

DOCKET NO. 509285

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
DAVID WILLIAM SOMMER D/B/A GOAT HILL COUNTRY STORE PERMIT/LICENSE NO(s). Q571848	§	ALCOHOLIC
	§	
TRINITY COUNTY, TEXAS (<i>SOAH DOCKET NO. 458-06-2156</i>)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of October 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on July 7, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 18, 2006. The 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 and Exhibits adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 Respondent's permit(s) and/or license(s) are hereby **SUSPENDED for twenty-four (24) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$3,600.00 on or before the **2nd day of January 2007**, all rights and privileges granted by the Commission under the above described permit(s) and/or license(s) will be **SUSPENDED for twenty-four (24) days** starting at 12:01 A.M. on the **10th day of January 2007**.

This Order will become final and enforceable on 27th day of November 2006, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 30th day of October 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

David Williams Sommer
d/b/a Goat Hill Country Store
RESPONDENT
472 Post Oak Rd.
Corrigan, TX 75939-4200
CERTIFIED MAIL NO. 7005 3110 0000 6411 3402

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office
Compliance

TABC Docket # 509285
DOCKET NO. 458-06-2156

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
DAVID W. SOMMER	§	OF
D/B/A GOAT HILL COUNTRY STORE	§	
HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against David W. Sommer d/b/a Goat Hill Country Store (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 24 days, or in lieu of suspension, that Respondent pay a civil penalty of \$3,600.00. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. 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 4, 2006, Petitioner issued its notice of hearing, directed to David W. Sommer d/b/a Goat Hill Country Store at its physical address of 22781 FM 357, Groveton, Trinity County, Texas 75845, via certified mail, return receipt requested. Respondent's mailing address is the same as the physical address. The notice of hearing was received by Respondent on or before May 18, 2006, as evidenced by the return receipt. On July 7, 2006, a hearing convened before SOAH ALJ Roshunda

Pringle at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, 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 that same date.

II. 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.

III. FINDINGS OF FACT

1. Respondent, David W. Sommers d/b/a Goat Hill Country Store, holds a Wine Only Package Store Permit, Q-571848, and a Beer Retailer's Off-Premise License, BF-571849, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 22781 FM 357, Groveton, Trinity County, Texas 75845. Respondent's mailing address is the same as the physical address.
 2. On May 4, 2006, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on July 6, 2006. This notice of hearing was received by Respondent on or before May 18, 2006.
 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.*
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5. A hearing convened before Roshunda Pringle, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on July 6, 2006. Respondent did not appear and was not represented at the hearing.
6. On or about July 8, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
7. On or about July 12, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
8. On or about August 25, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
9. On or about September 1, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
10. On or about September 8, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
11. On or about September 12, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
12. On or about September 15, 2005, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.
13. On or about March 16, 2006, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment violating Texas Alcoholic Beverage Code § § 28.12, 61.73 and 102.31.

IV. 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. Proper and timely notice of the hearing was affected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55, and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Findings of Fact No. 6 through No. 13, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 28.12, 61.73, and 102.31.
6. Based upon 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 24 days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$3,600.00 in lieu of suspension of the permit and license.

SIGNED September 18, 2006.



ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

RP



Shelia Bailey Taylor
Chief Administrative Law Judge

September 18, 2006

509 285

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

VIA REGULAR MAIL

RE: Docket No. 458-06-2156; Texas Alcoholic Beverage Commission v. David W. Sommer

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.

Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mc
Enclosure

xc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 - **VIA REGULAR MAIL**
David William Sommer d/b/a Goat Hill Country Store, 22781 FM 357, Groveton, Texas 75845 - **VIA REGULAR MAIL**