

State Office of Administrative Hearings

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SEP 18 2015

**TABC HOUSTON
LEGAL DEPT.**



Cathleen Parsley
Chief Administrative Law Judge
September 16, 2015

RECEIVED

SEP 18 2015 -A-

**TABC HOUSTON
LEGAL DEPT.**

VIA REGULAR MAIL

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

**RE: SOAH Docket No. 45815-3019; Texas Alcoholic Beverage
Commission vs. Angleton Roadhouse Inc. d/b/a Roadhouse**

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.

Sincerely,

A handwritten signature in black ink that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr

Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008
- VIA REGULAR MAIL
Martin Wilson, 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 1 Hearing CD/s)
Al Van Huff, Attorney at Law, 1225 North Loop West, Suite 640, Houston, TX 77008 - VIA REGULAR
MAIL

II. DISCUSSION

A. Background

Roadhouse is located at 2610 Hwy 288 North “B”, Angleton, Brazoria County, Texas, and holds Mixed Beverage Permit MB789867 and a Beverage Cartage Permit. The permits were issued November 10, 2011, and have been continuously renewed.¹

B. Applicable Law

The Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found that the permittee, or permittee’s agent, servant, or employee was intoxicated on the premises. Tex. Alco. Bev. Code (Code) §§ 1.04(11), 11.61 (b)(2), (13).

“Intoxication,” is defined as not having normal use of one’s mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body. Tex. Penal Code § 49.01(2)(A).

C. Evidence

1. TABC’s Evidence and Arguments

Agent Brian Bowers, an enforcement agent for TABC, testified that on October 9, 2014, he went to the Roadhouse because it was on a “priority list.” He said Roadhouse was on the priority list due to having prior public safety violations for intoxicated employee on the premises and breach of the peace.

¹ TABC Ex. 1.

At approximately 10:54 p.m., Agent Bowers proceeded to enter the bar, accompanied by Agent Robert Hardcastle. Near the door, they observed a patron leaving the bar with a bottle of beer. They advised the patron that he could not leave the premises with alcohol.

Inside the bar, the agents observed David Holcutt sitting at a table approximately 2 to 3 feet from them. From prior visits, Agent Bowers recognized Mr. Holcutt to be the president of the corporation holding the permit for Roadhouse. Mr. Holcutt began a conversation with Agent Bowers about football and the Texans game on television. Agent Bowers observed that Mr. Holcutt had red, glassy eyes. He testified that Mr. Holcutt's voice was quiet and subdued, contrary to his normal speech which is loud and vibrant. Agent Bowers also observed a glass with light amber liquid on the table in front of Mr. Holcutt.

Agent Bowers testified that he asked Mr. Holcutt to step outside to discuss the patron leaving with a beer and to check on Mr. Holcutt because of his red eyes and demeanor. Agent Bowers observed that Mr. Holcutt had unsteady walk and used the chair backs to maintain his balance. Mr. Holcutt stepped gingerly, held the railings, and walked with slow movements to avoid stumbling.

Once outside, Agent Bowers detected an odor of alcoholic beverage on Mr. Holcutt's breath. Mr. Holcutt told Agent Bowers that he had consumed three "Crown Royal Whiskeys and 7's." He stated that his fourth drink was on the table. He also told Agent Bowers that the bartender brought him drinks and made a "comp sheet" marking his total number of drinks.

Agent Bowers explained that it was a violation for Mr. Holcutt to be intoxicated on the premises and asked him to take a portable breath test (PBT). Mr. Holcutt refused. Agent Bowers is trained and certified to conduct standardized field sobriety tests. He proceeded to conduct the Horizontal Gaze Nystagmus (HGN) test on Mr. Holcutt. Despite instructions to not move his head, Mr. Holcutt moved his head twice during the HGN test. On his third attempt, Mr. Holcutt was able to perform the HGN test with only a slight movement of his head. Out of a possible six clues, Agent Bowers observed four clues, which he said indicted intoxication.

The second test Agent Bowers conducted was the Walk and Turn field sobriety test. Agent Bowers testified that Mr. Holcutt was unable to follow instructions and started the test twice before he was instructed to start. Out of a possible eight clues, Agent Bowers observed four clues indicative of intoxication on the Walk and Turn field test, namely not following instructions, swaying, starting too soon, and missing heel to toe.

Finally, Agent Bowers conducted the One Leg Stand field sobriety test on Mr. Holcutt. He instructed Mr. Holcutt to keep his feet together and hands at his side. Agent Bowers then demonstrated the test. Mr. Holcutt told Agent Bowers that he had hip surgery. Agent Bowers testified that he then told Mr. Holcutt to stand on the leg that did not have hip surgery and lift the other leg. Shortly after Mr. Holcutt lifted his foot, he lost his balance and put his foot down. Mr. Holcutt lifted his foot and set it down again. Mr. Holcutt then asked Agent Bowers if he should continue the test to which Agent Bowers responded affirmatively. On his third attempt, Mr. Holcutt was visibly shaking and swaying as he counted to 30, and stated that he was really nervous. According to Agent Bowers, Mr. Holcutt completed the One Leg Stand test. Out of a possible four clues, Agent Bowers observed two clues indicative of intoxication, namely swaying and putting foot down.

After the field sobriety tests, Agent Bowers offered Mr. Holcutt a second opportunity to take the PBT. Again, Mr. Holcutt refused.

At the conclusion of the interview and standardized field sobriety tests, Agent Bowers made the determination that Mr. Holcutt was intoxicated and had loss the normal use of his mental or physical faculties due to the introduction of alcohol or drugs in the body. Agent Bowers issued an administrative notice to the Roadhouse for having an intoxicated permittee on the licensed premises.

On cross examination, Agent Bowers testified that the bar was smoky, and he did not observe Mr. Holcutt to have slurred speech. Agent Bowers knew that Mr. Holcutt had hip surgery because he used a walking cane at the TABC office in June 2014 to settle a prior administrative violation. Agent Bowers testified that he knows people who have had double hip

surgery and have no difficulty walking. Nevertheless, Agent Bowers took into account Mr. Holcutt's hip surgery when he conducted the standardized field sobriety tests. He instructed Mr. Holcutt stand on the leg that did not have surgery. According to Agent Bowers, Mr. Holcutt did not use a walking cane the night of the investigation.

2. Respondent's Evidence and Arguments

David Joseph Holcutt testified and presented the testimony of several witnesses who were present at Roadhouse that night. Mr. Holcutt testified he is the president of the Roadhouse. He said he arrived at the bar between 7:30 and 8:00 p.m. Mr. Holcutt testified that TABC agents arrived at 10:54 p.m. He had just finished some pizza and was talking to friends from his bowling league. His friends had been with him for approximately 30 minutes and did not see what he had consumed. He testified he had consumed three Crown and 7's and was working on his fourth drink. According to Mr. Holcutt, his drinks contained a "short shot" of alcohol or half of the 1½ fluid ounce contained in a jigger/shot glass. Mr. Holcutt stated that his bartender Tracy brought his drinks to the table.

Mr. Holcutt testified that he was not intoxicated and had the normal use of his mental faculties. As for his physical faculties, he explained that he is unstable on his feet and walks slowly because of the hip surgery on his right leg. He testified that he told Agent Bowers he could not walk heel to toe because of the surgery. He also testified that he did not take a single step or perform the Walk and Turn test. Mr. Holcutt also testified that Agent Bowers did not conduct the One Leg Stand test. However, he testified he could probably perform the test on his good leg if he had been asked to do so.

Agent Bowers rebutted the testimony that the One Leg Stand test was not conducted. Agent Bowers confirmed that he conducted all three field sobriety tests and that his report and memory are accurate.

At the hearing, Mr. Holcutt did not use a walking cane and stated he has not used the cane in several months. He is able to walk, and he drove himself to the hearing.

Tracy Peters is the general manager and head bartender at Roadhouse. She recalled that Mr. Holcutt arrived at the bar between 7:30 and 8:00 p.m., and TABC arrived at 10:54 p.m. She testified that she served Mr. Holcutt five Crown and 7's in three hours. Each 12-ounce drink was prepared with a half/short shot or ½ jigger. She explained the purpose of the short shot is to not overserve alcohol and to make sure people are not intoxicated. According to Ms. Peters, Mr. Holcutt did not appear intoxicated.

Charles and Cheryl Thompson are regular customers at Roadhouse and members of its bowling league. They have known Mr. Holcutt for approximately 5 years. Elizabeth and Russell Minter are members of the bowling league at Roadhouse. They are very good friends with Mr. Holcutt and have known him for approximately 3 years. They were present the night of the investigation and had a conversation with Mr. Holcutt for 30 minutes before TABC agents arrived. They testified that Mr. Holcutt did not appear intoxicated, had the normal use of his mental and physical faculties, and was not a danger to himself or others.

Jeffrey Rosier is the bar-back at Roadhouse and arrived to work at 4:00 p.m. He was present when TABC agents arrived. Although he did not have constant observation of Mr. Holcutt, Mr. Rosier did not believe Mr. Holcutt was intoxicated. Mr. Rosier drove Mr. Holcutt home after the investigation.

D. Analysis and Appropriate Penalty

It is undisputed that Mr. Holcutt was the president of Roadhouse and on the premises on October 9, 2014. It is also undisputed that he admitted consuming several alcoholic drinks and had an odor of alcoholic beverage on his breath and red, glassy eyes.

The issue to be decided is whether Mr. Holcutt was intoxicated on the licensed premises. "Intoxication" is defined as not having normal use of one's mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body. Tex. Penal Code § 49.01(2)(A).

It is uncontroverted that Mr. Holcutt had hip surgery. Although Mr. Holcutt has not used a walking cane in several months, he testified that he still has difficulty with balance and walking. Many of the characteristics attributed to Mr. Holcutt's physical faculties which Agent Bowers felt demonstrated intoxication, such as swayed balance and unsteady slow walk, may be attributable to the hip surgery. Likewise, some of the clues on the standardized field sobriety tests may also be the result of the hip surgery rather than intoxication. Assuming that Mr. Holcutt's normal use of his physical faculties may have been affected by the hip surgery, the ALJ examines Mr. Holcutt's mental faculties which would be unaffected by the surgery and offers an objective determination of intoxication.

As to his mental faculties, the evidence shows that on all three standardized field sobriety tests, Mr. Holcutt repeatedly failed to follow instructions. On the HGN test, Mr. Holcutt failed twice to follow instructions and moved his head to follow the stimulus. Because the HGN test reveals an involuntary jerking of the eyes, the test is unaffected by the hip surgery and provides an objective indication of intoxication. Mr. Holcutt exhibited four clues indicative of intoxication on the HGN test. On the Walk and Turn test, he failed twice to follow instructions and started the test too soon. As to the One Leg Stand test, Mr. Holcutt denies performing the test. However, the ALJ finds Agent Bowers's testimony to be credible that he conducted the One Leg Stand test. The fact that Mr. Holcutt does not recall performing the test is a further indication to the ALJ that Mr. Holcutt's had loss the normal use of his mental faculties.

Respondent presented the testimony of witnesses who are employees, members of its bowling league, or regular patrons at the Roadhouse. Although they did not believe Mr. Holcutt was intoxicated, they did not have the benefit of the training and certification that Agent Bowers has in detecting signs of intoxication or evaluating a person's performance on the standardized field sobriety tests.

Given the totality of the circumstances, the ALJ finds that the preponderance of the evidence shows that Mr. Holcutt was intoxicated and did not have the normal use of his mental or physical faculties by reason of the introduction of alcohol into the body. After having reviewed Respondent's licensing history, which contains a prior intoxicated licensee/permittee

violation on May 18, 2014, the ALJ finds the requested suspension or penalty payment is appropriate.² Therefore, the ALJ recommends that Respondent's permits be suspended for 45 days, or in lieu of a suspension, Respondent be allowed to pay a civil penalty of \$300 per day, for a total of \$13,500.

V. FINDINGS OF FACT

1. David Joseph Holcutt is the president of the Roadhouse.
2. Angleton Roadhouse Inc. d/b/a Roadhouse (Respondent/Roadhouse) holds a Mixed Beverage Permit MB789867 and Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2610 Highway 288 North 'B', Angleton, Brazoria County, Texas.
3. The permits were issued on November 10, 2011, and have been continuously renewed.
4. On October 9, 2014, TABC Agent Brian Bowers observed Mr. Holcutt having a drink on Respondent's premises.
5. Agent Bowers observed Mr. Holcutt to have an odor of alcoholic beverage on his breath and red, glassy eyes. He also observed him to have swayed balance and unsteady slow walk.
6. Mr. Holcutt has had hip replacement surgery.
7. Mr. Holcutt admitted consuming several alcoholic beverages.
8. Mr. Holcutt twice refused to take a portable breath test.
9. Agent Bowers conducted standardized field sobriety tests on Mr. Holcutt to determine intoxication.
10. Mr. Holcutt loss the normal use of his mental faculties as evidenced by his inability to follow instructions on the standardized field sobriety tests.
11. On the Horizontal Gaze Nystagmus (HGN) test, Mr. Holcutt failed twice to follow instructions and moved his head to follow the stimulus.

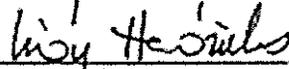
² Although the ALJ is not bound by the TABC's Schedule of Sanctions and Penalties in a contested case, it serves as a guide, and the recommended penalty is within the guidelines for a second violation within 36 months of the prior violation.

12. Because the HGN test reveals an involuntary jerking of the eyes, the test is unaffected by the hip surgery and provides an objective indication of intoxication.
13. Mr. Holcutt exhibited four clues indicative of intoxication on the HGN test.
14. On the Walk and Turn test, Mr. Holcutt failed twice to follow instructions and started the test too soon.
15. Mr. Holcutt does not recall performing the One Leg Stand test, even though Agent Bowers conducted all three standardized field sobriety tests.
16. The fact that Mr. Holcutt does not recall performing the One Leg Stand test is a further indication that Mr. Holcutt's had loss the normal use of his mental faculties.
17. On March 31, 2015, Staff issued a notice of hearing informing all parties of the hearing in this case. Staff's notice to the parties contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
18. The hearing convened on July 24, 2015, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Lindy Hendricks. Staff was represented by attorney Ramona M. Perry. Respondent was represented by attorney Al Van Huff. The hearing concluded and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 11.61.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Tex. Gov't Code §§ 2001.051-.052.
4. Respondent or Respondent's agent, servant, or employee was intoxicated on the permitted premises and thus violated Code §§ 1.04(11), and 11.61(b)(2), (13).
5. Respondent's permits should be suspended for a period of 45 days, or in lieu of suspension, Respondent should be ordered to pay a civil penalty of \$300 per day, for a total of \$13,500. Code § 11.61.

SIGNED September 15, 2015.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 629719

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
ANGLETON ROADHOUSE INC. D/B/A ROADHOUSE, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT MB789867, PE	§	
	§	
	§	
BRAZORIA COUNTY, TEXAS (SOAH DOCKET NO. 458-15-3019)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of December, 2015, 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 Lindy Hendricks presiding. The hearing convened on July 24, 2015 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 16, 2015. 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, 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.

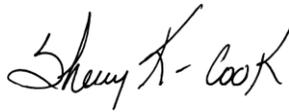
All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and the activities authorized under the above permit by the Code will be **SUSPENDED beginning at**

12:01 a.m. on February 10, 2016 and shall remain suspended for **FORTY-FIVE (45) CONSECUTIVE DAYS, UNLESS** a civil penalty in the amount of **\$13,500.00** is paid **ON OR BEFORE February 2, 2016.**

This Order will become final and enforceable on the 23rd day of January, 2016, unless a Motion for Rehearing is filed by the 22nd day of January, 2016.

SIGNED this the 30th day of December, 2015, at Austin, Texas.



Sherry K-Cook, Executive Director
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 30th day of December, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Angleton Roadhouse Inc.

d/b/a Roadhouse

RESPONDENT

5 Pine View

Angleton, TX 77515

VIA FIRST CLASS MAIL, CMRRR #70150640000460343405

Albert Van Huff

ATTORNEY FOR RESPONDENT

1225 North Loop West, Suite 640

Houston, TX 77008

VIA FIRST CLASS MAIL, CMRRR #70150640000460343412

Ramona Perry

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: Ramona.perry@tabc.texas.gov

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 629719

REGISTER NUMBER:

NAME: Angleton Roadhouse Inc.

TRADENAME: Roadhouse

ADDRESS: 5 Pine View Angleton, Texas

DUE DATE: February 2, 2016

PERMITS OR LICENSES: MB789867, PE

AMOUNT OF PENALTY: \$13,500.00

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.

DOCKET NO. 629719

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
ANGLETON ROADHOUSE INC. D/B/A ROADHOUSE, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT MB789867, PE	§	
	§	
	§	
BRAZORIA COUNTY, TEXAS (SOAH DOCKET NO. 458-15-3019)	§	BEVERAGE COMMISSION

ORDER DENYING MOTION FOR REHEARING

CAME ON FOR CONSIDERATION this 11th day of February, 2016, 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 Lindy Hendricks presiding. The hearing convened on July 24, 2015, 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 16, 2015. 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, on December 30, 2015, I issued an Order adopting the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and suspending Respondent's Mixed Beverage Permit MB789867 and the associated Beverage Cartage Permit for a period of 45 consecutive days unless a civil penalty in the amount of \$13,500.00 was timely paid.

On January 21, 2016, Respondent (represented by new counsel) filed a Motion for Rehearing seeking a "de novo rehearing of the allegations and claims made by the TABC" on the grounds that certain specified findings of fact "are not supported by the evidence produced and presented at the SOAH hearing on the case and are thus manifestly unjust", that certain

conclusions of law "are not supported by Texas statutory or case law or other applicable legal precedent and are thus manifestly unjust", and that "the ALJ [Administrative Law Judge] failed to properly apply Texas law to the evidence that was presented at the hearing and reached conclusions that are unsupported by such evidence".

On January 22, 2016, Petitioner filed a Reply to Respondent's Motion for Rehearing. Petitioner notes that Respondent did not file exceptions (which are not a prerequisite to filing a Motion for Rehearing), and thus the Administrative Law Judge did not have the opportunity to respond to the allegations in Respondent's Motion for Rehearing. Petitioner also alleges that Respondent's Motion for Rehearing was not pled with sufficient specificity.

On January 25, 2016, Respondent filed a Reply to Petitioner's Response to Motion for Rehearing, providing more specific allegations and arguments regarding the claimed errors. Generally, Respondent offers explanations other than intoxication for some Findings, argues that some Findings are contrary to the great weight of the evidence, alleges that Petitioner's witness was mistaken in testimony that contradicted Respondent's witness's testimony, and asserts that the results of certain tests are inherently unreliable. Respondent asserts that the disputed Conclusions are not supported by the evidence in the case, and that the Administrative Law Judge did not properly apply Texas law to the evidence.

On January 27, 2016, Petitioner filed a Reply to Respondent's Reply to Petitioner's First Reply to Respondent's Motion for Rehearing, responding to the more specific allegations and arguments in Respondent's January 25 Reply. Generally, Petitioner claims that sufficient evidence exists in the record to support the Findings and Conclusions, that Petitioner is not obligated to disprove alternative explanations, that the Administrative Law Judge (who heard all of the evidence and had the opportunity to judge the credibility of witnesses) is allowed to weigh conflicting evidence and explanations, and that the tests administered have been found to be reliable under given circumstances (that are alleged to be present in this case).

Having considered the Proposal for Decision, Respondent's Motion for Rehearing, Petitioner's Response to Motion for Rehearing, Respondent's Reply to Petitioner's Response to Motion for Rehearing, and Petitioner's Reply to Respondent's Reply to Petitioner's First Reply to Respondent's Motion for Rehearing, Respondent's Motion for Rehearing is **DENIED**.

IT IS THEREFORE ORDERED that ***IF THIS ORDER IS NOT APPEALED WITHIN THE TIME ALLOWED BY ALCOHOLIC BEVERAGE CODE §11.67***, the privileges granted by the Commission and the activities authorized under the above permits by the Code will be **SUSPENDED beginning at 12:01 a.m. on April 13th, 2016** and shall remain suspended for **FORTY-FIVE (45) CONSECUTIVE DAYS, UNLESS** a civil penalty in the amount of **\$13,500.00** is paid in lieu of suspension **ON OR BEFORE April 5th, 2016**.

IF THIS ORDER IS APPEALED AND THE DECISION IS AFFIRMED, the privileges granted by the Commission and the activities authorized under the above permits by the Code will be **SUSPENDED beginning at 12:01 a.m. on the fifteenth (15th) day** following the date the decision is affirmed, whether by Order or by operation of law, and shall remain suspended for **FORTY-FIVE (45) CONSECUTIVE DAYS, UNLESS** a civil penalty in the

amount of **\$13,500.00** is paid in lieu of suspension **ON OR BEFORE the seventh (7th) day** following the date the decision is affirmed, whether by Order or by operation of law.

SIGNED this the 11th day of February, 2016, at Austin, Texas.



Sherry K-Cook, Executive Director
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, 2016.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Angleton Roadhouse Inc.
d/b/a Roadhouse
RESPONDENT
5 Pine View
Angleton, TX 77515
VIA FIRST CLASS MAIL, CMRRR #70150640000460343641

David J. Escobar

ATTORNEY FOR RESPONDENT

Lorance & Thompson

2900 North Loop West, Suite 500

Houston, TX 77092

VIA FIRST CLASS MAIL, CMRRR #70150640000460343658

Ramona Perry

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: Ramona.perry@tabc.texas.gov

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 629719

REGISTER NUMBER:

NAME: Angleton Roadhouse Inc.

TRADENAME: Roadhouse

ADDRESS: 5 Pine View, Angleton, TX

DUE DATE: April 5, 2016

PERMITS OR LICENSES: MB789867, PE

AMOUNT OF PENALTY: \$13,500.00

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.

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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.

