

DOCKET NO. 595509

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
FROG BRANCH, LLC D/B/A FROG BRANCH SALOON, LLC, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT NOS. BG617802	§	
	§	
HILL COUNTY, TEXAS (SOAH DOCKET NO. 458-11-0628)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this **31st** day of **August**, 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 (ALJ) Suzan Shinder presiding. The hearing convened on November 8, 2010 and the SOAH record closed the same date. ALJ John H. Beeler, on behalf of ALJ Shinder, made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on January 5, 2011. On January 11, 2011, Sandra K. Patton (representing Petitioner), sent a letter to ALJ Beeler asking for issuance of an amended Proposal for Decision correcting a clerical mistake. On April 21, 2011, I sent a letter to ALJ Beeler (with copies to the parties) asking for clarification of the record. On June 16, 2011, I entered a Remand Order. On August 5, 2011, ALJ Beeler issued a Second Amended Proposal for Decision Nunc Pro Tunc, correcting the location of the hearing. ALJ Beeler prepared the Second Amended Proposal for Decision Nunc Pro Tunc after reading the record. The Second Amended Proposal for Decision Nunc Pro Tunc 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Second Amended Proposal for Decision Nunc Pro Tunc, adopts the Findings of Fact and Conclusions of Law of the ALJ that are contained therein, with the following exceptions:

Finding of Fact No. 5 in the Second Amended Proposal for Decision Nunc Pro Tunc is deleted, and the following Findings of Fact Nos. 5 and 6 are substituted in its stead:

Finding of Fact No. 5. The hearing proceeded on a default basis.

Finding of Fact No. 6. On or about July 28, 2010, Respondent's license was cancelled for cause by the commission.

In light of these revised Findings of Fact, Conclusion of Law No. 6 in the Second Amended Proposal for Decision Nunc Pro Tunc is deleted as duplicative and therefore unnecessary, and Conclusion of Law No. 7 in the Second Amended Proposal for Decision Nunc Pro Tunc is renumbered as Conclusion of Law No. 6.

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 Second Amended Proposal for Decision Nunc Pro Tunc, 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.

IT IS THEREFORE ORDERED that Conduct Surety Bond No. 122805A from First Bank & Trust in Dawson, Texas, or its successor in interest, which was issued on behalf of Frog Branch Saloon LLC, is hereby **FORFEITED**.

This Order will become final and enforceable on the 26th day of September, 2011, unless a Motion for Rehearing is filed **BEFORE** that date.

SIGNED this the 31st day of August, 2011, at Austin, Texas.



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 31st day of August, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

John Beeler
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
VIA FACSIMILE: 512.322.2061

Frog Branch, L.L.C.
d/b/a Frog Branch Saloon, L.L.C.
RESPONDENT
505 NE 5th Street
Hubbard, Texas 76648-2109
VIA REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
August 5, 2011

RECEIVED

AUG 10 2011

FABC HOUSTON
LEGAL

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA INTERAGENCY MAIL

RE: Docket No. 458-11-0628; Texas Alcoholic Beverage Commission vs. Frog Branch, L.L.C., d/b/a/ Frog Branch Saloon, L.L.C., License No. BG617802

Dear Mr. Steen:

Please find enclosed a Second Amended Proposal for Decision in this case. It contains my recommendation and underlying rationale.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Beeler".

John Beeler
Administrative Law Judge

JB/pp

Enclosure

xc Sandra Patton, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Frog Branch L.L.C., d/b/a Frog Branch Saloon, L.L.C., 505 NE 5th Street, Hubbard, TX 76648-2109 - VIA REGULAR MAIL

**SOAH DOCKET NO. 458-11-0628
TABC CASE NO. 595509**

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION,
Petitioner**

V.

**FROG BRANCH, LLC.
D/B/A FROG BRANCH SALOON, L.L.C.
LICENSE NO. BG617802,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**SECOND AMENDED PROPOSAL FOR DECISION
NUNC PRO TUNC**

The Texas Alcoholic Beverage Commission (Petitioner/Commission) seeks the forfeiture of the surety bond, certificate of deposit, or letter of credit for violation by Frog Branch, L.L.C. d/b/a Frog Branch Saloon, L.L.C. (Respondent) of the Texas Alcoholic Beverage Code (CODE) § 11.11 and Commission Rule 15 TEX. ADMIN. CODE § 33.24(j).

I. PROCEDURAL HISTORY AND DEFAULT

The hearing convened on November 8, 2010, before Administrative Law Judge (ALJ) Suzan Shinder, at the State Office of Administrative Hearings Office, Waco, Texas, and the record was closed on the same day. Staff attorney Sandra Patton represented Petitioner. Respondent failed to appear for the hearing and was not represented. Based on Respondent's failure to appear, Petitioner moved for a default under 1 TEX. ADMIN. CODE (TAC) § 155.501. The ALJ finds 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. Since the hearing proceeded on a default basis, the factual allegations contained in the Notice of Hearing are deemed admitted as true and are incorporated into the findings of fact without further discussion of the evidence.

II. FINDINGS OF FACT

1. Frog Branch, L.L.C. d/b/a Frog Branch Saloon, L.L.C. (Respondent), located at 207 North Pecan Street, Malone, Hill County, Texas, held Wine and Beer Retailer's On Premise Permit BG617802 that was canceled for cause by the Texas Alcoholic Beverage Commission (Commission) on July 28, 2010.
2. On October 12, 2010, Staff of the Commission timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address of 505 N.E 5th Street, Hubbard, Texas, 76648, that was received and signed for by "L. Slater" on October 14, 2010.
3. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held; and the matters asserted. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits convened on November 8, 2010. Respondent did not appear and was not represented at the hearing. The record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, and §§ 11.61 of the Texas Alcoholic Beverage Code (CODE). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by 1 TEX. ADMIN. CODE (TAC) §§ 155.401 and 155.501; and CODE § 11.63 and 16 TAC § 33.33.
4. Based on the above Findings of Fact, Respondent violated CODE §11.11 and Commission Rule § 33.24(j).
5. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.

6. Based on the Findings of Fact, Respondent's license was canceled for cause thus violating CODE § 11.11 and Commission Rule § 33.24(j).
7. Based on the foregoing Findings of Fact and Conclusions of Law, the forfeiture of Respondent's conduct surety bond, certificate of deposit, or letter of credit is warranted.

SIGNED August 4, 2011.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ON BEHALF OF SUZAN SHINDER
ADMINISTRATIVE LAW JUDGE