

DOCKET NO. 616200

MISHAEL DWEH BROWNELL JR.	§	BEFORE THE TEXAS
D/B/A KALAHARI CULTURAL CENTER	§	
LICENSE NO. BG-302926	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO.458-06-1377)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on 17th day of March 2006 and adjourned the same. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 9th day of May 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 pays a civil penalty in the amount of **\$1,050.00** on or before the **27th day of June, 2006**, all rights and privileges under the above described license will be **SUSPENDED for a period of seven (7) days, beginning at 12:01 A.M. on the 5th day of July, 2006.**

This Order will become final and enforceable on **26th day of June 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 the 5th day of June 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/dp

Hon. Timothy J. Horan
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
Via Fax 713-812-1001

MISHAEL DWEH BROWNELL JR.
RESPONDENT
d/b/a KALAHARI CULTURAL CENTER
15000 Bellaire, Ste. Y
Houston, TX 77083
CERTIFIED MAIL NO. 7005 3110 0000 6409 0543

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office



State Office of Administrative Hearings

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Shelia Bailey Taylor
Chief Administrative Law Judge

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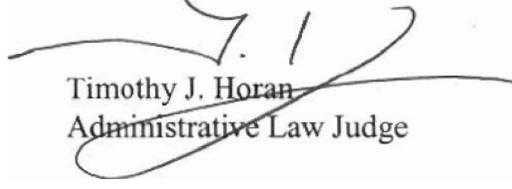
RE: Docket No. 458-06-1377; Texas Alcoholic Beverage Commission v. Michael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center

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,


Timothy J. Horan
Administrative Law Judge

TJH/mc
Enclosure

xc: Sandra Patton, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008
VIA REGULAR MAIL
Michael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, 15000 Bellaire, Suite Y, Houston, Texas 77083 -
VIA REGULAR MAIL

DOCKET NO. 458-06-1377

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**MISHAEL DWEH BROWNELL, JR.
D/B/A KALAHARI CULTURAL CENTER
HARRIS COUNTY, TEXAS**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended for seven days, or in lieu of suspension, that Respondent pay a civil penalty of \$1050. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a)(1). 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 13, 2006, Petitioner issued its notice of hearing, directed to Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, at Respondent's last known address, 15000 Bellaire, Suite Y, Houston, Texas 77083, via certified mail, return receipt requested. The notice was marked "returned to sender" as evidenced by the certified mail receipt. On March 17, 2006, a hearing convened before SOAH ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Sandra Patton, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegation presented in the notice of hearing is deemed admitted as true. Accordingly, the ALJ has incorporated the allegation into the Proposed Findings of Fact below. As admitted, the allegation support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. Respondent, Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center holds a Wine and Beer Retailer's Permit BG-302926 and Retail Dealer's On-Premise Late Hours License BL-302927 issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 15000 Bellaire, Suite Y, Houston, Harris County, Texas.
2. On February 13, 2006, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on March 17, 2006. The notice of hearing was sent via certified mail to Respondent's last known address and was marked "returned to sender" as evidenced by the certified mail receipt.
3. 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.
4. 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.
5. A hearing convened before Timothy J. Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on March 17, 2006. Respondent did not appear and was not represented at the hearing. The record was closed on March 17, 2006.
6. On or about March 11, 2005, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment for beer.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).
2. 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.
3. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of seven days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1050 in lieu of suspension of the permit/license.

SIGNED May 9, 2006.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

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Shelia Bailey Taylor
Chief Administrative Law Judge



May 9, 2006

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

VIA REGULAR MAIL

RE: Docket No. 458-06-1377; Texas Alcoholic Beverage Commission v. Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center

Dear Mr. Steen:

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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,

A handwritten signature in black ink, appearing to read "T. J. Horan", written over a printed name and title.

Timothy J. Horan
Administrative Law Judge

TJH/mc
Enclosure

xc: Sandra Patton, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Mishael Dweh Brownell, Jr. d/b/a Kalahari Cultural Center, 15000 Bellaire, Suite Y, Houston, Texas 77083 -
VIA REGULAR MAIL

DOCKET NO. 458-06-1377

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COMMISSION

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BEFORE THE STATE OFFICE

v.

OF

MISHAEL DWEH BROWNELL, JR.
D/B/A KALAHARI CULTURAL CENTER
HARRIS COUNTY, TEXAS

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PROPOSAL FOR DECISION

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I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of seven days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1050 in lieu of suspension of the permit/license.

SIGNED May 9, 2006.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS