

**DOCKET NO. 493662**

IN RE ANDRE BOOKER	§	BEFORE THE TEXAS
D/B/A CROSS TRACK RANCH	§	
PERMIT NOS. BG321068	§	
BL321069	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1137)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 22<sup>nd</sup> day of May 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on February 24, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 3, 2006. This Proposal For Decision 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.

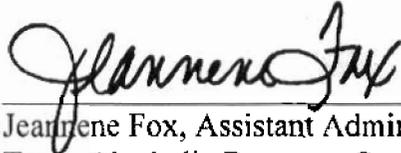
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the above permit(s) and/or license(s) are hereby **SUSPENDED for a period of ninety (90) days, beginning at 12:01 A.M on the June 13, 2006.**

**This Order will become final and enforceable on June 12, 2006 unless a Motion for Rehearing is filed before that date.**

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** on this the 22nd day of May 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

The Honorable Roshunda Pringle  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FACSIMILE (713) 812-1001**

Andre Booker  
d/b/a Cross Track Ranch  
**RESPONDENT**  
10715 Southview St.  
Houston, Texas 77047  
**CERTIFIED MAIL NO. 7005 3110 0000 6409 2387**

Andre Booker  
d/b/a Cross Track Ranch  
200 Magnolia  
Spring, Texas 77373  
**CERTIFIED MAIL NO. 7005 3110 0000 6409 2394**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Houston District Office

# State Office of Administrative Hearings

SP +  
D



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 3, 2006

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-06-1137; Texas Alcoholic Beverage Commission v. Andre Booker d/b/a Cross Track Ranch**

Dear Mr. Steen:

Please find enclosed a Recommendation and underlying rationale

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in this case. It contains my

recommendation and underlying rationale. Exceptions and replies may be filed in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule with

accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule with [www.soa.state.tx.us](http://www.soa.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

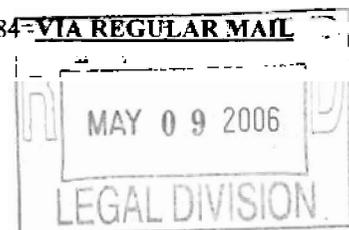
Roshunda Pringle  
Administrative Law Judge

RP/mc  
Enclosure

cc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL

Andre Booker d/b/a Cross Track Ranch, 11408 Starlight Bay, Pearland, Texas 77584 - VIA REGULAR MAIL

5-11-06  
Love has reviewed



SOAH DOCKET NO. 458-06-1137

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION  
Petitioner

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§

BEFORE THE STATE OFFICE

V.

OF

ANDRE BOOKER D/B/A  
CROSS TRACK RANCH,  
Respondent

ADMINISTRATIVE HEARINGS

**REVISED PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Andre Booker d/b/a Cross Track Ranch (Respondent), alleging that Respondent, his agent, servant or employee, with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be suspended for a 90 day period. The Administrative Law Judge (ALJ) agrees and recommends a 90 day suspension of Respondent's permits. The ALJ further recommends no fine in lieu of the 90 day suspension.

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

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 44.03. The State Office of Administrative Hearings (SOAH) 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.

On January 7, 2006, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address: 10715 Southview Street, Houston, Texas



77047, via certified mail, return receipt requested.<sup>1</sup> The 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 short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also contained 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 of hearing may be granted by default."

On February 24, 2006, a hearing convened before SOAH ALJ Roshunda Pringle at 2020 North Loop West, Ste. 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on February 24, 2006.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. Based on the deemed factual findings in this case, the ALJ recommends no fine in lieu of a 90 day suspension of Respondent's permits.

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<sup>1</sup> Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be *prima facie* evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

### III. FINDINGS OF FACT

1. Andre Booker d/b/a Cross Track Ranch (Respondent) holds a Wine and Beer Retailer's Permit which includes Retail Dealer's On Premise Late Hours License, BG-321068, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 200 Magnolia Street, Spring, Harris County, Texas 77373.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 10715 Southview Street, Houston, Texas 77047.
3. On January 27, 2006, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for February 24, 2006.
4. The 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 short, plain statement of the matters asserted.
5. The notice of hearing also contained 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 of hearing may be granted by default."
6. A hearing convened before Roshunda Pringle, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on February 24, 2006. Petitioner appeared through its Staff Attorney, Ramona Perry. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about April 23, 2005, Respondent sold, served, dispensed, or delivered with criminal negligence an alcoholic beverage to a minor.

### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 44.03.
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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, ITAC § 155.55 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 1.01 *et seq.* or the Texas Alcoholic Beverage Commission Rules, 16 TAC § 31.1 *et seq.* or both.
6. Respondent's permits should be suspended for 90 days. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

**SIGNED May 3, 2006.**



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**ROSHUNDA PRINGLE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**