

**DOCKET NO. 458-03-1826**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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**BEFORE THE STATE OFFICE**

**V.**

**OF**

**HOUDA, INC.  
D/B/A CENTRAL PLANO SHELL,  
Respondent  
DALLAS COUNTY, TEXAS  
(TABC No. 602643)**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Houda, Inc. d/b/a Central Plano Shell (Respondent), alleging that Respondent failed to pay ad valorem taxes to the City of Plano and/or the Collin County Tax Assessor. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permit be canceled.

**I. PROCEDURAL HISTORY**

On January 23, 2003, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 5116 Water Haven, Plano, Texas 75093. On January 28, 2003, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to correct information concerning the hearing's location. The First Amended Notice was sent by certified mail (7001 2510 0003 8688 6636), return receipt requested. The First Amended Notice was received at that address as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on January 30, 2003.

A hearing was convened as scheduled before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas, on March 14, 2003. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.



During the hearing, documents were admitted into evidence for TABC Staff which would support a recommendation for default against Respondent; however, Mr. Griffith, represented to the ALJ that he had been verbally informed that Respondent had tendered a check to the above-mentioned taxing authority in payment of its ad valorem taxes. Mr. Griffith requested that the record in this matter be held open in order for any check submitted by Respondent to the taxing authority to be routed via the banking system for payment. Mr. Griffith advised the ALJ that he would file a Motion to Dismiss in this cause if confirmation was obtained that the funds were, in fact, paid to the taxing authority. In the alternative, if the tax payment could not be verified via the taxing authority on or before April 7, 2003, Mr. Griffith, requested that the ALJ recommend entry of a default decision against Respondent. The hearing concluded on March 14, 2003. The record closed on April 7, 2003, without any further pleadings in this matter from either party. Therefore, the ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty.

## II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the First Amended Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

TABC Staff requested that the ALJ recommend cancellation of Respondent's permit. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its penalty request.

## III. PROPOSED FINDINGS OF FACT

1. Houma, Inc., d/b/a Central Plano Shell (Respondent) holds a Wine and Beer Retailer's Off Premises Permit, BQ421451, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 625 Central Expressway, Plano, Collin County, Texas.
2. On January 28, 2003, the TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 5116 Water Haven, Plano, Texas 75093. This Notice was sent by certified mail (7001 2510 0003 8688 6636), return receipt requested, and was received at that address as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on January 30, 2003.

3. The First Amended Notice of Hearing contained a statement of the time, place and nature of the hearing; 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 statement of the matters asserted.
4. The First Amended Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On March 14, 2003, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. Respondent failed to pay ad valorem taxes to the City of Plano and/or the Collin County Tax Assessor-Collector.
7. Respondent's licensing history maintained by TABC Staff reflects several previous violations of the Texas Alcoholic Beverage Code and TABC rules.

#### **IV. PROPOSED CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§11.38(e) and 26.03.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.38(e).

6. Based upon Proposed Conclusion of Law No. 5, Respondent's permit should be canceled.

SIGNED on this the 25<sup>th</sup> day of April 2003.



Tanya Cooper, ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 602643**

IN RE HOUDA INC.	§	BEFORE THE
D/B/A CENTRAL PLANO SHELL	§	
LICENSE NO. BQ421451	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1826)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 28th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on March 14, 2003, and adjourned on March 14, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 25, 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.

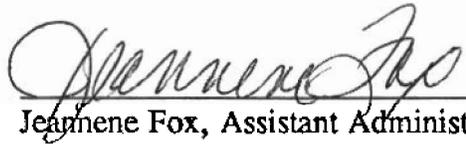
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that License No. BQ421451 is hereby **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on June 18, 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 28th day of May, 2003.

On Behalf of the Administrator,

A handwritten signature in cursive script, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

HOUDA INC.  
D/B/A CENTRAL PLANO SHELL  
**RESPONDENT**  
5116 Water Haven  
Plano, TX 75093  
**CERTIFIED MAIL NO. 7001 2510 0003 8687 0390**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division

Dallas District Office