

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

ASTER OGBAMICHAEL BERHE et al.
D/B/A FASIKA RESTAURANT & BAR
DALLAS COUNTY, TEXAS
(TABC CASE NO. 597395)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this enforcement action against Aster Ogbamicael Berhre et al. d/b/a Fasika Restaurant & Bar (Respondent). Staff alleges the Respondent committed five violations of the Texas Alcoholic Beverage Code (the Code) or Commission's rules on October 21, 2001 and July 6, 2002. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. Staff requested that Respondent's permits be canceled for cause. The Administrative Law Judge (ALJ) finds that Staff's allegations are true and recommends that Respondent's permits be canceled for cause.

I. NOTICE, JURISDICTION AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or venue in this proceeding. Those matters are set out in the proposed findings of fact and conclusions of law without further discussion here

On March 5, 2003, Staff issued its notice of hearing, directed to Respondent at it's mailing address of record reflected on Respondent's permits: 6750 Shadybrook Lane, No. 107, Dallas, Texas, 75231-6530, via certified mail, return receipt requested. The notice was received at that address on March 7, 2003, as evidenced by the "green card" returned to Staff by the U.S. Postal Service.

The notice 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 short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also included a disclosure, in at least 12-point, bold-face type, that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

On April 4, 2003, a hearing convened before ALJ Brenda Coleman. Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on that 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 § 155.55 be invoked. The ALJ finds that Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. The facts deemed admitted establish all requirements for cancellation of Respondent's permits.

III. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Staff or Commission) issued Mixed Beverage Permit, MB 482114, Mixed Beverage Late Hours Permit, LB 482113, and Beverage Cartage Permit, PE 482114, to Aster Ogbarnicael Berhre et al. d/b/a Fasika Restaurant & Bar (Respondent) on October 20, 2000.
2. Respondent's licensed premise is located at 6750 Shadybrook Lane, No. 107, Dallas, Dallas County, Texas.
3. On October 21, 2001, Respondent's agent, servant or employee, Mekonnen Dessie, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice; Respondent consumed or permitted others to consume an alcoholic beverage on the licensed premises, a public place, during prohibited hours; and Respondent failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits.
4. On July 6, 2002, Respondent's agent, servant or employee, Berhe Temesgen, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice; Berhe Temesgen also possessed or permitted others to possess distilled spirits in a container not bearing serially numbered identification stamps.
5. On March 5, 2003, Staff served its notice of hearing on Respondent by certified mail. It informed Respondent that the hearing would be held on April 4, 2003, at 10:00 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The notice was received on March 7, 2003.
6. The notice alleged Respondent had violated the Texas Alcoholic Beverage Code or Commission's rules. The notice made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
7. The notice of hearing also included a disclosure, in at least 12-point, bold-faced type, that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by

default.

8. On April 4, 2003, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings. Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on that date.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the proceedings was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The factual allegations in the notice are deemed true. 1 TEX. ADMIN. CODE § 155.55.
5. Based on Findings of Fact Nos. 3 and 4, Respondent violated §§ 28.06(c), 105.06, 28.09, and 28.15(c) of the Code. Respondent also violated 16 TEX. ADMIN. CODE § 41.72.
6. Based on Findings of Fact Nos. 3 - 7, Respondent's permits should be canceled for cause. §§ 11.61(b)(2) and 28.06(d) of the Code.

ISSUED this 20th day of May, 2003.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 597395

IN RE ASTER OGBAMICHAEL BERHE, ET AL	§	BEFORE THE
D/B/A FASIKA RESTAURANT & BAR	§	
PERMIT NOS. MB482112, LB482113,	§	
PE482114	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2328)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of June 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on April 4, 2003, and adjourned on April 4, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 20, 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 Permit Nos. MB482112, LB482113 and PE482114 are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on July 7, 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 16th day of June, 2003.

On Behalf of the Administrator,

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

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

ASTER OGBAMICHAEL BERHE, ET AL
D/B/A FASIKA RESTAURANT & BAR
RESPONDENT
6750 Shadybrook Lane #107
Dallas, TX 75231-6530
CERTIFIED MAIL NO. 7001 2510 0003 8687 0130

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Dallas District Office