

DOCKET NO. 595211

IN RE C.W.'S QUIKSTOP, INC.
D/B/A C.W.'S QUIKSTOP
PERMIT NO. BQ462124

DENTON COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-3862)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of January 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened and adjourned on October 19, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 21, 2001. 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. 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. BQ462124 is hereby **SUSPENDED** for ten days.

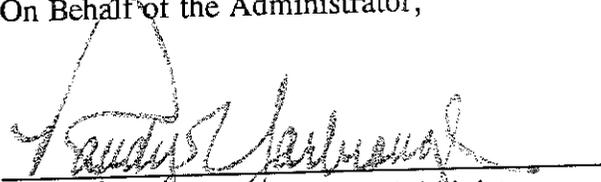
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 18th day of February 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 25th day of February 2002.

This Order will become final and enforceable on February 25, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 18th day of January 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

C.W.'s Quikstop, Inc.
d/b/a C.W.'s Quikstop
RESPONDENT
1098 East NW Highway
Grapevine, Texas 76051-3703
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 1757

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595211

REGISTER NUMBER:

NAME: C.W.'S QUIKSTOP INC.

TRADENAME: C.W.'S QUIKSTOP

ADDRESS: 201 E. Byron Nelson Parkway, Roanoke, Denton County, Texas 76262-8614

DATE DUE: February 18, 2002

PERMITS OR LICENSES: BQ462124

AMOUNT OF PENALTY: \$1,500.00

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 18TH, DAY OF FEBRUARY 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.

DOCKET NO. 458-01-3862

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

V.

**C.W.'s QUIKSTOP, INC.
D/B/A C.W.'s QUIKSTOP**

**PERMIT NO. BQ-462124
DENTON COUNTY, TEXAS
(TABC CASE NO. 595211)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this enforcement action against C.W.'s Quikstop, Inc. d/b/a C.W.'s Quikstop (Respondent) alleging that Respondent, or its agent, servant or employee, with criminal negligence, sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code. Staff requested that Respondent's permit be suspended for a period of ten days, or in lieu of a suspension, Respondent pay an administrative penalty of \$1,500. Respondent did not appear at the hearing in this matter and was not represented by counsel. The Administrative Law Judge (ALJ) recommends that Staff's request be granted and that Respondent's permit be suspended for ten days, or in lieu of suspension, that Respondent pay an administrative penalty of \$1,500.

I. Jurisdiction, Notice, and Procedural History

On October 19, 2001, a public hearing was held before Brenda Coleman, ALJ, at the offices of the State Office of Administrative Hearings (SOAH), Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, attorney for the Texas Alcoholic Beverage Commission. Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. Proposed Findings of Fact

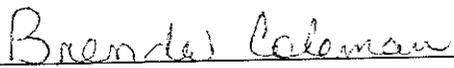
1. C.W.'s Quikstop, Inc. d/b/a C.W.'s Quikstop, 201 East Byron Nelson Parkway, Roanoke, Denton County, Texas, holds a Wine and Beer Retailer's Off Premise Permit, number BQ-462124, issued by the Commission on October 31, 2000.
2. On May 10, 2001, the TABC issued two warnings to Respondent for two violations involving the sale of an alcoholic beverage to a minor.
3. On May 18, 2001, Respondent, or it's agent, servant or employee, with criminal negligence, sold an alcoholic beverage to a minor.
4. Notice of the hearing in this matter, dated August 22, 2001, was properly addressed and sent by certified mail to Respondent at Respondent's mailing address as listed in the Commission's records. The notice of hearing notified Respondent of the statutes and rules involved, the legal authorities under which the hearing was to be held, and the date, time and place of the hearing.
5. The notice also contained language in 10-point type informing Respondent that if Respondent failed to appear at the hearing, the Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. The hearing on the merits convened October 19, 2001, at the offices of the State Office of Administrative Hearings (SOAH), Dallas, Texas, 6333 Forest Park Rd., Suite 150A. Staff was represented by attorney, Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

III. Proposed Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN §§ 6.01 and 61.71(a)(5).
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based on Finding of Fact No. 4, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.

4. Based on Findings of Fact Nos. 5 and 6, the hearing proceeded on a default basis, as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact Nos. 2 and 3, Respondent violated TEX. ALCO. BEV. CODE §§ 1.06(a) and 106.13(a).
6. Based on Findings of Fact Nos. 2 and 3, and Conclusion of Law No. 5, Respondent's Wine and Beer Retailer's Off Premise Permit, number BQ-462124, should be suspended for ten days.
7. Based on Conclusion of Law No. 6. and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be given an opportunity to pay a civil penalty in the amount of \$1,500 in lieu of the suspension.

ISSUED this 21st day of December, 2001.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS