

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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SEP 10 2012

FABC HOUSTON
LEGAL

September 7, 2012

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
ER GASTON LTD. D/B/A THE ELBOW ROOM
SOAH DOCKET NO. 458-12-6717**

Dear Mr. Steen:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/lan
Enclosure

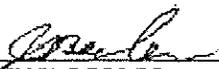
Xc: Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 427 West 20th Street Suite 600 Houston, Texas 77008
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 5806 Mesa Drive, Austin Texas 78731
ER Gaston LTD. d/b/a The Elbow Room, Respondent, VIA REGULAR MAIL, 2808 Cole Avenue Dallas, Texas 75024

4. The hearing was held and the record closed on July 11, 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. 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 September 7, 2012.



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

DOCKET NO. 609466

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ER GASTON LTD D/B/A THE ELBOW ROOM, Respondent	§	ALCOHOLIC
	§	
PERMITS MB496878, LB496879, PE496880 & CB496881	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-6717)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 11th day of February, 2013, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH). The hearing convened on July 11, 2012 and the SOAH record closed that same day. A Proposal for Decision containing Findings of Fact and Conclusions of Law was filed on September 7, 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:

On or about November 10, 2011, Respondent failed to pay a local fee.

Conclusion of Law No. 5 is modified to read:

By failing to pay a local fee, Respondent violated Texas Alcoholic Beverage Code §11.38.

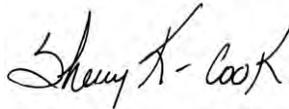
The modifications to Finding of Fact No. 7 and Conclusion of law No. 5 are non-substantive. They simply re-state the Administrative Law Judge's Finding and Conclusion by stating, instead of incorporating, the allegations in the Notice of Hearing.

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 No. **MB496878**, Mixed Beverage Late Hours Permit No. **LB496879**, Beverage Cartage Permit No. **PE496880** and Caterer's Permit No. **CB496881** are hereby **CANCELLED**.

This Order will become final and enforceable on the 8th day of March, 2013, unless a Motion for Rehearing is filed on or before the 7th day of March, 2013.

SIGNED this the 11th day of February, 2013, at Austin, Texas.



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 11th day of February, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Michelle Kallas/John H. Beeler
ADMINISTRATIVE LAW JUDGES
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, Texas 75235
VIA FACSIMILE: (214) 956-8611

ER Gaston Ltd.
d/b/a The Elbow Room
RESPONDENT
2808 Cole Avenue
Dallas, Texas 75204
AND
3010-14 Gaston Avenue
Dallas, Texas 75226
VIA REGULAR MAIL TO BOTH ADDRESSES

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division