

**DOCKET NO. 612123**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>DAJJ WASH GROUP INC. D/B/A THE DRAKE, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMITS MB673202, LB, PE &amp; CB</b>	§	
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-8067)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER ON REMAND FROM 295<sup>th</sup> DISTRICT COURT**

**CAME ON FOR CONSIDERATION** this **26<sup>th</sup>** day of June, 2013, 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 Timothy Horan presiding. The hearing convened on October 26, 2012 and the SOAH record closed that same day. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on November 30, 2012. The PFD 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. On March 21, 2013, I issued an Order cancelling Respondent’s permits. Respondent filed a Motion for Rehearing with SOAH on March 25, 2013. Although it was incorrectly filed with SOAH, it was treated as a Motion for Rehearing of my March 21, 2013 Order and was overruled by operation of law on May 9, 2013.

On May 17, 2013, Respondent filed an appeal with the District Court in Harris County. On June 13, 2013, the Judge of the 295<sup>th</sup> District Court signed an Agreed Order of Remand for Reconsideration of Administrative Penalty. The parties agreed “that a penalty to be recommended to the Administrator of the Texas Alcoholic Beverage Commission includes a temporary suspension of the above-referenced permits involving 15 days or, in lieu of such suspension, a civil monetary penalty not to exceed \$5000.00”. I find that the penalty recommended by the parties in the District Court’s Agreed Order of Remand is an appropriate penalty under the circumstances.

For the purpose of clarity, I set forth my findings and conclusions in full below, and my March 21, 2013 *Order* on the PFD is superseded by this *Order on Remand from the 295<sup>th</sup> District Court*. The Findings of Fact and Conclusions of Law set forth herein are from the PFD, as previously modified in my March 21, 2013 *Order*. Finding of Fact No. 7, which was modified in the March 21, 2013 *Order*, is further modified to indicate that the allegations in the Notice of Hearing (that are deemed admitted in Conclusion of Law No. 5) were true on the date of the Notice of Hearing. Further, Conclusion of Law No. 6 is modified to reflect the new penalty being assessed.

### **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 October 26, 2012.
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. On or about August 27, 2012, Respondent was indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by a rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Tax). Also on or about August 27, 2012, Respondent was shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or was shown on the records of the Comptroller of Public accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code).

## 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. By being indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by a rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Tax), Respondent violated Texas Alcoholic Beverage Code § 11.61(b)(5). By being shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or by being shown on the records of the Comptroller of Public accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), Respondent violated Texas Alcoholic Beverage Code § 11.61(c)(2).
6. Respondent's Permits should be suspended for 15 days, or in lieu thereof, Respondent should pay a civil penalty of \$5,000.00.

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 the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **July 31, 2013**, and shall remain suspended for **FIFTEEN (15)** consecutive days **UNLESS** Respondent pays a civil penalty in the amount of **\$5,000.00 ON OR BEFORE July 23, 2013**.

If this Order is appealed and judgment is issued affirming the Order, Respondent shall pay the civil penalty in the amount of **\$5,000.00** on or before the **tenth (10<sup>th</sup>)** day following the

date the judgment is signed. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **eighteenth (18<sup>th</sup>)** day following the date the judgment is signed and shall remain suspended for **FIFTEEN (15)** consecutive days.

**This Order will become final and enforceable on the 20th day of July, 2013, unless a Motion for Rehearing is filed on or before the 19th day of July, 2013.**

**SIGNED** this the 26th day of June, 2013, at Austin, Texas.



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Sherry K-Cook, 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 26th day of June, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Timothy Horan  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: 512.322.2061**

Dajj Wash Group Inc.  
d/b/a The Drake  
**RESPONDENT**  
1902 Washington Avenue, Suite E  
Houston, Texas 77076  
***VIA FIRST CLASS MAIL, CMRRR # 70120470000133006756***

Adam Tabak  
**ATTORNEY FOR RESPONDENT**  
3900 Essex Lane, Suite 330  
Houston, Texas 77027  
***VIA FIRST CLASS MAIL, CMRRR#70120470000133006763***  
***AND VIA FACSIMILE: [(888) 241-5250]***

Ramona Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
***VIA E-MAIL at: ramona.perry@tabc.state.tx.us***

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 612123**

**REGISTER NUMBER:**

**NAME: Dajj Wash Group Inc.**

**TRADENAME: The Drake**

**ADDRESS: 1902 Washington Avenue Suite E, Houston, Texas**

**DUE DATE: July 23, 2013**

**PERMITS OR LICENSES: MB673202, LB, PE & CB**

**AMOUNT OF PENALTY: \$5,000.00**

Amount remitted \$\_\_\_\_\_ Date remitted \_\_\_\_\_

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City              State              Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

P-3  
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**CAUSE NO. 2013-29748**

<b>DAJJ WASH GROUP, INC</b>	§	<b>IN THE DISTRICT COURT</b>
<b>d/b/a THE DRAKE,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	
<b>COMMISSION,</b>	§	
<b>Defendant.</b>	§	<b>295<sup>TH</sup> JUDICIAL DISTRICT</b>

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**AGREED ORDER OF REMAND FOR RECONSIDERATION OF  
ADMINISTRATIVE PENALTY**

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Be it remembered that this case is an appeal pursuant to Tex. Alcoholic Bev. Code §11.67 of an administrative cancellation of a mixed beverage permit (including ancillary permits) as a result of failure to pay certain taxes on mixed beverage receipts.

The Parties have announced that they have reached an agreement for remand of this case and the Court hereby finds as follows:

The SOAH administrative law judge issued its Proposal for Decision on December 30, 2012, after a hearing held on October 26, 2012; and

The Administrator of the Texas Alcoholic Beverage Commission adopted that Proposal For Decision on March 21, 2013 in and

The Order of the Administrator that ordered the cancellation of Mixed Beverage Permit MB673203 was signed on March 21, 2013; and

Motion for Rehearing was filed was filed with SOAH on March 25, 2013;

Plaintiff's Motion for Rehearing was overruled by operation of law on May 9, 2013; and

This appeal of the final Order of cancellation was filed by the Plaintiff on May 17, 2013.

Accordingly, it is hereby ORDERED AND DECREED as follows:

This case is hereby remanded to the Administrator of the Texas Alcoholic Beverage Commission for reconsideration of the administrative penalty to be assessed by the Administrator of the Texas Alcoholic Beverage Commission.

It is noted that the parties agree that a penalty to be recommended to the Administrator of the Texas Alcoholic Beverage Commission includes a temporary suspension of the above-referenced permits involving 15 days or, in lieu of such suspension, a civil monetary penalty not to exceed \$5000.00.

This is a final order in this matter.

Signed this 13<sup>th</sup> day of June, 2013.

Caroline Baker  
Judge Presiding

AGREED TO:



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Adam Tabak  
State Bar No. 24027904  
Tabak Law Firm  
3900 Essex Lane  
Suite 330  
Houston, TX 77210  
Telephone: (713) 581-0040  
Facsimile: (888) 241-5250



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Dennis M. McKinney  
State Bar No. 13719300  
Office of the Texas Attorney General  
Administrative Law Division  
P.O. Box 12548, MC-018  
Austin TX 78711-2548  
Telephone: (512) 475-4020  
Facsimile: (512) 320-0167  
Email: [dennis.mckinney@texasattorneygeneral.gov](mailto:dennis.mckinney@texasattorneygeneral.gov)



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this June 17, 2013

Certified Document Number: 56329124 Total Pages: 3

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

**DOCKET NO. 612123**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
<b>DAJJ WASH GROUP, INC. D/B/A THE DRAKE, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMITS MB673202, LB, PE &amp; CB</b>	§	
	§	
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-8067)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 21<sup>st</sup> day of March, 2013, 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 Timothy Horan presiding. The hearing convened on October 26, 2012 and the SOAH record closed that same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 30, 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, and except for Finding of Fact No. 7 and Conclusion of Law No. 5, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

**Finding of Fact No. 7 is modified to read:**

Respondent is indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by a rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Tax). Respondent is

shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code).

**Conclusion of Law No. 5 is modified to read:**

By being indebted to the state for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by a rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Tax), Respondent violated Texas Alcoholic Beverage Code§11.61(b)(5). By being shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or by being shown on the records of the Comptroller of Public accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), Respondent violated Texas Alcoholic Beverage Code§11.61(c)(2).

The modifications to Finding of Fact No. 7 and Conclusion of law No. 5 are non-substantive. They simply re-state the Administrative Law Judge's Finding and Conclusion by stating, instead of incorporating, the allegations in the Notice of Hearing.

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 Respondent's Mixed Beverage Permit MB673202 and the associated Mixed Beverage Late Hours Permit, Beverage Cartage Permit and Caterer's Permit are hereby **CANCELLED**.

**This Order will become final and enforceable on the 14<sup>th</sup> day of April, 2013, unless a Motion for Rehearing is filed on or before the 13<sup>th</sup> day of April, 2013.**

**SIGNED** this the 21<sup>st</sup> day of March, 2013, at Austin, Texas.



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Sherry K-Cook, 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 21<sup>st</sup> day of March, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Timothy Horan  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: 512.322.0474**

Dajj Wash Group, Inc.  
d/b/a The Drake  
**RESPONDENT**  
1902 Washington Avenue, Suite E  
Houston, Texas 77076  
**VIA REGULAR MAIL**  
**AND VIA CMRRR# 70120470000133005704**

Adam Tabak, Attorney at Law  
**ATTORNEY FOR RESPONDENT**  
3900 Essex, Suite 330  
Houston, Texas 77027  
**VIA REGULAR MAIL**  
**AND VIA CMRRR# 70120470000133005711**

Ramona Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
VIA Email at:  
[ramona.perry@tabc.state.tx.us](mailto:ramona.perry@tabc.state.tx.us)

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

November 30, 2012

RECEIVED

DEC 03 2012

FABC HOUSTON  
LEGAL

Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-12-8067; Texas Alcoholic Beverage Commission vs. DAJJ Wash Group Inc. d/b/a The Drake**

Dear Ms. Cook:

Please find enclosed a 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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan  
Administrative Law Judge

TH/mr  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008  
- VIA REGULAR MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and Hearing CD/s)  
Adam Tabak, Attorney at Law, 3900 Essex, Suite 330, Houston, TX 77027 - VIA REGULAR MAIL

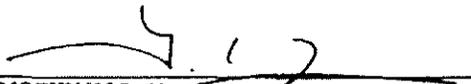


5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding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

**SIGNED November 30, 2012.**

  
TIMOTHY HORAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS