4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.501.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.61 (b)(5) and 61.71 (a)(1).
6. Based upon Proposed Findings of Fact Nos. 6, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(5) and 61.71 (a)(1), Respondent's permit and license should be cancelled.

SIGNED April 24, 2009.



P. W. CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS