

DOCKET NO. 584463

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
WEBB HOLDING CORPORATION D/B/A ROCKS LOUNGE, Respondent PERMIT/LICENSE NO(s). MB530672, LB & PE	§	ALCOHOLIC
	§	
	§	
JEFFERSON COUNTY, TEXAS (SOAH DOCKET NO. 458-09-5964)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 13th day of April 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen Burger, presiding. The hearing convened on December 11, 2009 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 February 8, 2010. Exceptions were filed to which the Administrative law Judge replied and recommended that no changes be made to the Proposal for Decision.

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

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 further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that the renewal of Respondent’s permits and licenses be **DENIED**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on May 7, 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 on this 13th day of April
2010, at Austin, Texas



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Stephen Burger
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Webb Holding Corporation
RESPONDENT
d/b/a Rocks Lounge
P. O. Box 21322
Beaumont, Texas 77720
VIA U.S. FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Beaumont District Office

II. LEGAL STANDARDS AND APPLICABLE LAW

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit or license if it is found, after notice and hearing, that the permittee has violated a provision of the TABC code or a commission rule, or the permittee is indebted to the state for taxes or payment of penalties imposed the code or TABC rule. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (b)(5).

The commission may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or TABC rule. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(5).

III. EVIDENCE

A. Petitioner's Evidence

1. Petitioner's Witness, Darrell Stewart

Darrell Stewart is an agent with the Texas Comptroller's Enforcement Office. He testified that the Respondent owes \$12,874.63 in delinquent mixed beverage gross receipts taxes as of the date of the hearing. The taxes have been due since March, 2009. After discussion between the parties, Respondent made several payments between August and December, 2009, in the amount of \$6,835.00, which resulted in the aforementioned balance owed of \$12,874.63. Additionally, the Respondent's 2009 franchise tax report due May 15, 2009, has not been filed. Therefore, it is unknown if any franchise taxes are owed.

B. Respondent's Evidence**1. Respondent's Witness, Dan Webb**

Dan Webb is Respondent's representative. He stated that since the 2009 fall payment schedule was entered into with the Comptroller's office, he has been "trying to catch up" with the scheduled payments, and that one of the bounced checks was due to a bookkeeping error. He stated that the last hurricane affected his cash flow, and was the reason why he has not been able to pay the taxes. He was hoping to be able to pay the amount owed.

Mr. Webb also testified that he had filed his 2009 franchise tax return online. However, the Comptroller's Office has no record of the filing.

IV. ANALYSIS

It is undisputed that as of the date of the hearing, Respondent owes the State of Texas \$12,874.63. Although Respondent made payments totaling \$6,835 this past fall, it is still in arrears. Pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (b)(5) the ALJ finds sufficient evidence that Respondent has failed to pay mixed beverage gross receipts taxes for 2009, and has failed to file its 2009 franchise tax report.

V. RECOMMENDATION

Because the Respondent is in arrears over mixed beverage gross receipts since March 2009, and has failed to file 2009 franchise tax reports, the ALJ agrees with Petitioner's request that Respondent's permit be cancelled or its renewal be denied.

VI. FINDINGS OF FACT

1. Webb Holding Corporation's (Respondent), d/b/a Rocks Lounge, 5675 Fannett Road, Beaumont, Jefferson County, Texas, is the holder of a Mixed Beverage Late Hours Permit and a Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC).
2. A Notice of Hearing dated September 3, 2009, was issued by the TABC and sent to Respondent.
3. The September 3, 2009, Notice of Hearing gave the location and nature of the hearing and contained 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 short statement of the allegations and the relief sought by the TABC.
4. On December 11, 2009, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Sandra Patton, attorney. Respondent was represented by Dan Webb. Evidence was received and the record closed on the same date.
5. As of December 11, 2009, Respondent owes \$12,874.63 on its 2009 mixed beverage gross receipts tax.
6. As of December 11, 2009, Respondent has not filed its franchise tax report for 2009.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above Findings of Fact, as of December 11, 2009, Respondent owes \$12,874.63 on its 2009 mixed beverage gross receipts tax. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (b)(5); and 11.46(a)(5).

5. Based on the above Findings of Fact, as of December 11, 2009, Respondent has not filed its 2009 franchise tax report. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (b)(5); and 11.46(a)(5).
6. Based on Conclusion of Law 4 and 5, Petitioner may cancel or deny the renewal of Respondent's permit.

SIGNED February 8, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 8, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-09-5964; Texas Alcoholic Beverage v. Webb Holding Corporation d/b/a Rocks 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 § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "S. Burger".

Stephen Burger
Administrative Law Judge

SB rlm
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and cd)
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Webb Holding Corporation d/b/a Rocks Lounge, P.O. Box 21322 Beaumont, TX 77720 -**VIA REGULAR MAIL**