

DOCKET NO. 583241

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
R.D.J. FAST FOODS INC. D/B/A STOP AND SHOP #2 PERMIT/LICENSE NO(s). BQ707654	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-4990)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 28th day of October, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on August 14, 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 September 29, 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.

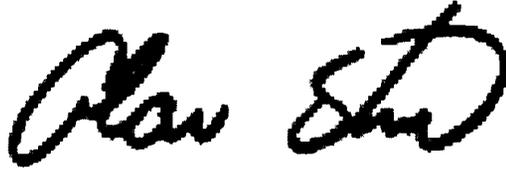
IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent’s permits are herein **SUSPENDED for twelve (12) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$3,600.00** on or before the **8th day of December 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of twelve (12) days beginning at 12:01 A.M. on the 16th day of December 2009**.

This Order will become final and enforceable on November 23, 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 28th day of October, 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

R.D.J. Fast Foods Inc.
d/b/a Stop And Shop #2
RESPONDENT
228 Charles Street
Humble, Texas 77338
U. S. FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Enforcement District Office

SAL/aa

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

September 29, 2009

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

VIA REGULAR MAIL

**RE: Docket No. 458-09-4990; Texas Alcoholic Beverage Commission vs. R.D.J.
Fast Foods Inc. d/b/a Stop and Shop #2**

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,



Stephen Burger
Administrative Law Judge

SJB: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**
R.D.J. Fast Food Inc. d/b/a Stop and Shop #2, Respondent, 228 Charles Street, Humble, Texas 77388 -**VIA**
REGULAR MAIL

RECEIVED

SEP 30 2009

LAB-HOUSTON
LEGAL

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

DOCKET NO. 458-09-4990

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
 Petitioner	§	
	§	
V.	§	
	§	
R.D.J. FAST FOODS INC.	§	OF
D/B/A STOP AND SHOP #2	§	
	§	
PERMIT/LICENSE NO. BQ707654	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 583241)	§	
 Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (“TABC”) brought this enforcement action against R.D.J. Fast Foods Inc., d/b/a Stop and Shop #2 (“Respondent”), alleging that on or about January 17, 2009, Respondent or its agent, servant, or employee, with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor, in violation of TEX. ALCO. BEV. CODE ANN. §§ 106.13 and/or 61.71(a)(5).

The Respondent did not appear at the August 14, 2009, hearing. The Administrative Law Judge (“ALJ”) finds the allegation deemed admitted and based on the violation, agrees with the TABC’s recommendation of a 12-day suspension or a \$300.00 per day civil penalty in lieu of suspension.

I. JURISDICTION, NOTICE, PROCEDURAL HISTORY, AND DISCUSSION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Respondent did not appear at the hearing, TABC’s Staff requested a default decision, pursuant to 1 TAC § 155.501. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and

jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings (“SOAH”) default rule.

At the hearing, the TABC presented Exhibit No. 1, the US Mail certified green card, and a copy of the returned envelope; Exhibit No. 2, the Notice of Hearing; and Exhibit No. 3, Respondent’s TABC official and certified license history.

The TABC met its burden of proving that Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 106.13 and/or 61.71(a)(5). Given that Respondent sold alcohol to a minor, the suspension period requested is appropriate. Under TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent is given the option of paying the recommended penalty in lieu of the suspension, and the ALJ has included that option in the Conclusions of Law.

The ALJ proposes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Respondent, R.D.J. Fast Foods Inc., d/b/a Stop and Shop #2, 228 Charles Street, Humble, Harris County, Texas 77338, holds a Wine and Beer Retailer’s Off Premise Permit, BQ707654, issued by the Texas Alcoholic Beverage Commission (“TABC”).
2. On July 7, 2009, the TABC’s Staff sent notice to Respondent of the hearing to be held August 14, 2009, at 9:00 a.m., regarding the alleged violation.
3. The July 7, 2009, notice was sent via certified mail and regular mail to the Respondent’s address of record, 228 Charles Street, Humble, Texas 77338.
4. 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 short, plain statement of the matters asserted.
5. The notice of hearing also contained the following language in 12-point or larger boldface type: “If a party fails to appear at the hearing, the factual allegations in the

notice of hearing will be deemed admitted true, and the relief sought in the notice of hearing may be granted by default.”

6. The hearing on the merits convened August 14, 2009, at 9:00 a.m., at the offices of the State Office of Administrative Hearings (“SOAH”), 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Shelia A. Lindsey. The Respondent did not appear and was not represented at the hearing. The record closed the same day.
7. On or about January 17, 2009, Respondent or Respondent’s agent, servant, or employee, with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§ 6.01, 11.46, 11.61, 61.71 and 61.73 of the TEX. ALCO. BEV. CODE ANN.
2. SOAH 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052, and 1 TAC § 155.501.
4. Based on the Finding of Facts, the Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 106.13 and/or 61.71(a)(5).
5. Based on the Findings of Fact and Conclusions of Law, the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.501.
6. Based on the foregoing findings and conclusions, a 12-day suspension of Respondent’s license and permit is warranted.
7. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be allowed to pay a \$3,600 civil penalty (\$300 per day) in lieu of suspension of its permit and license.