

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

June 05, 2007



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

**VIA REGULAR MAIL**

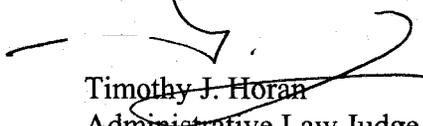
**RE: Docket No. 458-07-1988/Texas Alcoholic Beverage Commission vs. T B H Incorporated d/b/a Tommy's Club**

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](http://www.soah.state.tx.us).

Sincerely,

  
Timothy J. Horan  
Administrative Law Judge

TJH/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008-  
**VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA REGULAR MAIL**  
T B H Incorporated d/b/a Tommy's Club, Respondent, 17567 Imperial Valley Drive, Houston, Texas 77066 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-07-1988

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

V.

T B H INCORPORATED  
D/B/A TOMMY'S CLUB  
HARRIS COUNTY, TEXAS

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against T B H Incorporated d/b/a Tommy's Club (Respondent), alleging the following violations of the Texas Alcoholic Beverage Code (Code) :

- On or about July 27, 2006, Permittee or Permittee's agent, servant or employee, possessed or permitted a person to possess on the permitted premises distilled spirits in a container not bearing a serially numbered identification stamp issued by the Commission or other identification stamp approved by the Commission.
- 2 On or about July 27, 2006, Permittee or Permittee's agent, servant or employee possessed or permitted to be possessed on the permitted premises an alcoholic beverage not covered by an invoice from the supplier from whom the alcoholic beverage was purchased
- 3 On or about July 27, 2006, Permittee or Permittee's agent, servant or employee failed to invalidate the identification stamp on one or more bottles of distilled spirits on which the tax proscribed in Section 201.03 of the Code has been paid after emptying the bottle.
- 4 On or about October 27, 2006, Permittee or Permittee's agent, servant or employee

- possessed or permitted to possess on the permitted premises an alcoholic beverage not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.
5. Permittee is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code),
  6. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this code or rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act).

Staff recommended that Respondent's permits/licenses be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

## I. PROCEDURAL HISTORY

The hearing in this matter convened on April 13, 2007, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy J. Horan presided.

On March 8, 2007, Petitioner issued its Amended Notice of Hearing, directed to T B H Incorporated d/b/a Tommy's Club, 17567 Imperial Valley Drive, Houston, Texas 77060 via certified mail, return receipt requested, to Respondent's last known mailing address and was "unclaimed" as evidenced by the certified mail receipt. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a

default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

## II. FINDINGS OF FACT

T B H Incorporated d/b/a Tommy's Club (Respondent), located at 17567 Imperial Valley Drive, Houston, Harris County, Texas, holds Mixed Beverage Permit MB-580069 and Mixed Beverage Late Hours Permit LB-580070.

2. On March 8, 2007, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 17567 Imperial Valley Drive, Houston, Texas 77060. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was set to be heard on April 13, 2007. Respondent did not appear at the hearing and the record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. On or about July 27, 2006, Permittee or Permittee's agent, servant or employee, possessed or permitted a person to possess on the permitted premises distilled spirits in a container not bearing a serially numbered identification stamp issued by the Commission.

On ibo 106 or tee ren ree po ssed  
be po: ed pe: ed

On ibcu 1006 tee ermittee ge se employee fa: ed  
da: fre bo:  
ibe: lec: he:

On or bou De obe 006 rmittee or ermittee ag servan or ppl  
po: ed pe: ed to on the ed pr: be:  
m th: be: age: un: sed

tee iho: the ord the Co: ptroller Pu: A: bei: ibjec  
ial: pa: th: ed: U:  
A: C: od: th: C:  
bei: lec: to: determ: tax: id pa: unde: he:  
pa: les'an U: T: hapt: Tax: ode: d,

Re fe: pa: pe: posed b: th:  
Code: tu: C: Code: ed Be: irage G:  
lec: 'ax A:

CONCL ON: O W

T: T: A: oho: Be: C: has: sd: matter pursuant  
ibc: 'exas: Be: Cod:  
A:

The re Off: dn: H: has: isdi: nduc: he adnu

hearing in this matter and to issue a proposal for decision containing proposed 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN §§ 11.61(b) (2), 11.61 (b) (5), 11.61 (c) (2), 28.15(a), 28.06 (a), and 28.09 (a) (d).
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to TAC § 155.55
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits/licenses is warranted

**SIGNED** June 05, 2007.

  
\_\_\_\_\_  
**TIMOTHY HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**