

DOCKET NO. 580657

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS	§	
	§	
ALUOTTO INC. D/B/A F B I ROCK CLUB PERMIT/LICENSE NO(s). MB638331, LB	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2254)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex Shaver. 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 14, 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 five (5) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the **9th day of June 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of five (5) days beginning at 12:01 A.M. on the 17th 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

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

Aluotto Inc.
d/b/a F B I Rock Club
RESPONDENT
6442 Liberty Valley
Katy, Texas 77449
VIA U.S. REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Compliance Division

SKP/aa

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 580657

REGISTER NUMBER:

NAME: ALUOTTO INC.

TRADENAME: F B I ROCK CLUB

ADDRESS: 11528 JONES RD 'W', HOUSTON, TX 77070

DUE DATE: JUNE 9, 2009

PERMITS OR LICENSES: MB638331, LB

AMOUNT OF PENALTY: \$750.00

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

RECEIVED

APR 16 2009

TABC HOUSTON
LEGAL

April 14, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-2254; Texas Alcoholic Beverage Commission vs. Aluotto Inc. d/b/a F B I Rock Club

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,

A handwritten signature in black ink, appearing to read "R. Shaver".

Rex Shaver
Administrative Law Judge

RS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Sandra Patton, 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
Aluotto Inc. d/b/a F B I Rock Club, Respondent, 6442 Liberty Valley, Katy, Texas 77449 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-09-2254

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	
ALUOTTO INC. D/B/A F B I ROCK CLUB PERMIT/LICENSE NO. MB638331, LB Respondent HARRIS COUNTY, TEXAS (TABC CASE NO. 580657)	§	OF
	§	
	§	
	§	
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Aluotta Inc. d/b/a F B I Rock Club (Respondent) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 61.73 and 102.31. The alleged violation occurred on or about June 6, 2008, when Respondent, its agent, servant, or employee gave a check or draft for the purchase of beer that was 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 5 days or that Respondent be allowed to pay a civil penalty of \$750 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 the Commission (Staff) was represented by its counsel, Sandra Patton. 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

CODE § 61.73 authorizes the Commission 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 a check to a distributor that was subsequently returned for insufficient funds

Staff introduced two exhibits into evidence

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Mixed Beverage Late Hours Permit, MB-638331 was issued to Aluotto Inc., doing business as F B I Rock Club, 11528 Jones Road "W", Houston, Harris County, Texas, by the Commission. The record states that the mailing address of the permit holder is 6442 Liberty Valley, Katy, Texas 77449. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the signed US Postal Service Certified Mail Receipt for article number 7006 0810 0000 2143 0444, the Notice of Hearing, sent to Respondent by certified mail at 6442 Liberty Valley, Katy, Texas 77449 and advising that the hearing was set for March 27, 2009 at 10:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas

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

Respondent holds a Mixed Beverage Permit MB-638331 which includes the Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (Petitioner).

On June 6, 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.

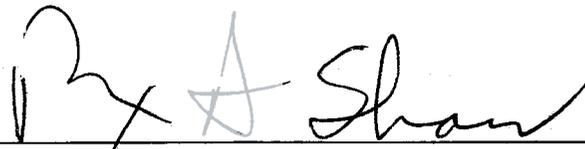
3. Respondent has four prior Alcoholic Beverage Code violations.
4. On February 3, 2009, Petitioner sent a Notice of Hearing to Respondent by certified mail to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2 and 3, Respondents permits or licenses could be denied, refused, cancelled, or suspended.
5. The Notice of Hearing was delivered and the return receipt signed and returned to Petitioner.
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 March 27, 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 Sandra Patton, Staff Attorney. Respondent did not appear.

V. CONCLUSIONS OF LAW

- 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 is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
- 5 The license should be suspended for a period of 5 days and Respondent be allowed to pay a civil penalty of \$750 in lieu of suspension.

Signed on April 14, 2009.



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