

DOCKET NO. 579842, 579861 & 583010

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
TAPAS VILLAGE II INC.	§	ALCOHOLIC
D/B/A MI LUNA RESTAURANT	§	
PERMIT NO(s). MB566476, FB566477,	§	
Respondent	§	
	§	
(SOAH DOCKET NO. 458-09-3320)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 24th day of July, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on Rex A. Shaver 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 July 7, 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 is final and enforceable on the date it is signed.

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

SIGNED this the 24th day of July, 2009, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

State Office of Administrative Hearings
ADMINISTRATIVE LAW JUDGE
2020 N. Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Ronald Monshaugen
ATTORNEY FOR RESPONDENT
1225 North Loop West, Suite 640
Houston, Texas 77008
VIA FACSIMILE (713) 880-5297

Tapas Village II, Inc.
d/b/a Mi Luna Restaurant
RESPONDENT
10106 Kleckley
Houston, Texas 77075
VIA U.S FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement District Office

SAL/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 7, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-3320; Texas Alcoholic Beverage Commission vs. Tapas Village II Inc. d/b/a Mi Luna Restaurant

Dear Mr. Steen:

Please find enclosed an Amended 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.

Sincerely,

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX
77008- **VIA FACSIMILE**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731- **VIA REGULAR MAIL**
Tapas Village II Inc. d/b/a Mi Luna Restaurant. Respondent, 10106 Klckley, Houston, Texas 77075 -**VIA
REGULAR MAIL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-09-3320

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
VS.	§	
	§	OF
TAPAS VILLAGE II INC.	§	
D/B/A MI LUNA RESTAURANT	§	
PERMIT NO(s). MB-566476, FB-566477.	§	
Respondent	§	
	§	
MONTGOMERY COUNTY, TEXAS	§	
(TABC CASE NO. 579842, 579861 & 583010)	§	ADMINISTRATIVE HEARINGS

AMENDED PROPOSAL FOR DECISION

This Amended Proposal For Decision is issued to correct an error contained in the original Proposal For Decision. The staff of the Commission (Staff) was represented by its counsel, Shelia Lindsey and not by Sandra Patton. This is the only correction contained in this Amended Proposal For Decision.

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Tapas Village II Inc. d/b/a Mi Luna Restaurant (Respondent) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 105.06, 11.61 (b)(2), 11.61 (b) and 106.13. The alleged violations occurred on or about August 16, 2008, September 7, 2008 and, January 17, 2009 when Respondent, its agent, servant, or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours; and on January 17, 2009 when Respondent, its agent, servant, or employee, with criminal negligence permitted a minor to possess or consume an alcoholic beverage.

This Proposal for Decision finds the allegations by TABC to be proven and adopts the recommendation of the staff that the license be cancelled.

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PROPOSAL FOR DECISION

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I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on May 1, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Shelia Lindsey. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) provides that, Petitioner may suspend or cancel a permit for violation of a provision of the Code or of Petitioner's rules. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (22), Petitioner may suspend or cancel a retail dealer's license for permitting the consumption of alcoholic beverages on the licensed premises at a time when the consumption of alcoholic beverages is prohibited.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13, Petitioner may suspend or cancel a retail dealer's license for, with criminal negligence, permitted a minor violate § 106.04 or § 106.05 by possessing or consuming an alcoholic beverage

Staff introduced three exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Mixed Beverage Permit, MB-566476 which includes the Food and Beverage Certificate, was

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issued to Tapas Village II, Inc., doing business as Mi Luna Restaurant, 6777 Woodlands Parkway '100', The Woodlands, Montgomery County, Texas, by the Commission. The record states that the mailing address of the permit holder is 10106 Kleckley, Houston, Texas 77075.

Exhibit 2 is a copy of the Notice of Hearing mailed to Respondent at 10106 Kleckley, Houston, Texas 77075 on April 7, 2009 by certified mail return receipt requested, article number 7006 0810 0000 2143 5845 advising that the hearing was set for May 1, 2009 at 9:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas.

Exhibit 3 is the Postal Service return receipt bearing US Postal Service certified mail article number 7006 0810 0000 2143 5845, for the envelope containing the Notice of Hearing, sent to Respondent by certified mail at 10106 Kleckley, Houston, Texas 77075.

III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 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. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

IV. FINDINGS OF FACT

1. Respondent holds a Mixed Beverage Permit MB-566476 which includes the Food and Beverage Certificate, issued to Tapas Village II, Inc., doing business as Mi Luna Restaurant, 6777 Woodlands Parkway '100', The Woodlands, Montgomery County, Texas.
2. On or about August 16, 2008, Respondent or Respondent's agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises

during prohibited hours.

3. On or about September 7, 2008, Respondent or Respondent's agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
4. On or about January 17, 2009, Respondent or Respondent's agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
5. On or about January 17, 2009, Respondent or Respondent's agent, servant, or employee, with criminal negligence permitted a minor to possess or consume an alcoholic beverage.
6. The Notice of Hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.
7. On May 1, 2009, a hearing convened before ALJ Rex A. Shaver at 2020 North Loop West, Suite 111, Houston, Texas 77018.
8. The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
9. Petitioner appeared and was represented by Shelia Lindsey, Staff Attorney. Respondent did not appear.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.
4. Based on Findings of Fact Nos. 1 through 9, and Conclusion of Law Nos. 1 through 3, Staff

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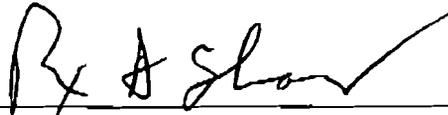
PROPOSAL FOR DECISION

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is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.

5. The permit and certificate should be cancelled.

Signed on July 7, 2009.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 7, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-3321; Texas Alcoholic Beverage Commission vs. Changing Times Management LLC d/b/a Changing Times

Dear Mr. Steen:

Please find enclosed an Amended 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.

Sincerely,


Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA FACSIMILE**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Changing Times LLC d/b/a Changing Times, Respondent, 2590 N 11th Street, Beaumont, Texas 77703 -**VIA REGULAR MAIL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001
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