

DOCKET NO. 591562

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
BELLBOTTOMS INC. D/B/A BELLBOTTOMS PERMIT/LICENSE NO(s). MB475091, LB	§	ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-10-3703)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Phyllis Cranz, presiding. The hearing convened on June 1, 2010 and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on June 18, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

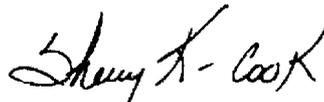
IT IS THEREFORE ORDERED that Respondent, Bellbottoms Inc. d/b/a Bellbottoms' permits and licenses be **CANCELED FOR CAUSE**.

This is a final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on August 20, 2010, 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 27th day of July, 2010,
at Austin, Texas.

On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 27th, 2010.



Joan C. Bates
Texas Alcoholic Beverage Commission
Legal Division

Administrative Law Judge
State Office of Administrative Hearings
6777 Camp Bowie Blvd., Suite 400
Fort Worth, Texas 76116
VIA FACSIMILE: (817) 377-3706

Bellbottoms Inc.
d/b/a Bellbottoms
RESPONDENT
8407 Grapevine Hwy
North Richland Hills, Texas 76180
VIA U.S. FIRST CLASS MAIL

Lisa Crissman
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Arlington District Office

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE

6777 Camp Bowie Blvd Suite 400

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DATE: 06/21/2010

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 7

REGARDING: PROPOSAL FOR DECISION

DOCKET NUMBER: 458-10-3703

JUDGE Phyllis Craz

FAX TO:

FAX TO:

BELLBOTTOMS INC

VIA REGULAR MAIL

LISA CRISSMAN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(713) 426-7965

Emily Heim GENERAL COUNSEL (Alcoholic Beverage Commission, Texas)

(512) 206-3498

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT DIANA DUPRE(dsc) (817) 731-1733

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 21, 2010

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

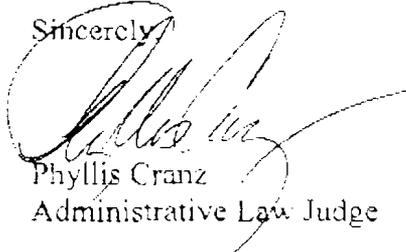
**Re: Docket No. 458-10-3703; Texas Alcoholic Beverage Commission,
v Bellbottoms, Inc. d/b/a Bellbottoms
(TABC No. 591562)**

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,



Phyllis Cranz
Administrative Law Judge

TC/dd

attachments

DOCKET NO. 458-10-3703

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**BELLBOTTOMS INC.
d/b/a/ BELLBOTTOMS
Respondent
TARRANT COUNTY, TEXAS
(TABC No. 591562)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Bellbottoms, Inc. d/b/a Bellbottoms (Respondent), alleging that they were subject to a final determination of taxes due and payable as shown on the records of the Texas Comptroller of Public Accounts, thus, in violation of the Texas Alcoholic Beverage Code. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's license be suspended or cancelled.

I. PROCEDURAL HISTORY

On April 15, 2010, TABC Staff issued a Notice of Hearing to Respondent at their mailing address of record reflected on Respondent's permit and license, TABC No. MB-475091. The Notice of Hearing was sent by certified mail (7006 0810 0000 2143 7221) and U.S. First Class Mail to Respondent's address of record, 8407 Grapevine Highway, North Richland Hills, Texas 76180-5812.

A hearing was convened as scheduled before ALJ Phyllis Cranz at the State Office of Administrative Hearings, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas 76107, on June 1, 2010. TABC Staff was represented at the hearing by Lisa Crissman, a TABC Staff Attorney,

via telephone conference call. Respondent did not appear and was not represented at the hearing.

During the hearing, documents that had been pre-filed by TABC Staff were admitted into evidence to support a recommendation for a default decision. The hearing concluded on June 1, 2010, and the record closed on that same day.

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 ANN. § 155.501 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE ANN. §§ 155.401 and 155.501, and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE ANN. § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its request. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. The findings support the requested penalty of cancellation or suspension of the permit and license.

III. PROPOSED FINDINGS OF FACT

1. Bellbottoms, Inc. (Respondent) holds a Mixed Beverage and Mixed Beverage Late Hours Permit, MB-4755091, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 8407 Grapevine Highway, North Richland Hills, Texas 76180-5812.
2. On April 15, 2010, the TABC Staff issued a Notice of Hearing to Respondent at their mailing address of record reflected on Respondent's permit: 8407 Grapevine Highway, North Richland Hills, Texas 76180-5812 by certified mail (7006 0810 0000 2143 7221) and U.S. First Class Mail. The notices were returned to sender by the U.S. Postal Service on May 5 and May 6, 2010, respectively, as undeliverable and unable to forward.
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 June 1, 2010, a hearing was convened before ALJ Phyllis Crazz 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 Lisa D. Crissman, a TABC Staff Attorney via telephone conference call. Respondent did not appear and was not represented at the hearing.
6. On or about January 25, 2010 Respondent was indebted to the state for taxes, fees, or payment of penalties imposed by Chapter 183 of the TEX. TAX CODE ANN. (Mixed Beverage Gross Receipts Tax Act) in violation of TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(5) and 11.61 (b)(2) as shown on the records of the Texas Comptroller of Public Account.
7. On or about January 25, 2010 Respondent was shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151 of the TEX. TAX CODE ANN.) or was shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 321 of the TEX. TAX CODE ANN. in violation of TEX. ALCO. BEV. CODE ANN. §11.61 (c)(2).
8. On or about January 25, 2010 Respondent was shown on the records of the Comptroller of Public Accounts as being indebted to the state for taxes, fees, or payment of penalties imposed by Chapter 171 of the TEX. TAX CODE ANN. (Franchise Tax), in violation of TEX. ALCO. BEV. CODE ANN. §11.61 (b)(2).

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.
 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 the above Proposed Findings of Fact, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE ANN. §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. §§ 5.43 and 11.015.
 4. Based upon the above Proposed Findings of Fact, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE ANN. § 155.501.
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5. Based upon Proposed Finding of Fact Nos. 6, 7, and 8. Respondent violated TEX. ALCO. BEV. CODE ANN. §11.61.
6. Based upon Proposed Findings of Fact Nos. 6, 7, and 8. Conclusion of Law No. 5. and the . TEX. ALCO. BEV. CODE ANN.. Respondent's permit may be suspended or cancelled.

SIGNED June 18, 2010.

A handwritten signature in black ink, appearing to read 'P. W. Cranz', written over a horizontal line.

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