

**TABC DOCKET NOS. 598499, 598634, 598635, 606155 & 606156**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
<b>LEANN MICHELLE WEAVER D/B/A CLUBB CIRCLE C, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT NO. BG747348</b>	§	
	§	
<b>GUADALUPE COUNTY, TEXAS (SOAH DOCKET NOS. 458-11-6497 &amp; 458-12-4118)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 9<sup>th</sup> day of May, 2012, the above-styled and numbered causes.

After proper notice was given, SOAH Docket No. 458-11-6497 (TABC Docket No. 598499) was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Michael J. O'Malley presiding. The hearing convened on August 4, 2011 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 1, 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.

After proper notice was given, SOAH Docket No. 458-12-4118 (TABC Docket Nos. 598634, 598635, 606155 and 606156) was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge John H. Beeler presiding. The hearing convened on February 28, 2012 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 13, 2012. 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.

After review and due consideration of the Proposals for Decision, I adopt the following Findings of Fact and Conclusions of Law. With one exception, these Findings of Fact and Conclusions of Law consolidate and re-state the relevant Findings of Fact and Conclusions of Law of the Administrative Law Judges contained in the two Proposals for Decision referenced above. Instead of incorporating by reference the factual allegations in the Notices of Hearing that are deemed admitted, those allegations are stated. Although both Proposals for Decision conclude that Texas Alcoholic Beverage Code §102.31 was violated by Respondent, that section applies to the distributor and not the retailer of beer. Respondent is a retailer of beer under its Wine and Beer Retailer's Permit. Therefore, Respondent did not violate Texas Alcoholic Beverage Code §102.31. This change to the Administrative Law Judges' conclusions in Conclusion of Law No. 5 in the Proposal for Decision in SOAH Docket No. 458-11-6497 and in Conclusion of Law No. 5 in the Proposal for Decision in SOAH Docket No. 458-12-4118 is made pursuant to Government Code §2001.058(e)(1) and is reflected in Conclusion of Law No. 5 in this Order.

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.

#### **FINDINGS OF FACT**

1. Respondent holds Wine and Beer Retailer's Permit No. BG747348.
2. Notices of the August 4, 2011 and February 28, 2012 hearings were mailed to Respondent at the Respondent's address of record at least ten days prior to the scheduled hearings.
3. The Notices of Hearing contained a statement of the time, place and nature of the hearings; a statement of the legal authority and jurisdiction under which the hearings were to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters alleged.
4. The Notices 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 that the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
5. The hearings were held by the State Office of Administrative Hearings in Austin, Texas on the dates specified in the Notices of Hearing (i.e., August 4, 2011 and February 28, 2012), and the record of the State Office of Administrative Hearings in each case was closed on the date of the hearing.
6. The Respondent did not appear at either the August 4, 2011 hearing or the February 28, 2012 hearing, and was not represented at either hearing.
7. In each case, staff of the Texas Alcoholic Beverage Commission moved for a default, which was granted.

8. These allegations in the Notices of Hearing are deemed admitted: On or about July 21, 2010, September 3, 2010, September 13, 2010, and June 10, 2011, Respondent, Leann Michelle Weaver d/b/a Clubb Circle C, or Respondent's agent, servant or employee, gave a check or draft for the purchase of beer that was dishonored for payment.

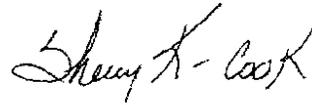
### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over these matters pursuant to Tex. Alco. Bev. Code §§6.01 and 61.73.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearings in these proceedings, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code ch. 2003.
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 Notices of Hearing were properly deemed admitted, pursuant to 1 Tex. Admin. Code §155.501.
5. By giving a check or draft for the purchase of beer that was dishonored when presented for payment, Respondent violated Tex. Alco. Bev. Code §61.73.
6. Based on Conclusion of Law No. 5, the staff of the Texas Alcoholic Beverage Commission established the basis for sanction alleged in the Notice of Hearing.
7. Based on the allegations deemed admitted and found in Finding of Fact No. 8, Respondent's Wine and Beer Retailer's Permit No. BG747348 should be cancelled.

**IT IS THEREFORE ORDERED** that Respondent's Wine and Beer Retailer's Permit No. BG747348 is hereby **CANCELLED**.

**This Order will become final and enforceable at 12:01 a.m. on the 5<sup>th</sup> day of June, 2012, unless a Motion for Rehearing is filed on or before the 4<sup>th</sup> day of June, 2012.**

**SIGNED** this the 9th day of May, 2012, at Austin, Texas.

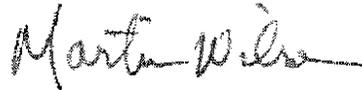


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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

**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 9<sup>th</sup> day of May, 2012.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Michael J. O'Malley  
John H. Beeler  
**ADMINISTRATIVE LAW JUDGES**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> St. Ste. 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

Leann Michelle Weaver  
d/b/a Clubb Circle C  
**RESPONDENT**  
11852 FM 1150  
Luling, TX 78648  
**VIA FIRST CLASS MAIL & CERTIFIED MAIL: 7006 2760 0004 7904 2312**

Judith L. Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division

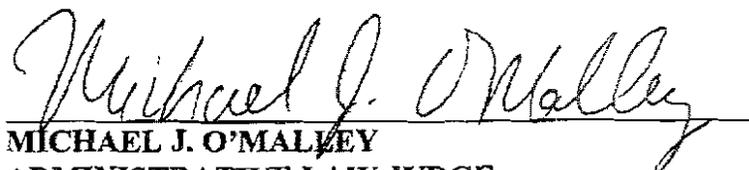


5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. TABC staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

### CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV CODE ANN. §§ 6.01 and 61.73.
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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
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, pursuant to 1 TEX. ADMIN. CODE §155.501.
5. On July 21, 2010, September 3, 2010, and September 13, 2010, Respondent's agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment in violation of TEX. ALCO. BEV CODE ANN. §§ 61.73 and 102.31.
6. TABC staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
7. The referring agency is entitled to the relief requested and the Respondent's Permit should be suspended for twenty days, or in lieu of a suspension, the Respondent should be permitted to pay a civil penalty of \$6,000.

SIGNED September 1, 2011.

  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING

**SOAH DOCKET NO. 458-12-4118  
TABC CASE NOS. 598634, 598635, 606155, & 606156**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**V.**

**LEANN MICHELLE WEAVER  
D/B/A CLUBB CIRCLE C  
PERMIT NO. BG747348  
GUADALUPE COUNTY, TEXAS,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

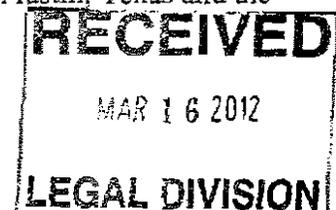
**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

This matter was scheduled for hearing at the request of the Staff of the Texas Alcoholic Beverage Commission (TABC). Despite being sent proper notice, Leanne Michelle Weaver d/b/a Clubb Circle C (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 Staff should be granted on a default basis.

**FINDINGS OF FACT**

1. Respondent hold Permit No. BG747348, issued by TABC.
2. 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.
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 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.
5. The hearing was held at the State Office of Administrative Hearings in Austin, Texas and the record closed on February 28, 2012.



6. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
7. TABC staff moved for a default, which was granted.
8. 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. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV CODE ANN. §§ 6.01 and 61.73.
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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
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, pursuant to 1 TEX. ADMIN. CODE §155.501.
5. On September 3, 2010, September 13, 2010, and June 10, 2011, Respondent's agent, servant, or employee gave checks or drafts for the purchases of beer that were dishonored when presented for payment in violation of TEX. ALCO. BEV CODE ANN. §§ 61.73 and 102.31.
6. Staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
7. The referring agency is entitled to the relief requested and the Respondent's permit should be canceled.

**SIGNED March 13, 2012.**

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