

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE
COMMISSION §
§
V. § OF
§
WINGS ETC. INC. §
D/B/A WINGS N MORE §
HARRIS COUNTY, TEXAS § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Wings Etc. Inc. d/b/a Wings N More (Respondent), alleging that Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 5 days, or in lieu of suspension, that Respondent pay a civil penalty of \$150 per day. The Administrative Law Judge (ALJ) agrees with this recommendation.

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, 61.71(a)(1), and 61.73(b). 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 July 3, 2002, Petitioner issued its notice of hearing, directed to Wings Etc. Inc. d/b/a Wings N More, 6006 Gulf Freeway, Houston, Texas 77023, via certified mail, return receipt requested. The notice of hearing was received by Respondent on or before July 5, 2002, as evidenced by the return receipt. On July 26, 2002, a hearing convened before SOAH ALJ Roshunda Atchison at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on July 26, 2002.

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 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.

PROPOSED FINDINGS OF FACT

1. Respondent, Wings Etc. Inc. d/b/a Wings N More, holds a Wine and Beer Retailer's Off-Premises Permit, BG-485280 and Food and Beverage Certificate, FB-485281, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 5003 Garth Road, Baytown, Harris County, Texas 77521, and whose mailing address is 6006 Gulf Freeway, Houston, Texas 77023.
2. On July 3, 2002, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on July 26, 2002. This notice of hearing was received by Respondent on or before July 5, 2002.
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 Roshunda Atchison, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on July 26, 2002. Respondent did not appear and was not represented at the hearing.
6. On or about December 13, 2001, Respondent issued a check or draft in the amount of \$115.32 for the purchase of beer which was dishonored when presented for payment.
7. On or about January 22, 2002, Respondent issued a check or draft in the amount of \$172.90 for the purchase of beer which was dishonored when presented for payment.
8. On or about January 22, 2002, Respondent issued a check or draft in the amount of \$137.13 for the purchase of beer which was dishonored when presented for payment. On that same day, the Respondent issued a second check or draft in the amount of \$137.13 for the purchase of beer which was dishonored when presented for payment.
9. On or about January 22, 2002, Respondent issued a check or draft in the amount of \$159.00 for the purchase of beer which was dishonored when presented for payment.
10. On or about January 23, 2002, Respondent issued a check or draft in the amount of \$94.00 for the purchase of beer which was dishonored when presented for payment.

11. On or about February 26, 2002, Respondent issued a check or draft in the amount of \$69.31 for the purchase of beer which was dishonored when presented for payment.

12. On or about February 26, 2002, Respondent issued a check or draft in the amount of \$168.00 for the purchase of beer which was dishonored when presented for payment.

13. On or about February 15, 2002, Respondent issued a check or draft in the amount of \$224.00 for the purchase of beer which was dishonored when presented for payment.

PROPOSED 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, 61.71(a)(1), and 61.73(b).

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. Based upon Proposed Findings of Fact Nos. 2-4, 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. Based upon Proposed Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.

5. Based upon Proposed Findings of Fact Nos. 6-13, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31.

6. Based upon Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, 61.71(a)(1), 61.73(b), and 102.31, Respondent's permit and license should be suspended for a period of 5 days.

7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$150 per day in lieu of suspension of the permit and license.

SIGNED this 4th day of September, 2002.



Roshunda Atchison

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599489

IN RE WINGS ETC. INC.	§	BEFORE THE
D/B/A WINGS N MORE	§	
PERMIT NO. BG485280	§	
LICENSE NO. FB485281	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3479)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of September 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Atchison. The hearing convened on July 26, 2002 and adjourned on July 26, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 4, 2002. This Proposal For Decision (attached hereto 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, 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. BG485280 and License No. FB485281 are hereby **SUSPENDED** for five (5) days.

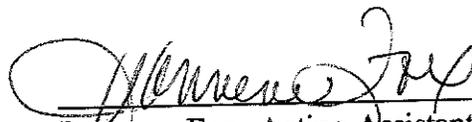
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **20th day of November, 2002**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of five (5) days, beginning at **12:01 A.M. on the 27th day of November, 2002**.

This Order will become final and enforceable on October 21, 2002, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this the 30th day of September, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Roshunda Atchison
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

WINGS ETC. INC.
D/B/A WINGS N MORE
RESPONDENT
6006 Gulf Fwy.
Houston, TX 77023
CERTIFIED MAIL NO. 7001 2510 0003 8686 6256

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 599489

REGISTER NUMBER:

NAME: WINGS ETC. INC.

TRADENAME: WINGS N MORE

ADDRESS: 5003 Garth Road, Baytown, Texas 77521

DATE DUE: November 20, 2002

PERMITS OR LICENSES: BG485280, FB485281

AMOUNT OF PENALTY: \$750.00

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 20TH DAY OF NOVEMBER, 2002, 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**

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.