

DOCKET NO. 458-02-2908
(TABC CASE NO. 596506)

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
V.	§	OF
	§	
WARREN D. SHEIBLE	§	
SELLER/SERVER CERTIFIED	§	
HARRIS COUNTY, TEXAS	§	
	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission ("TABC"), brought this enforcement action against Warren D. Sheible, ("Respondent"). The TABC alleged that on September 16, 2001, Respondent sold, served, dispensed or delivered an alcoholic beverage to a minor, in violation of TEX. ALCO. BEV. CODE §106.03(a) and 106.13(a), and 16 TEX. ADMIN. CODE ("TAC") § 50.9(b). A hearing was set for April 11, 2003, before the State Office of Administrative Hearings. Neither the Respondent nor his attorney attended the April 11, 2003, hearing. The Administrative Law Judge ("ALJ") finds the allegation proven and agrees with the TABC's recommendation that the Respondent's seller/server trainee certificate be revoked.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on April 11, 2003, after an initial agreed upon continuance from January 17, 2003, before Stephen J. Burger, ALJ, at the offices of the State Office of Administrative Hearings ("SOAH") in Houston, Texas. The TABC was represented by Lindy To, attorney. The Respondent did not appear nor did his attorney of record appear at the hearing; therefore, the hearing proceeded on a default basis as requested by the TABC, pursuant to 1 TAC § 155.55. Because the hearing proceeded on a default basis, the TABC's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the Findings of Fact below, without further discussion here.

There were no contested issues of notice or jurisdiction in this proceeding. The TABC and SOAH have jurisdiction over this matter as reflected in the Conclusions of Law.

II. FINDINGS OF FACT

1. Respondent, Warren D. Sheible, holds a seller/server trainee certificate, No. A131120, issued by the TABC.
2. On December 12, 2002, the TABC sent notice to Respondent by certified mail, return receipt requested, and to his attorney, Christopher J. Downey, by fax, of the hearing to be held January 17, 2003, in Houston, TX., at 10:00 a.m.



The notice of hearing included the following language in 12-point or larger boldface type:

If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice may be granted by default.

4. The January 17, 2003, hearing was continued by agreement, and an Order setting a new date for April 11, 2003, at 10:00 a.m., was faxed to Respondent's attorney on January 16, 2003.
5. The hearing on the merits convened April 11, 2003, at 10:00 a.m., at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Lindy To. Neither the Respondent nor his attorney appeared at the hearing. The record closed the same day.
6. On September 16, 2001, Warren D. Sheible, sold, served, dispensed or delivered an alcoholic beverage to a minor.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, and §§6.01 and 11.61, of the TEX. ALCO. BEV. CODE.
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 ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052, and by 1 TEX. ADMIN. CODE § 155.55.
4. Based upon Finding of Fact No. 6., the Respondent violated TEX. ALCO. BEV. CODE § 1106.03(a) and 106.13(a), and 16 TAC § 50.9(b).
5. Based on Findings of Fact Nos. 1-6, and Conclusion of Law Nos. 1-3, the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on Findings of Fact Nos. 1-6, Warren D. Sheible, on September 16, 2001, sold, served, dispensed or delivered an alcoholic beverage to a minor, in violation of TEX. ALCO. BEV. CODE §106.03(a).
7. Based on the foregoing findings and conclusions, Respondent's seller/server trainee certificate A131120 should be revoked.

SIGNED this 9th day of June, 2003.


STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 596506

IN RE WARREN D. SHEIBLE	§	BEFORE THE
SSN:	§	
SELLER/SERVER CERTIFIED	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2908)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 9th day of July 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on April 11, 2003, and adjourned on April 11, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 9, 2003. This Proposal For Decision (attached hereto as Exhibit "A"), 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.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Seller/Server Certificate is hereby **REVOKED**.

This Order will become final and enforceable on July 30, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 9th day of July, 2003.

On Behalf of the Administrator,



Jeannere Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Stephen J. Burger
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

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Lindy To
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