

DOCKET NO. 592582

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
COCO C-STORE INC.	§	ALCOHOLIC
D/B/A SUPER BY-LO, Respondent	§	
	§	
PERMIT NO. Q563462	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-5658)	§	BEVERAGE COMMISSION

ORDER

The above-styled and numbered cause is before the Assistant Administrator of the Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

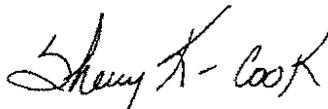
After proper notice was given, this case was heard by the State Office of Administrative Hearings, with Administrative Law Judge Laura Kuchinsky presiding. The hearing convened on the 31st day of August, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on the 15th day of September, 2010. 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. No exceptions were filed.

The Assistant 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 that are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED that the Wine Only Package Store Permit of Coco C-Store Inc. d/b/a Super By-Lo is hereby **CANCELLED**.

This Order will become final and enforceable on the 17 day of December, 2010, unless a Motion for Rehearing is filed **before** that date.

SIGNED on November 22, 2010, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the parties listed below were served with a copy of the agency order in this matter as indicated below on November 22, 2010



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Honorable Laura Kuchinsky
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Rd., Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE: (214) 956-8611

Coco C-Store Inc.
RESPONDENT
d/b/a Super By-Lo
3403 Merrifield Ave.
Dallas, TX 75223
VIA REGULAR MAIL

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Lt. Jeff Gladden
Dallas District Office
VIA EMAIL

**SOAH DOCKET NO. 458-10-5658
TABC CASE NO. 592582**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	
COCO C-STORE INC.	§	OF
D/B/A SUPER BY-LO,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission's staff (TABC/Staff) seeks cancellation of Coco C-Store Inc. d/b/a Super By-Lo's (Respondent) TABC-issued permit based on violations of §11.61(b)(5) and §11.61(c)(1) of the Texas Alcoholic Beverage Code (Code). The contested case hearing was held on August 31, 2010. Respondent did not appear.

Staff offered three exhibits¹ and requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.501 be invoked. Findings of fact and conclusions of law relating to notice and jurisdiction are set out below. The Administrative Law Judge (ALJ) concludes that the Notice of Hearing sent to Respondent complies with Code § 11.63, 16 TAC § 33.33, and 1 TAC §§ 155.401 and 155.501. As a result, pursuant to 1 TAC § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true, and the ALJ incorporates these allegations into the findings of fact below. The findings support the requested permit cancellation.

III. FINDINGS OF FACT

1. Coco C-Store Inc. d/b/a Super By-Lo (Respondent) holds a Wine Only Package Store Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises known as Super By-Lo located at 3403 Merrifield Avenue, in Dallas, Dallas County, Texas.

¹ Notice of Hearing (Ex. 1); Respondent's TABC-issued permit information (Ex. 2); and a copy of the certified mail returned to Staff by the United State Post Office (Ex. 3).

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PROPOSAL FOR DECISION

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2. As of March 3, 2010, Respondent no longer holds a sales tax permit.
3. As of March 3, 2010, Respondent was indebted to the state for taxes, fees, or the payment of penalties imposed by the Texas Alcoholic Beverage Code, by a rule of the TABC, or by Chapter 183 of the Texas Tax Code.
4. On August 11, 2010, TABC's staff issued a Notice of Hearing to Respondent at Respondent's address of record.
5. On August 19, 2010, the U.S. Post Office's return mail for certified mail, return receipt number 7007 0710 0004 9247 5838 indicates "return to sender, attempted - not known, unable to forward."
6. The notice 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.
7. The notice properly disclosed in at least 12-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought may be granted by default.
8. The contested case hearing was held on August 31, 2010, at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150A in Dallas, Texas, before Administrative Law Judge Laura Kuchinsky. Judith Kennison, attorney for the TABC's staff, appeared telephonically. Respondent failed to appear.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE (Code) §§ 5.31 and 5.35.
2. 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 proposed findings of fact and conclusions of law, pursuant to Code § 5.43 and TEX. GOV'T CODE §§ 2003.021(b) and 2003.042(6).
3. Based upon the Findings of Fact, TABC issued its Notice of Hearing in compliance with 1 TAC §§ 155.401 and 155.501, 16 TAC 33.33, and Code § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TAC § 155.501.
5. Based upon the Findings of Fact, Respondent no longer holds a sales tax permit, in violation of Code § 11.61(c).

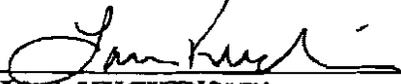
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6. Based upon the Findings of Fact, Respondent failed to pay a debt for taxes, fees, or penalties imposed by the Code, by a rule of the TABC, or by Chapter 183 of the Texas Tax Code, in violation of Code § 11.61(b)(5).
7. Therefore, Respondent's permit should be cancelled.

Signed September 15, 2010.



LAURA KUCHINSKY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS