

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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February 3, 2012

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

VIA REGULAR MAIL

RE: Docket No. 458-12-1942; Texas Alcoholic Beverage Commission vs. Brazoria Castaways Inc. d/b/a Castaway Bar and Grill

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,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

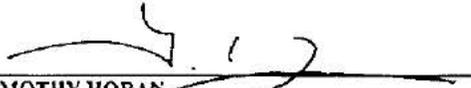
xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**(with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Brazoria Castaways Inc. d/b/a Castaway Bar and Grill, 111 Fort Velasco drive, Surfside Beach, Texas 77541 -**VIA REGULAR MAIL**

4. The hearing was held and the record closed on January 20, 2012.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. 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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T CODE ch. 2001 and 1 TEX. ADMIN. CODE ch. 155.
4. The allegations in the notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested and Respondent's Permits should be suspended for a period of twenty five days, or in lieu of a suspension, the Respondent should be permitted to pay a civil penalty of \$7,500.

SIGNED February 3, 2012.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 605340

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
BRAZORIA CASTAWAYS INC. D/B/A CASTAWAY BAR & GRILL, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS NO. MB684695, LB & PE	§	
	§	
	§	
BRAZORIA COUNTY, TEXAS (SOAH DOCKET NO. 458-12-1942)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20TH day of August, 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 Timothy Horan presiding. The hearing convened on January 20, 2012, 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 February 3, 2012. 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. Respondent, who did not appear at the hearing on January 20, 2012, filed a letter on February 13, 2012 (dated February 14), asking for a new hearing. On February 14, 2012, Petitioner filed a reply to Respondent's letter, opposing a new hearing. On March 2, 2012, Administrative Law Judge Horan issued an Order Denying Motion to Set Aside Default.

After review and due consideration of the Proposal for Decision, Respondent's letter, Petitioner's reply and the Order Denying Motion to Set Aside Default, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision as modified in this Order.

Finding of Fact No. 7 in the Proposal for Decision is deleted, and the following Finding of Fact No. 7 is substituted in its stead:

7. On or about July 16, 2011, Respondent or its agent, servant or employee was intoxicated on the licensed premises.

The following new Finding of Fact No. 8 is added:

8. On or about July 16, 2011, Respondent or its agent, servant or employee sold or delivered an alcoholic beverage to an intoxicated person.

Conclusion of Law No. 5 in the Proposal for Decision is deleted, and the following Conclusion of Law No. 5 is substituted in its stead:

5. By Respondent, its agent, servant, or employee being intoxicated on the licensed premises, Respondent violated Alcoholic Beverage Code §§ 11.61(b)(2) and 11.61(b)(13); and by Respondent, its agent, servant or employee selling or delivering an alcoholic beverage to an intoxicated person, Respondent violated Alcoholic Beverage Code §§ 11.61(b)(2) and 11.61(b)(14).

The changes to Finding of Fact No. 7 and Conclusion of Law No. 5, and the addition of Finding of Fact No. 8, are made pursuant to Government Code §2001.058.

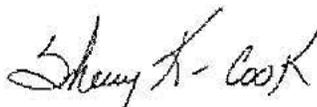
The Findings of Fact and Conclusions of Law set forth in the Proposal for Decision, as modified by this Order, are incorporated into this Order as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on 26TH DAY OF SEPTEMBER, 2012, and shall remain suspended for **twenty five (25)** consecutive days, **UNLESS** Respondent pays a civil penalty in the amount of **\$7,500.00** on or before 18TH DAY OF SEPTEMBER, 2012.

If this Order is appealed and judgment is issued affirming the Order, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **EIGHTEENTH (18th)** day following the date the judgment is signed and shall remain suspended for **twenty five (25)** consecutive days, **UNLESS** Respondent pays the civil penalty in the amount of **\$7,500.00** on or before the **TENTH (10th)** day following the date the judgment is signed.

This Order will become **final and enforceable** on the 14TH DAY OF SEPTEMBER, 2012, **unless a Motion for Rehearing is filed on or before the 13TH DAY OF SEPTEMBER, 2012.**

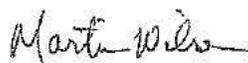
SIGNED this the 20TH day of August, 2012, at Austin, Texas.



Sherry K-Cook, 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 20TH day of August, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West Suite 111
Houston, TX 77018
VIA FACSIMILE: (512)322-0474

Brazoria Castaways Inc.
d/b/a Castaway Bar and Grill
RESPONDENT
111 Fort Velasco Drive
Surfside Beach, TX 77541
VIA CERTIFIED MAIL: 7002 2030 0000 1837 4126

Michael Weaster
PRESIDENT OF RESPONDENT
15831 Fleetwood Oaks
Houston, TX 77079
VIA FACSIMILE: (713) 461-5857

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL: RAMONA.PERRY@TABC.STATE.TX.US