

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

**RECEIVED**

OCT 02 2015

TABC HOUSTON  
LEGAL DEPT.

September 30, 2015

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

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-15-0932; *Texas Alcoholic Beverage Commission vs. Bishop 500 LLC d/b/a Whitehall 500***

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Van Hamme", written over a circular stamp or mark.

Jerry Van Hamme  
Administrative Law Judge

JV/me  
Enclosure

Xc: Sheila Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, Texas 78731-VIA REGULAR MAIL  
Earl W. Cross, Attorney at Law, 647 Monssen, Dallas, Texas 75224-VIA REGULAR MAIL  
Earl W. Cross, Attorney at Law, 218 S. Madison Street, Dallas Texas 75208-VIA REGULAR MAIL

SOAH DOCKET NO. 458-15-0932

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
v.		
BISHOP 500 LLC D/B/A WHITEHALL 500, Respondent		OF
TABC CASE NO. 624270		ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Bishop 500 LLC, d/b/a Whitehall 500, 500 N. Bishop, Dallas, Dallas County, Texas (Respondent) submitted a renewal application to the Texas Alcoholic Beverage Commission (Commission) for its Mixed Beverage Restaurant permit with Food and Beverage certificate and Mixed Beverage Late Hours permit. The Commission Staff (Staff) brought this action against Respondent alleging that Respondent's sales of mixed beverages constituted more than 50 percent of Respondent's gross receipts and arguing that Respondent's Mixed Beverage permit should only be renewed if accompanied with a suspension of 7 to 12 days or, in the alternative, a civil penalty of \$300 dollars per day for 7 to 12 days in lieu of suspension. The Administrative Law Judge (ALJ) agrees with Staff's suggestion and recommends that Respondent's permit should be renewed and suspended for 7 days or in the alternative that Respondent's permit should be renewed and Respondent ordered to pay a civil penalty of \$2,100.00.

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

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On June 10, 2015, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Dallas, Texas. Staff was represented by Shelia Lindsey, attorney. Respondent was represented by Earl Cross, attorney. The record was left open for receipt of additional evidence. The record was closed on August 3, 2015.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The holder of a mixed beverage permit may be issued a food and beverage certificate by the Commission if the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts of the premises.<sup>1</sup> Upon receipt of an application for the renewal of a mixed beverage permit by a holder who also holds a food and beverage certificate, the Commission shall request certification by the Texas Comptroller of Public Accounts (Comptroller) to determine whether the permit holder is in compliance with the requirement that the gross receipts of mixed beverages be 50 percent or less of the total gross receipts of the premises. If the Comptroller does not certify that the holder is in compliance, the Commission may not renew the certificate.<sup>2</sup>

## III. EVIDENCE

### A. Petitioner's Evidence

#### 1. Documents

On January 4, 2012, the Commission issued a Mixed Beverage Restaurant permit with Food and Beverage certificate and a Mixed Beverage Late Hours permit to Respondent.<sup>3</sup> On January 3,

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<sup>1</sup> Texas Alcoholic Beverage Code (Code) § 28.18(a).

<sup>2</sup> Code § 28.18(d).

<sup>3</sup> Pet. Ex 1 at 2; Pet. Ex 2.

2014, Respondent filed an application for a 2-year-renewal of the permits.<sup>4</sup> By letter dated February 24, 2014, Staff informed Respondent that sales information provided to Staff by the Comptroller for Respondent's previous year of operation showed that Respondent had \$227,347.00 in mixed beverage sales and \$198,639.00 in other sales.<sup>5</sup> The Comptroller determined that mixed beverage sales were 53.5395 percent of Respondent's total gross sales.<sup>6</sup> The Comptroller further determined that from February 2012 through September 2014 mixed beverage sales at Respondent's premises averaged 71.7106 percent of total gross sales.<sup>7</sup>

Staff informed Respondent that Respondent did not qualify for a Food and Beverage certificate because the mixed beverage sales for Respondent's premises were in excess of 50 percent of total gross sales.<sup>8</sup> Accordingly, on April 1, 2014, Staff issued an order denying the renewal of Respondent's Mixed Beverage Restaurant permit with Food and Beverage certificate and Mixed Beverage Late Hours permit.<sup>9</sup>

## 2. Patrick Ramirez

Patrick Ramirez, a senior tax auditor for the Comptroller, testified that he personally examined sales data submitted by Respondent to the Comptroller for January 2012 through September 2014. He determined that the average mixed beverage sales at Respondent's premises during this time were 71.7106 percent of total gross sales.<sup>10</sup> He also examined sales data submitted by Respondent to the Comptroller for October 2014 through April 2015 and determined that the

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<sup>4</sup> Pet. Ex. 1 at 13-14.

<sup>5</sup> Pet. Ex. 1 at 11-12. Staff's letter to Respondent originally showed that Respondent's alcoholic beverage sales for its last year of operation were \$198,639.00 and other sales were \$227,347.00. Staff subsequently determined that the figures in the letter were transposed and that alcoholic beverage sales for Respondent's last year of operation were \$227,347.00 and other sales were \$198,639.00.

<sup>6</sup> Pet. Ex. 1 at 11.

<sup>7</sup> Pet. Ex. 4.

<sup>8</sup> Pet. Ex. 1 at 12.

<sup>9</sup> Pet. Ex. 1 at 9-10.

<sup>10</sup> Pet. Ex. 4.

average mixed beverage sales at Respondent's premises during this time constituted 68.9916 percent of total gross sales.

### **3. Staff's Post-Hearing Request to Comptroller**

After the hearing held on June 10, 2015, Staff requested that the Comptroller review Respondent's compliance record for June 10-July 16, 2015. Pursuant to that request, the Comptroller determined that Respondent's Food and Beverage certificate was in compliance with the requirement that gross receipts of mixed beverages be 50 percent or less of the total gross receipts.<sup>11</sup>

### **B. Respondent's Evidence**

Respondent presented no evidence.

## **IV. ANALYSIS**

The Comptroller determined that Respondent's mixed beverage sales averaged 71.7106 percent of total gross sales from February 2012 through September 2014 and 68.9916 percent from October 2014 through April 2015. Accordingly, the evidence supports Staff's contention that Respondent violated Code § 28.18(a). However, Staff determined subsequent to the hearing of June 10, 2015, that Respondent was in compliance and suggested that Respondent's permit be renewed but suspended for 7 to 12 days; or, in the alternative, that Respondent be ordered to pay a civil penalty of \$300 per day for each day that the permit would have been suspended. The ALJ adopts Staff's suggestion and recommends that Respondent's permit be renewed and suspended for 7 days or, in the alternative, that Respondent's permit be renewed but that Respondent be ordered to pay a civil penalty of \$2,100.00.

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<sup>11</sup> Pet. Ex. 5.

## V. FINDINGS OF FACT

1. On January 4, 2012, the Texas Alcoholic Beverage Commission (Commission) issued a Mixed Beverage Restaurant Permit with Food and Beverage Certificate and a Mixed Beverage Late Hours Permit to Bishop 500 LLC, d/b/a Whitehall 500, 500 N. Bishop, Dallas, Dallas County, Texas (Respondent).
2. On January 3, 2014, Respondent filed an application for a 2-year-renewal of its Mixed Beverage Restaurant permit with Food and Beverage certificate and Mixed Beverage Late Hours permit.
3. Respondent's mixed beverage sales for the previous year of its operation prior to submitting its application for renewal in January 3, 2014, were 53.5395 percent of Respondent's total gross sales.
4. Respondent's mixed beverage sales from February 2012 through September 2014 averaged 71.7106 percent of Respondent's total gross sales.
5. Respondent's mixed beverage sales from October 2014 through April 2015 averaged 68.9916 percent of total gross sales.
6. By letter dated February 24, 2014, Staff informed Respondent that Respondent did not qualify for a Food and Beverage certificate because the mixed beverage sales for Respondent's premises were in excess of 50 percent of total gross sales.
7. On April 1, 2014, Staff issued an order denying the renewal of Respondent's Mixed Beverage Restaurant permit with Food and Beverage certificate and Mixed Beverage Late Hours permit.
8. By letter dated April 18, 2014, Respondent requested that the matter be reconsidered.
9. On May 14, 2014, the Commission issued an order granting Respondent's motion for reconsideration. On July 7, 2014, the Commission issued a second order granting Respondent's motion for reconsideration and ordering that the matter be submitted to the Legal Division for a hearing.
10. Staff sent a Notice of Hearing dated October 31, 2014, via regular mail and certified mail return receipt requested, to Respondent's last known address setting forth the time, place and nature of the hearing, including a statement of the legal authority and jurisdiction under which the hearing was to be held, a reference to the particular sections of the statutes and

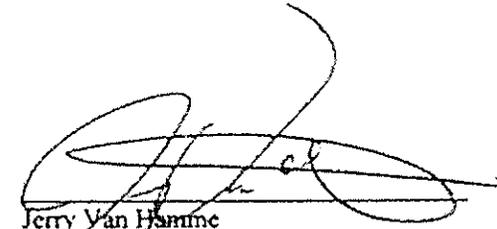
rules involved, and a short, plain statement of the matters asserted.

11. On June 10, 2015, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Dallas, Texas. Staff was represented by Shelia Lindsey, attorney. Respondent was represented by Earl Cross, attorney. The record was left open for receipt of additional evidence. The record was closed on August 3, 2015.
12. Subsequent to the hearing and while the record was open, the Comptroller reviewed Respondent's sales information for June 10, 2015, through July 16, 2015, and determined that Respondent was in compliance, with mixed beverage sales averaging 50 percent or less of total gross sales.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Subchapter B of Chapter 5 and § 6.01.
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 all parties pursuant to the Administrative Procedure Act, Tex. Gov't Code ch. 2001, and 1 Tex. Admin. Code § 155.401.
4. From February 2012 through April 2015 Respondent failed to qualify to hold a mixed beverage permit. Tex. Alco. Bev. Code § 28.18(a).
5. Subsequent to June 10, 2015, Respondent has qualified to hold a mixed beverage permit. Tex. Alco. Bev. Code § 28.18(a).
6. Respondent's permit should be renewed subject to the permit being suspended for 7 days or, in the alternative, Respondent should be ordered to pay a civil penalty of \$2,100.00.

SIGNED September 30, 2015.



Jerry Van Hamme  
Administrative Law Judge  
State Office of Administrative Hearings



Mixed Beverage Late Hours Permit and Food and Beverage Certificate be **GRANTED, AND IT IS ALSO ORDERED** that the privileges granted by the Commission and the activities authorized under the above permits and certificate by the Code will be **SUSPENDED beginning at 12:01 a.m. on February 17th, 2016** and shall remain suspended for **SEVEN (7) CONSECUTIVE DAYS, , UNLESS** a civil penalty in the amount of **\$2100.00 is paid ON OR BEFORE February 9th, 2016.**

**This Order will become final and enforceable on the 2nd day of February, 2016, unless a Motion for Rehearing is filed by the 1st day of February, 2016.**

**SIGNED** this the 7th day of January, 2016, at Austin, Texas.



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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 7th day of January, 2016.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Jerry Van Hamme  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150A  
Dallas, TX 75235  
**VIA FACSIMILE: (512) 322-2061**

Bishop 500 LLC  
d/b/a Whitehall 500

**RESPONDENT**

500 N. Bishop  
Dallas, TX 75208

***VIA FIRST CLASS MAIL, CMRRR # 70150640000460343689***

Earl W. Cross

**ATTORNEY FOR RESPONDENT**

647 Monssen  
Dallas, TX 75224

***VIA FIRST CLASS MAIL, CMRRR#70150640000460343672***

**&**

218 S. Madison Street  
Dallas, TX 75208

***VIA FIRST CLASS MAIL, CMRRR#70150640000460343665***

Shelia Lindsey

**ATTORNEY FOR PETITIONER**

TABC Legal Division

***VIA E-MAIL: [Shelia.lindsey@tabc.texas.gov](mailto:Shelia.lindsey@tabc.texas.gov)***

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 624270**

**REGISTER NUMBER:**

**NAME: Bishop 500 LLC**

**TRADENAME: Whitehall 500**

**ADDRESS: 500 N. Bishop, Dallas, Texas**

**DUE DATE: February 9, 2016**

**PERMITS OR LICENSES: RM794034, FB, LB**

**AMOUNT OF PENALTY: \$2,100.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**P.O. Box 13127**

**Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City              State              Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

