

DOCKET NO. 613643

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
	§	
THE ICE HOUSE	§	
D/B/A THE ICE HOUSE	§	
PERMIT/LICENSE NOS. N-250957,	§	
PE250958	§	
HILL COUNTY, TEXAS	§	
(SOAH Docket No. 458-05-4948)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on April 25, 2005, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 10, 2005. 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.

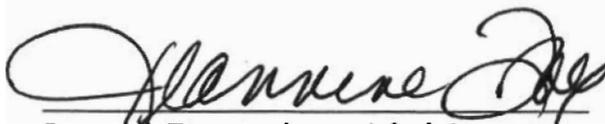
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal of Respondent's permits/licenses be **DENIED**.

This Order will become final and enforceable on June 14, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this 25th day of May, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

Administrative Law Judge Suzan Moon Shinder
State Office of Administrative Hearings
VIA FAX (254) 750-9380

The Ice House
d/b/a The Ice House
RESPONDENT
PO Box 1504
Whitney, Texas 76692
CERTIFIED MAIL NO. 7000 1530 0929 3065

PROTESTANTS:

Gary and Billie Bee
PO Box 1796
Whitney, Texas 76692

Joe and Ann Collier
PO Box 1767
Whitney, Texas 76692

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Division

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-05-4948
TABC CASE NO. 613643

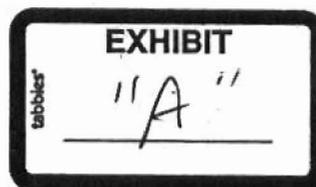
TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
THE ICE HOUSE Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff brought this action against The Ice House (the Respondent or Applicant), protesting the change of address, the reinstatement, and the issuance of the Applicant's permits; and asserting that the Applicant's request for renewal of its permits should be denied. Their petition is based on the Staff's and Protestants' allegation that the Applicant is indebted to the State of Texas for mixed beverage taxes due, pursuant to Texas Tax Code (Tax Code) §183.021, in violation of Texas Alcoholic Beverage Code (Code) §11.61(b)(5) and/ or §11.46(a)(5); and, on the allegation that the place or manner in which the Applicant may conduct its business warrants the refusal of the permit based upon the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency, in violation of Code §11.46(a)(8). The Applicant failed to appear at the hearing and the hearing proceeded on a default basis. As a result, the undersigned Administrative Law Judge finds that the Staff's allegations are true, and agrees with the Staff's request that the renewal of Applicant's permits be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.



On April 25, 2005, a public hearing was held before Suzan Shinder, Administrative Law Judge (ALJ), at the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, in Waco, Texas. The Staff appeared by its attorney Timothy Griffith. The Applicant did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE §155.55, and the record closed the same day. Based on the foregoing, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

II. LEGAL STANDARDS AND APPLICABLE LAW

If a party who does not have the burden of proof fails to appear on the day and time set for the hearing on the merits, the ALJ may proceed in that party's absence on a default basis and issue a proposal for decision, where provided by law, against the defaulting party. In the proposal for decision, the factual allegations in the notice of hearing, against the defaulting party, will be deemed admitted pursuant to 1 TEX. ADMIN. CODE §155.55.¹

Pursuant to Tax Code §183.021, a tax at the rate of 14 percent is imposed on the gross receipts of a permittee, received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

Pursuant to Code §11.61 (b)(5), the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by the Code, by a rule of the Commission, or by Chapter 183, of the Tax Code.

¹ Pursuant to the Commission's Rules at 16 Texas Administrative Code §37.3, ten days notice shall be by certified mail, addressed to the permittee's last known address as reflected in the Commission's records. Based on this rule, a certificate of service to such address is prima facie evidence of adequate service on the permittee.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Ch. 5, Subch. B.
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. (Government Code) ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedures Act, Government Code ch. 2001, and TEX. ADMIN. CODE (Administrative Code) §155.55.
4. The allegations contained in the notice of hearing are deemed admitted as true, pursuant to Administrative Code §155.55.
5. Based on the foregoing findings and conclusions, the Applicant violated Code §§11.46(a)(5), and (a)(8), and Code §11.61 (b)(5); and, TEX. TAX CODE ANN. §183.021.
6. Pursuant to Code §44.03, the above violations are applicable to any secondary permit(s).
7. Based on the foregoing findings and conclusions, the renewal of the Applicant's permits should be denied.

Signed May 10, 2005.



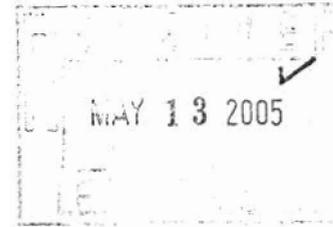
**SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings

5-27



Shelia Bailey Taylor
Chief Administrative Law Judge



May 11, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission
5306 Mesa
Austin, Texas 78731

REGULAR MAIL

RE: Docket No. 458-05-4948, The Ice House, TABC Case No. 613643

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

Sincerely,

Suzan Moon Shinder
Suzan Moon Shinder
Administrative Law Judge *by permission*

srs/tae

Enclosure

xc: Timothy Griffith, TABC, 825 McDonald, Suite 180, McKinney, Texas 75089 - REGULAR MAIL
The Ice House, P.O. Box 1504, Whitney, Texas 76692- REGULAR MAIL
Gary and Billie Bee, P.O. Box 1796, Whitney, Texas 76692- REGULAR MAIL
Joe and Ann Collier, P.O. Box 1767, Whitney, Texas 76692- REGULAR MAIL