

DOCKET NO. 586753

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
A TASTE OF NEW ORLEANS L.L.C. D/B/A A TASTE OF NEW ORLEANS PERMIT/LICENSE NO(s). MB688095, FB Respondent	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-6070)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 31st day of December 2009 the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Timothy J. Horan, presiding. The hearing convened on October 9, 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 December 1, 2009. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

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.

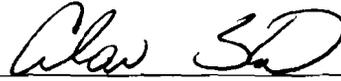
It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent's Mixed Beverage Permit and Food and Beverage Certificate 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 January 25th, 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 31st day of
December 2009 at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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

A Taste Of New Orleans L.L.C.
d/b/a A Taste Of New Orleans
RESPONDENT
3719 N. Fry Road, Suite O & P
Katy, Texas 77449
VIA U.S. REGULAR MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

RMP/aa

DOCKET NO. 458-09-6070

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
A TASTE OF NEW ORLEANS LLC. D/B/A A TASTE OF NEW ORLEANS HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against A Taste Of New Orleans LLC d/b/a A Taste Of New Orleans (Respondent), alleging that the Respondent applied for renewal of its permits and submitted a check for payment of fees that was returned due to insufficient funds and has subsequently failed to pay the required fees imposed by Chapter 183 of the Tax Code and in violation of the Texas Alcoholic Beverage Code (Code). Petitioner requested that the Respondent's permit be cancelled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61, 11.32 and 11.35. The State Office of Administrative Hearings (SOAH) 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.

On September 18, 2009, Petitioner issued its notice of hearing, directed to A Taste Of New Orleans LLC d/b/a A Taste Of New Orleans, 3719 N. Fry Road, Suite O & P, Katy, Texas 77449, via certified mail, return receipt requested. Notice was returned to TABC as "unclaimed" as evidenced by the certified mail receipt. On October 9, 2009, a hearing convened before SOAH ALJ Timothy Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. The Respondent did not

appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed.

II. DISCUSSION

Based on the failure of the Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 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 set out in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. The Respondent, A Taste Of New Orleans LLC d/b/a A Taste Of New Orleans holds a Mixed Beverage Restaurant Permit MB-688095, which includes the Food and Beverage Certificate, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3719 N. Fry Road, Suite O & P, Katy, Harris County, Texas.
2. On September 18, 2009, Petitioner issued its notice of hearing to the Respondent for a hearing that was held on October 9, 2009. The notice of hearing was sent via certified mail to the Respondent's last known address and was returned back to TABC as "unclaimed" as evidenced by the certified mail receipt.
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 short, plain statement of the matters asserted.
4. 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 as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Timothy Horan, an Administrative Law Judge with the State

Office of Administrative Hearings (SOAH), on October 9, 2009. The Respondent did not appear and was not represented at the hearing and the record was closed.

6. The Respondent applied for renewal of its permit and on April 24, 2009, the Respondent submitted a check for payment of fees that was returned due to insufficient funds and has subsequently failed to pay the required fees.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61, 11.32 and 11.35.
2. SOAH 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. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.501.
5. Based on the above Findings of Fact, the Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) (5), 11.61(b) (2), 11.32 and 11.35.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent's permit should be cancelled.

SIGNED December 1, 2009.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS