

DOCKET NO. 592586

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
WILKEN PARTNERS, LP D/B/A TEXAS BRICKHOUSE GRILL, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB675197, LB & PE BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-10-4662)	§	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.

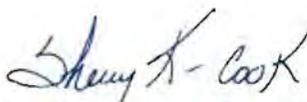
After proper notice was given, this case was heard by the State Office of Administrative Hearings, with Administrative Law Judge John H. Beeler presiding. The hearing convened on August 17, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 6, 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 Mixed Beverage Permit, the Mixed Beverage Late Hours Permit and the Beverage Cartage Permit of Wilken Partners, L.P. d/b/a Texas Brickhouse Grill are hereby **CANCELLED**.

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

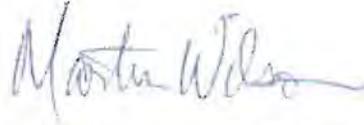
SIGNED on November 22, 2010, at Austin, Texas.



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 John H. Beeler
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
VIA FACSIMILE: (512) 322-2061

Wilken Partners, L.P.
d/b/a Texas Brickhouse Grill
RESPONDENT
6836 Bee Caves Rd., Suite 235
Austin, TX 78746
VIA REGULAR MAIL

John W. Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

**SOAH DOCKET NO. 458-10-4662
TABC CASE NO. 592586**

TEXAS ALCOHOLIC BEVERAGE COMMISSION, PETITIONER	§ § § § § § § § § §	BEFORE THE STATE OFFICE
V.		
WILKEN PARTNERS, LP D/B/A TEXAS BRICKHOUSE GRILL, PERMIT/LICENSE NO. MB675197, PE & LB, BEXAR COUNTY, TEXAS RESPONDENT		OF
		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC/Staff) seeks cancellation of Wilken Partners, L.P., d/b/a Texas Brickhouse Grill's (Respondent) TABC-issued permits alleging that Respondent has failed to pay taxes owed the State of Texas in violation of §11.61(b)(5) of the Texas Alcoholic Beverage Code (Code).

The hearing convened on August 17, 2010, before Administrative Law Judge (ALJ) John H. Beeler, at the State Office of Hearings, 10300 Heritage, San Antonio, Texas, and the record closed on the same day. TABC was represented by Staff attorney John W. Sedberry who appeared by telephone. Respondent failed to appear at the hearing and was not represented. Staff offered two exhibits¹ and a witness² from the Texas State Comptroller's Office who testified about the amounts owed. Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.501 be invoked and Respondent's permits be canceled. Findings of fact and conclusions of law relating to notice and jurisdiction are set out below.

¹ Notice of Hearing (Ex.1) and Respondent's TABC-issued permit information (Ex.2).

² Stephen Bushover.

II. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under 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 under Code § 5.43 and TEX. GOV'T CODE §§ 2003.
3. Proper and timely notice of hearing was provided as required by 1 TEX. ADMIN. CODE (TAC) §§ 155.401 and 155.501, 16 TAC 33.33, and Code § 11.63.
4. Based on the above Findings of Fact and Conclusions of Law, TABC is entitled to a default against Wilken Partners, L.P. d/b/a Texas Brickhouse Grill (Respondent) under 1 TAC § 155.501.
5. Based upon the Findings of Fact, Respondent failed to pay a debt for taxes, fees, or penalties imposed by the Code, or by Chapter 183 of the Texas Tax Code, in violation of Code § 11.61(b)(5).
6. Based on the Findings of Fact and Conclusions of Law, Respondent's permits should be canceled.

SIGNED October 6, 2010.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS