

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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TABC HOUSTON
LEGAL

August 31, 2012

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
SANG CORPORATION D/B/A SUSHI AWAJI
SOAH DOCKET NO. 458-12-6367**

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 be "KJG", with a horizontal line extending to the right.

Kyle J. Groves
Administrative Law Judge

KG/lan
Enclosure

Xc: Lisa Crissman, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 427 W. 20th Street
Suite 600 Houston, Texas 77008
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 5806 Mesa Drive, Austin
Texas 78731
Sang Corporation, D/B/A Sushi Awaji, VIA REGULAR MAIL 135 Fountain Court Fairview, Texas 75069

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

v.

**SANG CORPORATION
D/B/A SUSHI AWAJI,
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 Texas Alcoholic Beverage Commission. Despite being sent proper notice, the 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 the referring agency should be granted on a default basis.

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 July 10, 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 in its notice of hearing.

SIGNED August 31, 2012.



Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 607368 & 610172

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
SANG CORPORATION	§	
D/B/A SUSHI AWAJI,	§	ALCOHOLIC
Respondent	§	
	§	
PERMITS RM779076, FB, LB & PE	§	
	§	
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-12-6367)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this **20th** 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 Kyle J. Groves presiding. The hearing convened on July 10, 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 August 31, 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 December 2, 2011 and April 12, 2012, Respondent or Respondent’s agent, servant or employee knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice.

On or about December 2, 2011 and April 12, 2012, Respondent or Respondent's agent, servant or employee acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder. On or about December 2, 2011 and April 12, 2012, Respondent or Respondent's agent, servant or employee possessed or permitted another to possess on the premises distilled spirits in a container not bearing a serially numbered identification stamp. On or about April 12, 2012, Respondent or Respondent's agent, servant or employee possessed or permitted others to possess a narcotic on the licensed premises. On or about April 12, 2012, Respondent or Respondent's agent, servant or employee purchased, sold, offered to sell, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage, or permitted the consumption of an alcoholic beverage, on the licensed premises while the license was under suspension.

Conclusion of Law No. 5 is modified to read:

By knowingly possessing or permitting the possession of alcoholic beverages not covered by invoice, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) and 28.06(c) & (d). By acquiring an alcoholic beverage for the purpose of resale from another retail permit or license holder, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) and 28.07. By possessing or permitting another to possess on the premises distilled spirits in a container not bearing a serially numbered identification stamp, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) and 28.15(a). By possessing or permitting others to possess a narcotic on the licensed premises, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) & (7), 104.01(9) and 16 Texas Administrative Code §35.31. By purchasing, selling, offering to sell, distributing, or delivering an alcoholic beverage, or consuming an alcoholic beverage, or permitting the consumption of an alcoholic beverage, on the licensed premises while the license was under suspension, Respondent violated Texas Alcoholic Beverage Code §§11.61(b)(2) and 11.68.

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 Restaurant Permit No. RM779076 and the associated Food and Beverage Certificate, Mixed Beverage Late Hours Permit and Beverage Cartage Permit are hereby **CANCELLED**.

This Order will become final and enforceable on the 13th day of April, 2013, unless a Motion for Rehearing is filed on or before the 12th day of April, 2013.

SIGNED this the 20th day of March, 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 20th day of March, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Kyle J. Groves
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, Texas 75235
VIA FACSIMILE: 512.322.0471

Sang Corporation
d/b/a Sushi Awaji
RESPONDENT
135 Fountain Court
Fairview, Texas 75069
VIA REGULAR MAIL

Lisa Crissman
ATTORNEY FOR PETITIONER
TABC Legal Division