

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
RO INVESTMENT, L.L.C.	§	
D/B/A SUPER SMOKES	§	
PERMIT NO. BQ-414774	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 580578)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking cancellation of the permit held by RO Investment, L.L.C., d/b/a Super Smokes (Respondent), because it has not paid a local permit fee levied by the City of Austin. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends the permit be canceled.

**I. Procedural History**

On December 2, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Clyde Burleson, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE §155.55, and the motion was granted.

**II. Reasons for Decision**

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and the recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

**III.**

PROPOSED FINDINGS OF FACT

1. RO Investment, L.L.C., d/b/a Super Smokes (Respondent), is the holder of Wine and Beer Retailer's Off Premise Permit BQ-414774 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises known as Super Smokes located at 1805 Airport Boulevard, Austin, Travis County, Texas 78702.
2. On October 26, 1998, Staff sent, by certified mail, a Notice of Hearing to Respondent, which contained a statement of the time, place and nature of the hearing; a statement

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of the legal authority and jurisdiction under which the hearing was to be held; a reference to the statutes and rules involved; and a statement of the matters asserted.

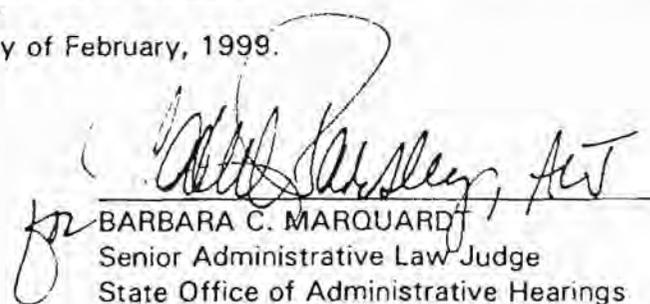
- a. The Notice of Hearing was sent to Respondent at its mailing address of record, 1805 Airport Boulevard, Austin, Texas 78702 by certified mail (No. P 419 580 191), return receipt requested, and it was received at that address on October 28, 1998.
  - b. The notice disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought could be granted.
3. On December 2, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings in the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Clyde Burleson, an attorney with the Commission's Legal Division, but Respondent failed to appear and was not represented by an attorney.
  4. Respondent has not paid a local permit fee levied by the City of Austin.

#### IV.

#### PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§11.38 and 11.61 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. As referenced in Finding 2, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to the Code §11.61, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE §§155.27 and 155.55.
4. Based on the foregoing, Respondent has not paid a local permit fee authorized by § 11.38(a) of the Code, which warrants cancellation of the permit referenced in Finding 1 under §§ 11.38(b) and 61.36(b) of the Code.

SIGNED this 12th day of February, 1999.

  
BARBARA C. MARQUARDT  
Senior Administrative Law Judge  
State Office of Administrative Hearings