

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

NIFA Enterprise Inc.
D/B/A North Shepherd Shell
HARRIS COUNTY, TEXAS

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against NIFA Enterprise Inc. d/b/a North Shepherd Shell (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 and license be suspended for 5 days, or in lieu of suspension, that Respondent pay a civil penalty of \$750. 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 May 14, 2002, Petitioner issued its notice of hearing, directed to NIFA Enterprise Inc. d/b/a North Shepherd Shell, 2802 N. Shepherd Dr., Houston, Texas, 77008-1934, via certified mail, return receipt requested and was returned to sender on May 24, 2002, as evidenced by the return receipt. On June 28, 2002, 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 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 June 28, 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, NIFA Enterprise Inc. d/b/a North Shepherd Shell, holds a Wine and Beer Retailer's Off-Premises Permit, BQ-312075, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2802 N. Shepherd Drive, Houston, Harris County, Texas.

2. On May 14, 2002, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on June 28, 2002. The notice of hearing was returned to TABC as "returned to sender" on May 24, 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 10-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 June 28, 2002. Respondent did not appear and was not represented at the hearing.

6. On or about November 30, 2001 and on December 7, 2001, Respondent issued a check or draft 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 Finding of Fact No. 6, 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 \$750 in lieu of suspension of the permit and license.

SIGNED this 21st day of August, 2002.



Timothy J. Horan
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 598269

IN RE NIFA ENTERPRISE INC.	§	BEFORE THE
D/B/A NORTH SHEPHERD SHELL	§	
PERMIT NO. BQ312075	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2903)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of September 2002, 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 and adjourned on June 28, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 21, 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. BQ312075 is hereby **SUSPENDED** for five (5) days.

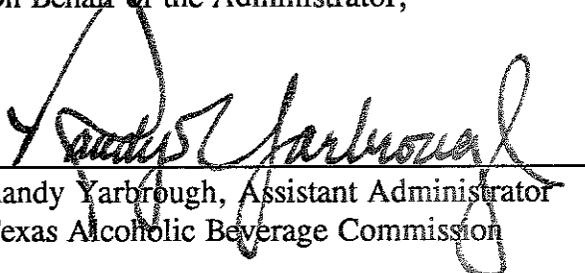
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 30th day of October, 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 6th day of November, 2002.

This Order will become final and enforceable on October 3, 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 12th day of September, 2002.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT\bc

The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

NIFA ENTERPRISE INC.
D/B/A NORTH SHEPHERD SHELL
RESPONDENT
2802 N Shepherd Dr.
Houston, TX 77008-1934
CERTIFIED MAIL NO. 7001 2510 0000 7277 6609

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 598269

REGISTER NUMBER:

NAME: NIFA ENTERPRISE INC. TRADENAME: NORTH SHEPHERD SHELL

ADDRESS: 2802 N Shepherd Dr., Houston, Texas 77009-1934

DATE DUE: October 30, 2002

PERMITS OR LICENSES: BQ312075

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 30TH, DAY OF OCTOBER, 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.