

DOCKET NO. 458-03-1665

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE
COMMISSION §
§
VS. § OF
§
PETER EGHE OSAGIE §
D/B/A AFRICAN SHRINE §
HARRIS COUNTY, TEXAS §
(TABC CASE NO. 602019) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking forfeiture of the conduct surety bond of Peter Eghe Osagie, d/b/a African Shrine (Respondent) following final adjudication of three violations by Respondent since September 1, 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing was convened on February 14, 2003, by Administrative Law Judge (ALJ) Timothy J. Horan from the State Office of Administrative Hearings, 2020 N. Loop West, Suite 111, Houston, Texas 77018 and the record was closed on February 24, 2003. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Lindy To. Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, and the ALJ recommends that it be granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

1. Peter Eghe Osagie, d/b/a African Shrine (Respondent) held a Wine and Beer Retailer's Permit No. BG-457191 and a Retail Dealer's On-Premise Late Hours License Permit No. BL-457192, issued by the Texas Alcoholic Beverage Commission (Commission).
2. Notice of the hearing in this matter dated January 15, 2003, was properly addressed and sent by certified mail to Respondent at his Houston, Texas mailing address as listed in Commission records.
3. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.

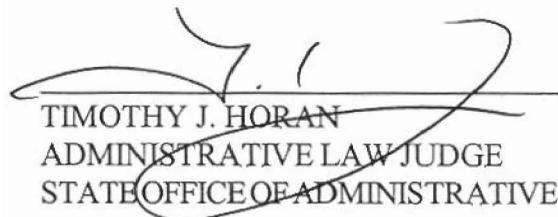


4. The notice of hearing also contained language in 12-point bold type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
5. Respondent did not attend and was not represented at the hearing in this matter held February 14, 2003.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. 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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos.1 through 5, and the above Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.
6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited.

SIGNED this 21st day of April, 2003.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 602019

IN RE PETER EGHE OSAGIE	§	BEFORE THE
D/B/A AFRICAN SHRINE	§	
PERMIT NO. BG457191	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1665)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on February 14, 2003, and adjourned on February 14, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 21, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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.

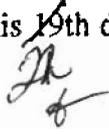
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

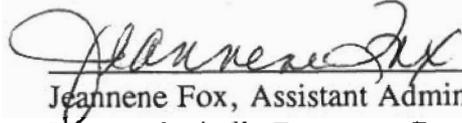
This Order will become final and enforceable on June 9, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 19th day of May, 2003.



On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

PETER EGHE OSAGIE
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RESPONDENT
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CERTIFIED MAIL NO. 7001 2510 0003 8688 8432

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Houston District Office