

DOCKET NO. 623190 & 623194

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
JAMAL BATAINEH D/B/A M S EXPRESS #704, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT BQ646415	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3094)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of December, 2014, 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 June 20, 2014 and the SOAH record closed on that same date. Although proper and timely notice was provided to Respondent, Respondent did not appear and was not represented at the hearing. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 5, 2014. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, and with the following modifications to Finding of Fact No. 7 and Conclusion of Law No. 5, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

The modifications to Finding of Fact No. 7 and Conclusion of Law No. 5 provide clarity but do not change the substance of the Proposal for Decision.

Finding of Fact No. 7 is modified to read:

No. 7. On or about January 9, 2014, Respondent or Respondent's agent, servant or employee possessed or permitted others to possess a narcotic on the licensed premises. On or about January 16, 2014, Respondent or Respondent's agent, servant or employee sold, offered for sale, distributed or delivered an alcoholic beverage while Respondent's permit was under suspension.

Conclusion of Law No. 5 is modified to read:

No. 5. Based on Finding of Fact No. 7, Respondent violated Alcoholic Beverage Code §§11.61(b)(2), 11.68 and 104.01(9), and 16 Texas Administrative Code §35.41(b).

All motions, requests for entry of Proposed Findings of Fact 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 Respondent's Wine and Beer Retailer's Off Premises Permit BQ646415, is hereby **CANCELLED**.

This Order will become final and enforceable on the 13th day of January, 2015, unless a Motion for Rehearing is filed by the 12th day of January, 2015.

SIGNED this the 19th day of December, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 19th day of December, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

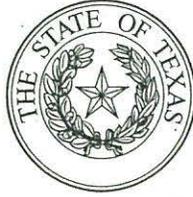
Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Jamal Bataineh
d/b/a M S Express #704
RESPONDENT
25705 FM 2100
Huffman, TX 77336
VIA FIRST CLASS MAIL, CMRRR # 70120470000133006244

Wisam Ghuneim
ATTORNEY FOR RESPONDENT
3115 Preston, Suite F
Pasadena, TX 77505
VIA FIRST CLASS MAIL, CMRRR#70120470000133006251
AND VIA FACSIMILE: (281) 487-0022

Sandra Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: Sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 5, 2014

RECEIVED
AUG 6 2014
IABC HOUSTON
LEGAL

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-3094; Texas Alcoholic Beverage Commission vs. Jamal Bataineh d/b/a M S Express #704

Dear Ms. Cook:

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,

A handwritten signature in black ink, appearing to read "Timothy Horan", with a long horizontal flourish extending to the right.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc Sandra Patton Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 -
VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - VIA REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - VIA REGULAR MAIL
Wisam Ghuneim, Attorney at Law, 3115 Preston, Suite F, Pasadena, TX 77505 - VIA REGULAR MAIL
Jamal Bataineh d/b/a M S Express #704, 25705 FM 2100, Huffman, TX 77336 - VIA REGULAR MAIL

4. The hearing was held and the record closed on June 20, 2014.
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 cancelled.

SIGNED August 5, 2014.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS