

State Office of Administrative Hearings 605768



Cathleen Parsley
Chief Administrative Law Judge

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LEGAL

March 19, 2012

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
OLICAT GROUP LLC D/B/A HOOLEYS TAVERN AND GRILL
SOAH DOCKET NO. 458-12-3501**

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

Sincerely,

Brenda Coleman

Brenda Coleman
Administrative Law Judge

BC/lan
Enclosure

Xc: Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 427 W. 20th Street Suite 600 Houston, Texas 77008
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 5806 Mesa Drive, Austin Texas 78731
Manuel Olivarez, President Olicat Group LLC d/b/a Hooleys Tavern and Grill

SOAH DOCKET NO. 458-12-3501

TEXAS ALCOHOLIC
BEVERAGE COMMISSION,
Petitioner

V.

OLICAT GROUP LLC D/B/A
HOOLEYS TAVERN AND GRILL,
Respondent

§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this action against Olicat Group LLC d/b/a Hooleys Tavern and Grill (Respondent). Petitioner seeks cancellation of Respondent's permit, alleging that Respondent has violated the Texas Alcoholic Beverage Code (Code) or Commission's rules (the Rules). Respondent failed to appear at the hearing and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On February 7, 2012, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Shelia A. Lindsey, Staff Attorney, represented Petitioner. Respondent did not appear and was not represented at the hearing. The record closed on that same date. Based on Respondent's failure to appear, Petitioner moved for a default under 1 Tex. Admin. Code (TAC) § 155.501. Petitioner presented evidence that proved proper notice and jurisdiction. Since the hearing proceeded on a default basis, most of the factual allegations contained in the notice of hearing are deemed admitted as true and are incorporated into the findings of fact without further discussion of the evidence.¹ The admitted facts support

¹ Petitioner alleged in its notice of hearing that Respondent violated Code § 69.09 "by acquiring an alcoholic beverage for the purpose of resale from another retail permit or license holder." Code ch. 69 governs activities of the holder of a retail dealer's on-premise license. Because Respondent holds a mixed beverage permit, which is governed by Code ch. 28, the ALJ gives no weight to the allegation.

cancellation of Respondent's permit.

II. FINDINGS OF FACT

1. Olicat Group LLC d/b/a Hooleys Tavern and Grill (Respondent), located at 7340 Highway 78, Suite 1400, Sachse, Collin County, Texas, is the holder of a mixed beverage restaurant permit with a food and beverage certificate issued by the Texas Alcoholic Beverage Commission (Commission).
2. On December 28, 2011, the Commission's Staff (Petitioner) issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address of 7340 Highway 78, Suite 1400, Sachse, Collin County, Texas, 75048, setting the hearing on the merits for February 7, 2012. The notice was returned marked "moved left no address unable to forward."
3. On December 28, 2011, Petitioner also sent the notice of hearing to Respondent's president, Manuel Olivarez, at 2717 Grant Drive, Sachse, Texas, 75048, via first class mail.
4. 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.
5. 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.
6. The hearing convened on February 7, 2012. Respondent did not appear and was not represented at the hearing. The record closed on the same day.
7. The hearing proceeded on a default basis, and the allegations contained in the notice were deemed admitted as true.
8. On or about June 2, 2011, Respondent or its agent, servant, or employee committed the following Code violations:
 - a. refilled a container that contained distilled spirits on which tax had been paid;
 - b. possessed or permitted a person on the premises to possess distilled spirits in a container that did not bear a serially numbered identification stamp issued or approved by the Commission;
 - c. knowingly possessed or permitted a person on the premises to possess an alcoholic beverage that was not covered by an invoice from the supplier from whom the alcoholic beverage was purchased; and
 - d. failed to immediately invalidate the identification stamp on an empty distilled

spirits bottle.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.61.
2. SOAH has jurisdiction over all matters relating to conducting a 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 1 TAC §§ 155.401 and 155.501; and Code § 11.63.
4. Based on the above Findings of Fact, Respondent violated Code §§ 28.06(c), 28.08, 28.09(a), 28.15(a), and 16 TAC § 41.72 of the Rules.
5. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
6. Pursuant to Code § 28.06(d), the Commission is authorized to cancel a permit if a permittee knowingly possesses or permits a person on the premises to possess an alcoholic beverage that is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased in violation of Code § 28.06(c).
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permit is warranted.

SIGNED March 19, 2012.


Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings

TABC DOCKET NO. 605768

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
OLICAT GROUP LLC D/B/A HOOLEY'S TAVERN AND GRILL, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. RM741140, FB	§	
	§	
COLLIN COUNTY, TEXAS (SOAH DOCKET NO. 458-12-3501)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this the 25th day of May, 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 February 7, 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 March 19, 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. As of this date no exceptions have been filed.

After review and due consideration of the Proposal for Decision, 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.

THEREFORE, IT IS ORDERED that Respondent's Mixed Beverage Restaurant Permit No. RM741140 and the associated Food and Beverage Certificate are hereby **CANCELLED**.

This Order will become **final and enforceable** on the 19th day of June, 2012, **unless a Motion for Rehearing is filed on or before the 18th day of June, 2012.**

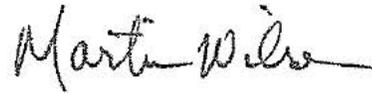
SIGNED this the 25th day of May, 2012, at Austin, Texas.



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 25th day of May, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road Ste. 150A
Dallas, TX 75285
VIA FACSIMILE: (512) 322-0471

Olicat Group LLC
d/b/a Hooley's Tavern and Grill
RESPONDENT
7340 HWY 78, Ste. 1400
Sachse, TX 75048
VIA FIRST CLASS CERTIFIED MAIL, Certificate No.: 7006 2760 0004 7904 2336

Shelia Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division