

DOCKET NO. 510084

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

RUSS EVAN KOCH
D/B/A DOCK ON THE RIVER
PERMIT/LICENSE NO. BG562139
BANDERA COUNTY, TEXAS
(SOAH DOCKET NO. 458-06-1205)

§ BEFORE THE STATE OFFICE
§
§
§
§
§ OF
§
§
§
§
§ ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 8th day of May, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert M. Brown, II. The hearing convened on April 5, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 18, 2006. The Proposal For Decision, attached 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 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 permit(s) and/or license(s) will be suspended for thirty (30) days, beginning on July 26, 2006, unless a \$6,000.00 civil penalty is paid on or before July 19, 2006.

This Order will become final and enforceable on **May 29, 2006**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this 8th day of May, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

WMC\bc

The Honorable Robert M. Brown II
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (210) 308-6854

RUSS EVAN KOCH
RESPONDENT
d/b/a DOCK ON THE RIVER
PO BOX 16
BANDERA, TX 78003-0016
CERTIFIED MAIL NO. 7001 2510 0000 7274 1621

Michael Cady
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 510084

REGISTER NUMBER:

NAME: RUSS EVAN KOCH

TRADENAME: DOCK ON THE RIVER

ADDRESS: 105 S. Lakeshore Drive, Bandera, Texas 78003

DATE DUE: July 19, 2006

PERMITS OR LICENSES: BG562139

AMOUNT OF PENALTY: \$6,000.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 19TH DAY OF JULY 2006, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below.
MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

LEGAL

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

April 19, 2006

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

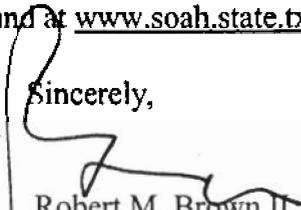
RE: Docket No. 458-06-1205, TABC vs Russ Evan Koch d/b/a Dock On The River

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

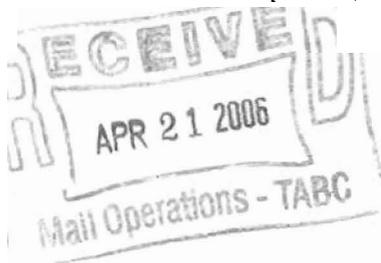
Sincerely,


Robert M. Brown II
Administrative Law Judge

RMB/ilap

Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
~~Michael Cady, Attorney for TABC, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL~~
Low Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Russ Evan Koch, Respondent, d/b/a Dock on The River, P O Box 16, Bandera, Tx 78003-0016 -VIA REGULAR MAIL



MC +

SOAH DOCKET NO. 458-06-1205

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
	§	
RUSS EVAN KOCH	§	
D/B/A DOCK ON THE RIVER	§	
PERMIT/LICENSE NO. BG562139	§	
BANDERA COUNTY, TEXAS	§	
(TABC CASE NO. 510084)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC or Petitioner) staff (Staff) brought this action against Russ Evan Koch d/b/a Dock on the River (Respondent), alleging that Respondent failed to provide records data, reports, documents, or other information to Petitioner, 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 permit be suspended for thirty days with the option of paying a civil penalty of \$200.00 per day in lieu of the 30-day suspension. The Administrative Law Judge (ALJ) recommends Petitioner's requested period of suspension and option of a civil penalty in lieu of the 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, 44.03, and 31.03. 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 February 14, 2006, Petitioner issued its notice of hearing, amended its notice of hearing on March 14, 2006, and sent both notices to Respondent at Respondent's last known designated mailing address: Post Office Box 16, Bandera, Texas 78003-0016, via certified mail, return receipt

requested.¹ The notices 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 notices 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 April 5, 2006, the undersigned ALJ convened a hearing at 10300 Heritage Boulevard, Suite 250, San Antonio, Texas. Petitioner was represented at the hearing by W. Michael Cady, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice, jurisdiction and Respondent's prior administrative record. The record closed on April 5, 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 and Respondent's administrative record that records two prior violation, the ALJ recommends that Respondent's permit be suspended for a period of thirty days. However, as Respondent failed to appear, has had two prior violations and this one in less than a year, the undersigned ALJ recommends a 30-day suspension be imposed with an option of a civil penalty in the amount of \$6,000.00.

¹ 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

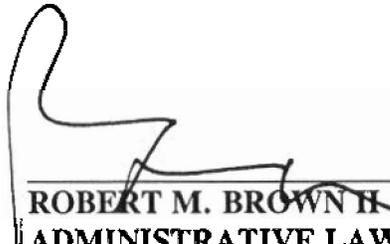
1. Russ Evan Koch d/b/a Dock on the River (Respondent) holds a Wine & Beer Retailer's On Premise Permit, BG562139, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 105 S. Lakeshore Drive, Bandera, Bandera County, Texas
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is Post Office Box 16, Bandera, Texas 78003-0016.
3. Petitioner issued its notice of hearing and amended notice of hearing by certified mail, return receipt requested, on February 14, 2006, and March 14, 2006, respectively, to Respondent at Respondent's last known address, setting the hearing on the merits for April 5, 2006.
4. The notices 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 notices 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. On April 5, 2006, the undersigned Administrative Law Judge (ALJ) convened a hearing in which Petitioner appeared through its Staff Attorney, W. Michael Cady. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about September 17, 2005, Respondent, or his agent, servant, or employee, allowed Kenneth Simmons, an intoxicated person to remain on its premises, and sold, served, or delivered an alcoholic beverage to the aforementioned person on its premises.
8. Respondent's administrative record contains two earlier violations in December, 2004, and June, 2005 for which Respondent paid civil penalties in lieu of suspensions.

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, 44.03, and 31.03.

2. State Office of Administrative Hearings (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, 1 TEX. ADMIN. CODE (TAC) § 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. §§ 104.01(5), 11.61(b)(2) and (14), and/or 61.71(a)(10 and (b)(6).
6. Respondent's permit should be suspended for a 30-day period. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).
7. The suspension should be imposed with alternative civil penalty in the amount of \$200.00 per day in lieu of the 30-day suspension. TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED April 18, 2006.



ROBERT M. BROWN II
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS