

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

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TABC HOUSTON  
LEGAL

May 14, 2012

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
MARY E. WALLER d/b/a TA TA'S  
SOAH DOCKET NO. 458-12-4576**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Brenda Coleman".

Brenda Coleman  
Administrative Law Judge

BC/slp  
Enclosure

Xc: ✓ Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 5806 Mesa Drive, Austin Texas 78731  
Mary E. Waller, Respondent, VIA REGULAR MAIL, 1306 E. Marshall Ave., Longview, Texas 75601

SOAH DOCKET NO. 458-12-4576

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	OF
	§	
MARY ELIZABETH WALLER	§	
D/B/A TA TA'S,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) requested forfeiture of the conduct surety bond posted by Mary Elizabeth Waller d/b/a Ta Ta's (Respondent). Staff alleged that Respondent had three or more adjudicated violations of the Tex. Alco. Bev. Code (Code) or Commission Rules since September 1, 1995, or Respondent's permit was canceled for cause by the Commission. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

Notice and jurisdiction were not contested in this proceeding. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

On March 21, 2012, a hearing convened before ALJ Brenda Coleman at the State Office of Administrative Hearings (SOAH) in Dallas, Texas. Staff Attorney Shelia Lindsey appeared by telephone on behalf of the Commission. Respondent did not appear and was not represented at the hearing. Staff presented evidence to support a default decision against Respondent. The record closed on that same date.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 Tex. Admin. Code (TAC) § 155.501 be invoked. Staff issued notice in compliance with 1 TAC §§ 155.401 and 155.501 and Code § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Proposed Findings of Fact below. Based on the findings in this case, Respondent's conduct surety bond should be forfeited.

## III. FINDINGS OF FACT

1. On March 22, 2010, the Texas Alcoholic Beverage Commission (Commission) issued a Wine and Beer Retailer's On Premise Permit and Retailer's On Premise Late Hours License, to Mary Elizabeth Waller d/b/a Ta Ta's (Respondent).
2. Respondent assigned conduct surety bond number 5066554 to the Commission in the amount of \$5,000 held by SureTec Insurance Company.
3. On October 25, 2011, Respondent had three or more adjudicated violations of the Tex. Alco. Bev. Code (Code).
4. On November 3, 2011, the Commission's Staff notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond.
5. On January 24, 2012, Respondent's permit was canceled for cause by the Commission.
6. On February 14, 2012, Staff issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address, setting the hearing on the merits for March 21, 2012.
7. The US Postal Service attempted to deliver the certified mail on February 18, 2012, and left a notice. The certified mail was unclaimed by Respondent and returned to Staff on March 9, 2012.
8. The notice stated 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

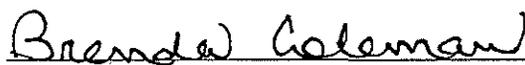
rules involved; and the matters asserted.

9. The notice also contained language in 12-point, bold-face type stating that if Respondent 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.
10. On March 21, 2012, the hearing convened before Administrative Law Judge Brenda Coleman at the State Office of Administrative Hearings (SOAH) in Dallas, Texas. Staff Attorney Shelia Lindsey appeared by telephone on behalf the Commission. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
11. Staff's motion for default was granted and the hearing proceeded on a default basis.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code (Code) ch. 5 and § 11.11, as well as 16 Tex. Admin. Code (TAC) § 33.24.
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 ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent as required by Tex. Gov't Code ch. 2001 and 1 TAC ch. 155.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.501.
5. Respondent had three or more adjudicated violations of the Code.
6. Respondent's permit was canceled for cause by the Commission on January 24, 2012.
7. The conduct surety bond posted by Respondent should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

**SIGNED May 14, 2012.**



BRENDA COLEMAN

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 606709**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>MARY ELIZABETH WALLER D/B/A TA TA'S, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMITNO. BG744522, BL</b>	§	
	§	
<b>GREGG COUNTY, TEXAS (SOAH DOCKET NO. 458-12-4576)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this **14th day of August, 2012**, the above-styled and numbered cause.

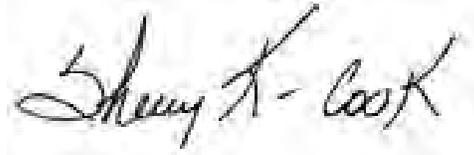
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Brenda Coleman presiding. The hearing convened on March 21, 2012, and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 14, 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.

**IT IS THEREFORE ORDERED** that the conduct surety bond posted by Respondent in the amount of \$5,000.00 be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the **10th day of September, 2012**, unless a Motion for Rehearing is filed on or before the **7th day of September, 2012**.

**SIGNED** this the 14th day of August, 2012, at Austin, Texas.



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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 14th day of August, 2012.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Brenda Coleman  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150A  
Dallas, Texas 75235  
**VIA FACSIMILE: 512.322.0471**

Mary Elizabeth Waller  
d/b/a Ta Ta's  
**RESPONDENT**  
1306 E. Marshall Avenue  
Longview, Texas 75601  
**VIA REGULAR MAIL**

Shelia A. Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA EMAIL: [SHELIA.LINDSEY@TABC.STATE.TX.US](mailto:SHELIA.LINDSEY@TABC.STATE.TX.US)**