

TABC DOCKET NO. 595675

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
RUMPUS LLC D/B/AMOUTH, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS NO. BG698648, FB	§	
	§	
DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-7663)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of April, 2012, 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 Brenda Coleman presiding. The hearing convened on September 30, 2011 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 November 29, 2011. 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. As of this date no exceptions have been filed.

After review and due consideration of the Proposal for Decision and the record in this proceeding, 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 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 Wine and Beer Retailer's Permit No. BG698648 and the associated Food and Beverage Certificate held by Rumpus LLC d/b/a Mouth are hereby **CANCELLED**.

Unless a Motion for Rehearing is filed by the 7th of May, 2012, this Order will become final and enforceable on the 8th day of May, 2012.

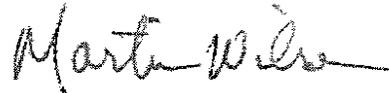
SIGNED this the 12th day of April, 2012, at Austin, Texas.



Sherry K-Cook, Assistant 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 12th day of April, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Rd. Ste. 150A
Dallas, TX 75235
VIA FACSIMILE: (512) 322-0471

Rumpus, LLC
d/b/a Mouth
RESPONDENT
2808 Robin Circle
Hartford, WI 53027
VIA REGULAR & CERTIFIED MAIL: 7006 2760 0004 7904 2206

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TEXAS ALCOHOLIC
BEVERAGE COMMISSION,
Petitioner

V.

RUMPUS LLC D/B/A MOUTH,
Respondent

§ BEFORE THE STATE OFFICE
§
§
§
§ OF
§
§
§ ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this action against Rumpus LLC d/b/a Mouth (Respondent). Petitioner seeks cancellation of Respondent's permit, alleging that Respondent had committed multiple violations of the Texas Alcoholic Beverage Code (Code). 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 (ALJ) finds that relief requested by the Commission should be granted on a default basis.

I. FINDINGS OF FACT

1. Rumpus LLC d/b/a Mouth (Respondent), located at 2626 Main Street, Suite A, Dallas, Dallas County, Texas, is the holder of a Wine and Beer Retailer's On Premise Permit and a Food and Beverage Certificate issued by the Texas Alcoholic Beverage Commission (Commission).
2. On July 22, 2011, and July 25, 2011, the Commission's Staff (Petitioner) issued its notice of hearing and amended notice of hearing, respectively, by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address of 2808 Robin Circle, Hartford, Wisconsin 53027, setting the hearing on the merits for August 11, 2011. Respondent received the notices on August 4, 2011, as evidenced by the signature of Respondent's agent, Ronda Hattori.
3. The notice informed Respondent of the time, date, and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
4. The notice also contained language in 12-point, bold-face type informing Respondent that

if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice might be granted by default.

5. Respondent filed a motion for continuance on August 10, 2011.
6. The hearing was rescheduled to September 30, 2011.
7. The hearing was convened by Administrative Law Judge Brenda Coleman at the State Office of Administrative Hearings (SOAH) field office in Dallas, Texas. Petitioner was represented by Staff Attorney, Judith Kennison. Respondent did not appear and was not represented at the hearing.
8. Petitioner moved for a default, which was granted, and the record closed at the conclusion of the hearing.
9. The allegations contained in the notice are deemed admitted as true.
10. On or about June 16, 2010, Respondent's agent, servant, or employee failed to operate the premises primarily as a food service establishment.
11. On or about October 6, 2010, Respondent failed to qualify for a food and beverage certificate and failed to obtain a conduct surety bond or a performance bond for the licensed premises.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE (Code) ch. 5 and §§ 11.11, 11.61, 25.13 and 61.71.
2. SOAH has jurisdiction over matters relating to the hearing in this proceeding, including the preparation of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required by TEX. GOV'T CODE ANN. ch. 2001 and TEX. ADMIN. CODE ch. 155.
4. Based on the above Findings of Fact, Respondent violated Code §§11.11, 11.61, 25.13 and 61.71.
5. Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
6. Petitioner is entitled to the relief requested, and Respondent's Permit should be cancelled.

SIGNED November 29, 2011.

A handwritten signature in cursive script that reads "Brenda Coleman". The signature is written in black ink and is positioned above a horizontal line.

BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS