

DOCKET NO. 597524

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
JAMES ROBERT CURD JR. D/B/A 1ST ROUND, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB700736, LB	§	
	§	
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-11-3997)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of July, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Donald B. Dailey presiding. The hearing convened on April 29, 2011 and the SOAH record closed that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 29, 2011. 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, with the following exceptions:

Finding of Fact No. 7 in the Proposal for Decision is deleted, and the following Findings of Fact Nos. 7 and 8 are substituted in its stead:

Finding of Fact No. 7. From January 2009 through on or about November 2, 2010, Respondent conducted business at the licensed premises in a manner that offends the general welfare, health, peace, morals and safety of the people, and offends the public sense of decency.

Finding of Fact No. 8. On or about November 2, 2010, Respondent owed \$8,264.64 in delinquent mixed beverage taxes to the State of Texas.

Conclusions of Law Nos. 5 and 6 in the Proposal for Decision are deleted, and the following Conclusions of Law Nos. 5 and 6 are substituted in their stead:

Conclusion of Law No. 5. Conducting business at a licensed premises in a manner that offends the general welfare, health, peace, morals and safety of the people, and offends the public sense of decency, warrants cancellation of Respondent's permits under Texas Alcoholic Beverage Code §§11.61(b)(7), 11.61(b)(2), and 16 Texas Administrative Code §35.31.

Conclusion of Law No. 6. Failing to pay a debt to the State of Texas for delinquent mixed beverage taxes warrants cancellation of Respondent's permits under Texas Alcoholic Beverage Code §11.61(b)(5).

These changes are made pursuant to Government Code §2001.058(e)(1) and (3).

The Findings of Fact and Conclusions of Law set forth in the Proposal for Decision, as modified by this Order, are incorporated into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

The Proposal for Decision in this case is unnecessarily cryptic. While the motivation for preparing such a terse Proposal may be to save SOAH time and resources, trying to put meat on this bare-bones Proposal has cost the referring agency additional time and resources. Although we are required to utilize SOAH to conduct hearings and are limited in our ability to change the Administrative Law Judge's proposed Findings of Fact and Conclusions of Law, we are ultimately responsible for the Order that is issued and for the sufficiency of those Findings and Conclusions. I do not consider the Findings and Conclusions in this generic Proposal for Decision to meet the standards that I find acceptable for Orders issued by this agency. Nor does the Proposal meet the standards I expect to receive, and am used to receiving, from SOAH.

In his effort to be terse, the Administrative Law Judge neglected to actually make a recommendation regarding the appropriate sanction in this case. Conclusion of Law No. 6 states that the referring agency is entitled to the relief requested in the Notice of Hearing. Exhibit #1 is the Notice of Hearing. It simply states that the Petitioner "will seek to cancel or suspend" the permits. Although I am not bound by SOAH's sanction recommendations, I find them useful and expect to see them. In this case, I find cancellation to be the appropriate penalty for these violations.

When and if SOAH adopts its proposed revisions to 1 TAC §155.501, it will no longer prepare Proposals for Decision on the merits of a defaulted case. But until that amendment is

adopted, I expect to receive from SOAH a Proposal for Decision that reflects a more thoughtful consideration of even a defaulted case.

IT IS ORDERED that Respondent's Mixed Beverage Permit No. 700736 and the associated Mixed Beverage Late Hours Permit are hereby **CANCELLED**.

This Order will become final and enforceable on the 23rd day of August, 2011, unless a Motion for Rehearing is filed **before** that date.

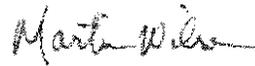
SIGNED this the 28th day of July, 2011, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 28th day of July, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Donald B. Dailey
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
10300 Heritage, Suite 250
San Antonio, Texas 78216
VIA FACSIMILE: (210) 308-6854

James Robert Curd, Jr.
d/b/a 1st Round
RESPONDENT
7118 Westlawn
San Antonio, Texas 78227-2839
VIA REGULAR MAIL

John W. Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Division

SOAH DOCKET NUMBER 458-11-3997

TEXAS ALCOHOLIC BEVERAGE	*	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	*	
	*	
VERSUS	*	
	*	
JAMES ROBERT CURD, JR., d/b/a 1ST	*	
ROUND, Respondent	*	OF
	*	
PERMIT/LICENSE NUMBER	*	
MB700736, LB	*	
TABC CASE NUMBER 597524	*	
BEXAR COUNTY, TEXAS	*	ADMINISTRATIVE HEARINGS

DEFAULT PROPOSAL FOR DECISION

This matter was scheduled for hearing at the request of the Texas Alcoholic Beverage Commission (the referring agency). Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by the referring agency should be granted on a default basis.

FINDINGS OF FACT

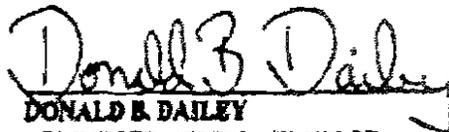
1. Notice of the hearing was mailed to the Respondent at the Respondent's address of record at least ten days prior to the scheduled hearing.
2. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the 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.
3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. The hearing was held and the record closed on April 29, 2011.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.

6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T. CODE ch 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T. CODE ch 2001 and 1 TEX. ADMIN. CODE ch 155.
4. The allegations in the notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested in its notice of hearing.

SIGNED April 29, 2011.


DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 29, 2011

Mr. Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Post Office Box 13127
Austin, Texas 78711-3127

BY FIRST CLASS MAIL

RE: SOAH Docket No. 458-11-3997; TABC Docket No. 597524; Texas Alcoholic Beverage Commission v. James Robert Curd, d/b/a 1st Round, Permit No MB700736, LB

Greetings Mr. Steen:

Enclosed is a Default Proposal for Decision.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.


DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DBD/dbd
Enclosure

xc: Mr. John W. Sedberry, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, Texas 78731 - **BY FIRST CLASS MAIL**

xc: Mr. James Robert Curd, Jr., d/b/a 1st Round, 7118 Westlawn, San Antonio, Texas 78227-2839 - **BY FIRST CLASS MAIL**

