

DOCKET NO. 613365

IN RE: MISHAEL DWEH BROWNELL, JR.	§	BEFORE THE TEXAS
D/B/A KALAHARI CULTURAL CENTER	§	
LICENSE NOS. BG302926, BL302927	§	
	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1443)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on 7th day of April, 2006 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 5th day of May, 2006. The Proposal For Decision, attached 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 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 permit and license are hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$2,250.00 on or before the 27th day of June 2006, all rights and privileges under the above described permits will be **SUSPENDED** for a period of fifteen (15) days, beginning at 12:01 A.M. on the 5th day of July 2006.

This Order will become final and enforceable on 26th day of June 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 5th day of June, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/dp

Hon. Rex A. Shaver
Administrative Law Judge
State office of Administrative Hearing
Houston, Texas
VIA FAX (713) 812-1001

Mishael Dweh Brownell Jr.
d/b/a Kalahari Cultural Center
RESPONDENT
15000 Bellaire Ste Y
Houston, TX 77083
CERTIFIED MAIL NO. 7005 3110 0000 6409 0499

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

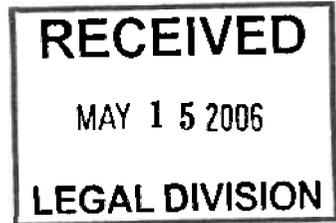
Houston District Office

State Office of Administrative Hearings

SPL
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Shelia Bailey Taylor
Chief Administrative Law Judge



May 5, 2006

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

VIA REGULAR MAIL

RE: Docket No. 458-06-1443; Texas Alcoholic Beverage Commission v. Michael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center

Dear Mr. Steen:

Please find enclosed an Amended 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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mc
Enclosure

xc: **Sandra Patton**, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 -

VIA REGULAR MAIL

Michael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, 15000 Bellaire, Ste. Y, Houston Texas 77083 -

VIA REGULAR MAIL

DOCKET NO. 458-06-1443

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
MISHAEL DWEH BROWNELL, JR.	§	
D/B/A KALAHARI CULTURAL CENTER	§	
LICENSE NOS. BG-302926, BL-302927,	§	
Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 613365)	§	ADMINISTRATIVE HEARINGS

**AMENDED
PROPOSAL FOR DECISION**

This Amended Proposal for Decision is issued to correct an incorrect date of hearing which appeared in Conclusion of Law No. 4 in the original Proposal For Decision. The date of violation should have been shown as October 23, 2004 is so shown in this Amended Proposal for Decision.

The Texas Alcoholic Beverage Commission ("TABC"), brought this enforcement action against Michael Dweh Brownell, Jr. d/b/a/ Kalahari Cultural Center alleging that on or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.

The Respondent did not attend the April 7, 2006 hearing. The Administrative Law Judge ("ALJ") finds the allegations true and agrees with the TABC recommendation that there be a suspension of both the Wine and Beer Retailer's Permit, BG-302926 and Retail Dealer's On-Premise Late Hours License, BL-302927 for a period of 15 days and that the Respondent be allowed to pay \$150 per day in lieu of suspension.

I. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Respondent did not appear at the hearing, TABC requested a default decision, pursuant to 1 TAC §155.55. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings ("SOAH") default rule.

At the hearing, the TABC presented Exhibit No.1, the TABC file on Respondent, and Exhibit No.2, the certified mail envelope containing the notice of this hearing which was sent to the Respondent's mailing address and was returned to TABC by the postal service.

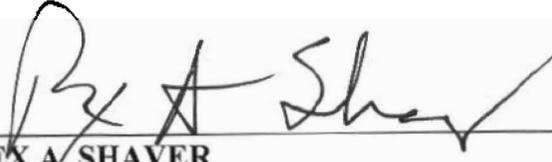
II. FINDINGS OF FACT

1. Respondent, Michael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center with premises at 15000 Bellaire, Suite Y, Houston, Texas, 77083 holds Permit Nos. BG-302926 and BL-302927 issued by the TABC.
2. On February 17, 2006, the TABC sent notice of the hearing to be held April 7, 2006, at 9:00 a.m., at 2020 N. Loop West, Suite 111, Houston, Texas 77018 to Respondent at its mailing address, 15000 Bellaire, Suite Y, Houston, Texas, 77083 by certified mail, return receipt requested, alleging that the Respondent was in violation of the Code in that on or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.
3. The hearing on the merits convened April 7, 2006, at 9:00 a.m., at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Sandra Patton. The Respondent did not appear and was not represented at the hearing. The record closed the same day.
4. On or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§6.01, 11.46, 11.61, 61.71 and 61.73 of the CODE.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 AND 2001.052.
4. Based upon Finding of Fact No.4 on or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.
5. Based on Findings of Fact Nos. 2-4, and Conclusions of Law 3 and 4 the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions both the Wine and Beer Retailer's Permit, BG-302926 and Retail Dealer's On-Premise Late Hours License, BL-302927 should be suspended for a period of 15 days with consideration that the Respondent be allowed to pay \$150 per day in lieu of suspension.

SIGNED May 5, 2006.

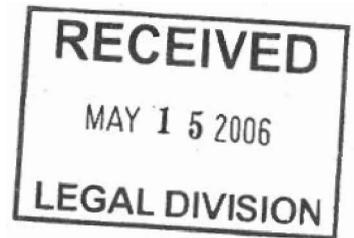


REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings *SPJ*



Shelia Bailey Taylor
Chief Administrative Law Judge



May 5, 2006

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

VIA REGULAR MAIL

RE: Docket No. 458-06-1443; Texas Alcoholic Beverage Commission v. Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center

Dear Mr. Steen:

Please find enclosed an Amended 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 § 155.59(c), a SOAH rule which may be found at www.soh.state.tx.us.

Sincerely,

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Rex A. Shaver
Administrative Law Judge

RAS/mc
Enclosure

xc: **Sandra Patton**, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, 15000 Bellaire, Ste. Y, Houston Texas 77083 -
VIA REGULAR MAIL

I. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Respondent did not appear at the hearing, TABC requested a default decision, pursuant to 1 TAC §155.55. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings ("SOAH") default rule.

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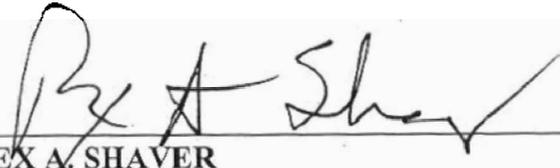
II. FINDINGS OF FACT

1. Respondent, Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center with premises at 15000 Bellaire, Suite Y, Houston, Texas, 77083 holds Permit Nos. BG-302926 and BL-302927 issued by the TABC.
2. On February 17, 2006, the TABC sent notice of the hearing to be held April 7, 2006, at 9:00 a.m., at 2020 N. Loop West, Suite 111, Houston, Texas 77018 to Respondent at its mailing address, 15000 Bellaire, Suite Y, Houston, Texas, 77083 by certified mail, return receipt requested, alleging that the Respondent was in violation of the Code in that on or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.
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4. On or about October 23, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§6.01, 11.46, 11.61, 61.71 and 61.73 of the CODE.
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5. Based on Findings of Fact Nos. 2-4, and Conclusions of Law 3 and 4 the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions both the Wine and Beer Retailer's Permit, BG-302926 and Retail Dealer's On-Premise Late Hours License, BL-302927 should be suspended for a period of 15 days with consideration that the Respondent be allowed to pay \$150 per day in lieu of suspension.

SIGNED May 5, 2006.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

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D



Shelia Bailey Taylor
Chief Administrative Law Judge

May 2, 2006

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

VIA REGULAR MAIL

RE: Docket No. 458-06-1443; Texas Alcoholic Beverage Commission v. Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center

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Rex A. Shaver
Administrative Law Judge

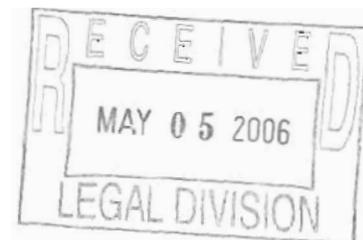
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VIA REGULAR MAIL

Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, 15000 Bellaire, Ste. Y, Houston Texas 77083 -

VIA REGULAR MAIL



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II. FINDINGS OF FACT

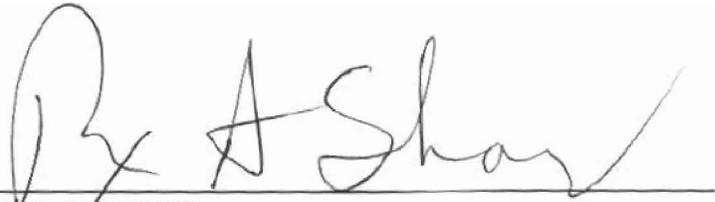
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2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 AND 2001.052.
4. Based upon Finding of Fact No.4 on or about September 12, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.
5. Based on Findings of Fact Nos. 2-4, and Conclusions of Law 3 and 4 the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions both the Wine and Beer Retailer's Permit, BG-302926 and Retail Dealer's On-Premise Late Hours License, BL-302927 should be suspended for a period of 15 days with consideration that the Respondent be allowed to pay \$150 per day in lieu of suspension.

SIGNED May 2, 2006.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS