

DOCKET NO. 580551

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
SAHARA INVESTMENT LLC	§	
D/B/A JUST CHILL BAR & LOUNGE	§	ALCOHOLIC
PERMIT NO(s). MB691525, LB	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-3037)	§	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 Don Smith. The hearing convened on March 27, 2009 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 April 2, 2009. This 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 are herein **SUSPENDED for ten (10) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **2nd day of June 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of ten (10) days beginning at 12:01 A.M. on the 10th day of June 2009**.

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 day of May, 2009, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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

Sahara Investment LLC
d/b/a Just Chill Bar & Lounge
RESPONDENT
4329 Hwy 6 North
Houston, Texas 77084
VIA FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Compliance Division

SAL/aa

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 580551

REGISTER NUMBER:

NAME: SAHARA INVESTMENT LLC

TRADENAME: JUST CHILL BAR & LOUNGE

ADDRESS: 4329 HWY 6 NORTH, HOUSTON, TEXAS 77084

DUE DATE: JUNE 2, 2009

PERMITS OR LICENSES: MB691525, LB

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You **must** pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

April 2, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-3037; Texas Alcoholic Beverage Commission vs. Sahara Investment LLC d/b/a Just Chill Bar & Lounge

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.

Sincerely,


Don Smith
Administrative Law Judge

DS/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 REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Sahara Investment LLC d/b/a Just Chill Bar & Lounge, 4329 Hwy 6 North, Houston, Texas 77084 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-09-3037

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

SAHARA INVESTMENT LLC
d/b/a JUST CHILL BAR & LOUNGE
PERMIT NO. MB691525, LB,
HARRIS COUNTY, TEXAS
(TABC CASE NO. 580551)

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Sahara Investment LLC d/b/a Just Chill Bar & Lounge (Respondent) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 61.73 and 102.31. The alleged violations occurred on or about August 15, 2008 and August 29, 2008, when Respondent, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment, in violation of Code §§ 61.73 and 102.31

This Proposal for Decision finds the allegations by TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 10 days or that Respondent be allowed to pay a civil penalty of \$1500 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on March 27, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The staff of TABC (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.

TABC 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

CODE § 61.73 authorizes the TABC to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the respondent gave a distributor a check for payment which is dishonored when presented for payment. As described in the findings of fact, Respondent violated CODE § 61.73 by writing checks to distributors that were subsequently returned for insufficient funds.

Staff introduced five exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Permit No. MB691525 was issued to Sahara Investment LLC, doing business as Just Chill Bar & Lounge, 4329 Hwy 6 North, Houston, Harris County, Texas, by the Commission. The mailing address of Sahara Investment LLC is 4329 Hwy 6 North, Houston, Texas 77084. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the Notice of Hearing sent to Respondent on March 12, 2009.

Exhibit 3 is the US Postal Service Track & Confirm letter that the postal service attempted to deliver the Notice of Hearing to Respondent by certified mail 7006 0810 0000 2143 1403 on March 14, 2009, and notified Respondent that if the item is unclaimed after 30 days that it will be returned to the sender. Exhibit 3 confirms that on March 24, 2009, the letter had not been claimed by the addressee.

Exhibit 4 is a Business Records affidavit with the copy of Respondent's check #1122.

in the amount of \$716.14 that was returned for insufficient funds.

Exhibit 5 is a Business Records affidavit with the copy of Respondent's check #1128 in the amount of \$334.20 that was returned for insufficient funds.

The ALJ took official notice of the notice of hearing in SOAH's file which shows the hearing was scheduled for March 27, 2009 at 9:00 a.m. The notice of hearing was mailed to Sahara Investment LLC d/b/a Just Chill Bar & Lounge at 4329 Hwy 6 North, Houston, Texas 77084 by certified mail # 7006 0810 0000 2143 1403 on March 12, 2009.

III. RECOMMENDATION

The notice of hearing, in bold lettering, states "**If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.**" Because Respondent failed to attend the hearing, the allegations that on or about August 15, 2008 and August 29, 2008, Respondent gave checks or drafts for the purchase of beer that were dishonored when presented for payment is deemed admitted as true. The permit should be suspended for a period of 10 days, or in lieu of suspension, Respondent should pay a civil penalty of \$1500.00.

IV. FINDINGS OF FACT

- Permit No. MB691525 was issued to Sahara Investment LLC, doing business as Just Chill Bar & Lounge (Respondent), by the Texas Alcoholic Beverage Commission (TABC).
- 2 The mailing address of Respondent is 4329 Hwy 6 North, Houston, Texas 77084.
 - 3 On March 12, 2009, the staff of TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's address at 4329 Hwy 6 North, Houston, Texas 77084.
 - 4 On March 14, 2009, the United States Postal Service left a notice at Respondent's address

that Respondent could pick up the letter, or that if the item is unclaimed after 30 days, then it would be returned to the sender. As of March 24, 2009, Respondent had not picked up the letter.

5. The notice of hearing also contained the following language in capital letter in 12 point or larger boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegation (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.

6. The hearing on the merits was held on March 27, 2009, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Shelia Lindsey. Respondent did not appear and was not represented at the hearing.

The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

8. On August 15, 2008, Respondent, or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
9. On August 29, 2008, Respondent, or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.

V. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE § 155.501.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73 and 102.31 by giving checks or drafts for the purchase of beer that were dishonored when presented for payment.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a 10 day suspension of the

permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$1500 civil penalty in lieu of suspension of its permits.

Signed this 2nd day of April, 2009.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS