

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 12, 1999

Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

Certified Mail No. Z133586764

RE: Docket No. 458-99-1504; Texas Alcoholic Beverage Commission vs. Johannes Inc.  
d/b/a North Loop Milk Depot (TABC Case No. 583118)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, Legal Director for Texas Alcoholic Beverage Commission, and to Johannes Inc.

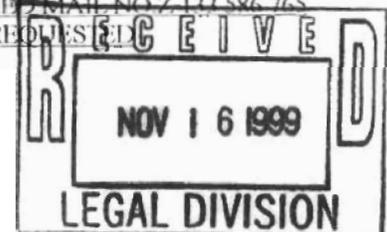
Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Louis R. Lopez  
Administrative Law Judge

LRL:et  
Enclosure

xc: Shance Woodbridge, Docket Clerk, State Office of Administrative Hearing -REGULAR MAIL  
Gayle Gordon, Legal Director, Texas Alcoholic Beverage Commission -CERTIFIED MAIL NO Z 133 586 765  
Johannes Inc. - CERTIFIED MAIL NO Z 133 586 726, RETURN RECEIPT REQUESTED



DOCKET NO. 458-99-1504  
(TABC NO. 583118)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
	§	OF
	§	
JOHANNES, INC. dba NORTH LOOP MILK DEPOT PERMIT NO. BQ-081089 EL PASO COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Petitioner, TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), brought this action against JOHANNES, INC. dba NORTH LOOP MILK DEPOT, Respondent, alleging Respondent was subject to final determination for taxes due, a violation of the Texas Alcoholic Beverage Code [Code]. A hearing was scheduled and convened. Respondent failed to appear and defaulted.

**FINDINGS OF FACT**

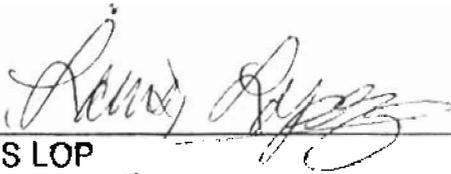
1. On August 10, 1999 Petitioner TABC sent a Notice of Hearing to Respondent at 327 Buena Vista, El Paso, Texas 79950 by certified mail, return receipt requested, Article Number Z 473 038 412, informing that a hearing in this case was to be held at the SOAH office at 9434 Viscount, Suite 102, El Paso, Texas 79925 on Wednesday, September 8, 1999, at 10:00 a.m. No green receipt was included with Petitioner's exhibits, but the envelope apparently was never returned.
2. Before that on August 2, 1999, SOAH had sent an Order Setting Prehearing Conference to Respondent at the same address which included the same information on the place and date of the hearing. To this date, the envelope has not come back to the SOAH office.
3. Both Petitioner's Notice of Hearing and the SOAH Order contained the statement in 10-point, bold-face type required by 1 Texas Administrative Code 155.55(c) regarding the consequences of failure of a party to appear at the hearing.
4. The hearing was convened on Wednesday, September 8, 1999, at 10:00 a.m., as scheduled. Johannes Vanderaa personally appeared for Respondent. He stated he was the owner of the business. He discussed the indebtedness with representatives of the State Comptroller's Office and at no time denied the indebtedness. He said he could catch up with the taxes he owed within two weeks. In order to give him time to pay the arrears, there was an agreement by the parties to continue the case until Friday, October 15, 1999, at 10:00 a.m. The agreement was put on the record.

5. The hearing was once again convened on Friday, October 15, 1999, at 10:00 a.m., as scheduled at the same SOAH office at 9434 Viscount as before. At 10:35, Mr. Vanderaa had not appeared. The telephone number available for him was called. A man named Martin Juarez answered and said Mr. Vanderaa had left, that he didn't know where he had gone, and that he didn't know how to get ahold of him. To this date Mr. Vanderaa has not appeared or contacted the SOAH office.
6. Neither TABC nor SOAH was contacted by Respondent regarding any desire for a continuance or any reason for not being able to attend the hearing.
7. Gayle Gordon, attorney for TABC, appeared along with witness Addie Bryant from the State Comptroller's Office, but Respondent failed to appear and defaulted.
8. Since Respondent did not appear, the factual allegations in the notice of hearing are deemed admitted and found to be true.
9. Based on the foregoing, Respondent is subject to final determination for taxes due and payable.

#### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to any or all of the following: Code Sections 5.31--5.44, 6.01, 11.61, and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and the Administrative Procedure Act, Texas Government Code Chapter 2003.
3. Service of the Notice of Hearing was made pursuant to Code Section 11.63 and Texas Government Code Sections 2001.051 and 2001.052.
4. Under 1 Texas Administrative Code 155.55(b), when a respondent defaults, the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.
5. Respondent is subject to final determination of taxes due and payable under Texas Tax Code Chapters 151 and 321.
6. Based on Conclusion of Law No. 5, Respondent is subject to cancellation or suspension of his permit under Code Sections 11.61(b)(5), 11.61(c), and 61.712(2).
7. It is recommended that Respondent's permits be suspended for 14 days and, in lieu of suspension, that there be a civil penalty of \$100 per day for a total of \$1,400.

SIGNED this 10th day of November, 1999.

A handwritten signature in cursive script, appearing to read "Louis Lop", written over a horizontal line.

**LOUIS LOP**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS