

DOCKET NO. 582610

IN RE GUY THOMAS DEES	§	BEFORE THE
D/B/A GUYZERS	§	
PERMIT NO. BG-423541	§	
LICENSE NO. BL-423542	§	TEXAS ALCOHOLIC
	§	
CULBERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1508)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 17th day of November, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis R. Lopez. The hearing convened on September 8, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 22, 1999. 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. Petitioner filed exceptions on October 4, 1999 and Administrative Law Judge Lopez responded on November 8, 1999 with an Amendment to his Proposal for Decision.

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 No. BG-423541 and License No. BL-423542 are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on December 8, 1999, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 17th day of November, 1999.



On Behalf of the Administrator,

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

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

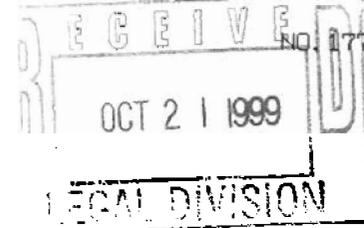
The Honorable Louis R. Lopez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (915) 595-0362

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Guy Thomas Dees
RESPONDENT
P.O. Box 985
Van Horn, Texas 79855-0985
**CERTIFIED MAIL/RRR NO. Z 473 039 101 and
Regular Mail**

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office



DOCKET NO. 458-99-01508
(TABC NO. 582610)

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
VS.	§	
	§	OF
GUY THOMAS DEES dba GUYZER'S	§	
PERMIT NO. BG-423541	§	
LICENSE NO. BL-423542	§	
CULBERSON COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
Respondent	§	

PROPOSAL FOR DECISION

Petitioner, TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), brought this action against GUY THOMAS DEES dba GUYZER'S, Respondent, alleging Respondent no longer held a sales tax permit, a violation of the Texas Alcoholic Beverage Code [Code]. A hearing was scheduled and convened, but Respondent failed to appear and defaulted.

FINDINGS OF FACT

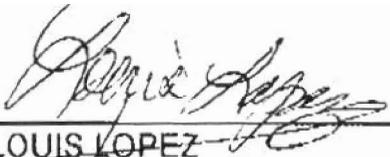
1. On August 10, 1999 Petitioner TABC sent a Notice of Hearing to Respondent at P.O. Box 985, Van Horn, Texas 79855-0685 by certified mail, return receipt requested, Article Number Z 473 038 411, informing him that a hearing in his case was to be held at the SOAH office at 9434 Viscount, Suite 102, El 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. On February 25, 1999, and on March 1, 1999, TABC had sent letters to Respondent's address above by certified mail, return receipt requested, notifying Respondent of its intent to cancel Respondent's permits based on violations of the Code. Two green return receipts came back, both with a stamped date of March 11, 1999. Similar illegible signatures were on the two green receipts.

5. The hearing was convened on Wednesday, September 8, 1999, at 10:00 a.m., as scheduled.
6. Neither TABC nor SOAH were 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, was present at the hearing, 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 no longer holds a sales tax permit.

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, 61.71, and 32.01.
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. Based on Respondent's no longer holding a sales tax permit, he is subject to cancellation or suspension of his permits under Code Sections 11.61(c) and 61.712(1).
6. 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 21st day of October, 1999.



LOUIS LOPEZ

ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS