

**DOCKET NO. 510752**

**IN RE FATBOYS BAR INC.  
d/b/a Fatboys  
PERMIT NO. N-537827**

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**BEFORE THE TEXAS**

**ALCOHOLIC**

**SMITH COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-1979)**

**BEVERAGE COMMISSION**

**ORDER**

**CAME ON FOR CONSIDERATION** this 6th day of September, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing was convened on June 2, 2006 and closed on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 31, 2006. 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. Exceptions were not 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.

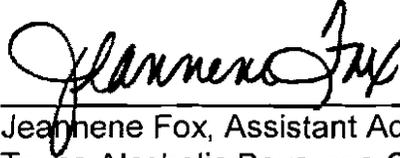
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits shall be suspended for a period of 15 days commencing at 12:01 a. m., October 18, 2006, unless a civil penalty in the sum of \$3,000.00 is paid by the Respondent to the Commission on or before 12:01 a.m. , October 11, 2006.**

**This Order will become final and enforceable on September 27, 2006, 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.

**SIGNED** on this 6th day of September, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Jerry Van Hamme  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
**VIA FACSIMILE 214-956-8611**  
Ph.: 214-956-8616

FATBOYS BAR INC.  
d/b/a Fatboys  
**RESPONDENT**  
P. O. Box 1431  
Whitehouse, TX 75791-1431  
**CERTIFIED MAIL NO. 7003 2260 0000 6465 8599**  
**RETURN RECEIPT REQUESTED**

Timothy Griffith  
**ATTORNEY FOR PETITIONER**  
**VIA FACSIMILE 214-678-4050**  
Ph.: 214-678-4043  
TABC Legal Section

Licensing Division

Longview District Office



represented by Timothy E. Griffith, attorney for the Commission. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Accordingly, 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 record was closed on that date.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee violated a provision of this code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

Each holder of a private club permit shall report to the Commission, by affidavit, any change of officers and directors within 10 days of the event. 16 TAC § 41.48(d)(1),(2) & (h).

A party may be defaulted for failing to appear at the hearing. A default proceeding requires a showing that proper notice under TEX. GOV'T. CODE ANN. ch. 2001 and 1 TAC § 155.27 was provided to the defaulting party and that such notice included a disclosure, in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and that the relief sought in the notice of hearing might be granted by default against the defaulting party that fails to appear at the hearing. 1 TAC § 155.55.

Unless applicable law provides otherwise, an agency referring a contested case to SOAH shall provide notice to all parties in accordance with TEX. GOV'T. CODE ANN. § 2001.052, which states, in pertinent part, that a notice of hearing in a contested case must include a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. 1 TAC § 155.27(a).

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### III. ANALYSIS

As reflected in Findings of Fact numbers 4 and 5, the notice sent to Petitioner complied with TEX. GOV'T. CODE ANN. § 2001.052 and 1 TAC §§ 155.27 & 155.55. The deemed findings in Findings of Fact numbers 2 and 3 show Respondent failed to report to the Commission a change of director and officer within 10 days of the event. Staff's request that Respondent's permits be suspended for 15 days or that Respondent be assessed a civil penalty of \$3,000 should therefore be upheld.

### IV. FINDINGS OF FACT

1. Fatboys Bar Inc., d/b/a Fatboys Bar, 15282 Highway 110 South, Whitehouse, Smith County, Texas, holds Private Club Registration Permit, N-537827, which includes a Beverage Cartage Permit, issued by the Commission on June 13, 2003.
2. On or about October 26, 2005, Respondent failed to report a change of director to the Commission within 10 days of the event.
3. On or about October 26, 2005, Respondent failed to report a change of officer to the Commission within 10 days of the event.
4. On April 25, 2006, Staff sent Respondent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records. The Notice of Hearing informed Respondent of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The Notice of Hearing also contained language in 12-point type stating that if Respondent failed to appear at the hearing Staff's factual allegations could be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
6. On June 2, 2006, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, 227-C North Spring Avenue, Tyler, Texas.

Staff was represented by Timothy E. Griffith, attorney. Respondent did not appear and was not represented at the hearing. The record was closed on the same day.

### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).
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. 2, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and 16 TAC § 41.48(d)(1) & (h).
4. Based on Finding of Fact No. 3, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and 16 TAC § 41.48(d)(2) & (h).
5. Based on Findings of Fact Nos. 4 and 5, proper and timely notice of the hearing was effected on Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TAC § 155.55(d).
6. Based on Finding of Fact Nos. 4 - 6, a default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing findings and conclusions, the Commission is warranted in suspending Respondent's permits for a period of 15 days, or, in lieu of suspension, assessing a civil penalty of \$3,000.

SIGNED July 31, 2006.



**JERRY VAN HAMME**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

## SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Fatboys Bar Inc. d/b/a Fatboys Bar

DOCKET NUMBER: 458-06-1979

AGENCY CASE NO: 510752

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Timothy Griffith  
Staff Attorney  
8700 N. Stemmons Frwy. #460  
Dallas, TX 75247  
Telephone No:  
Fax No:

**AGENCY COUNSEL**  
**VIA FAX**

Fatboys Bar Inc.  
d/b/a Fatboys Bar  
PO Box 1431  
Whitehouse, TX 75791-1431

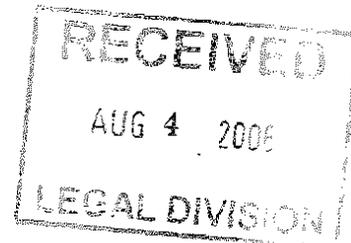
**RESPONDENT**  
**VIA REGULAR MAIL**

as of July 31, 2006

# State Office of Administrative Hearings

TB +  
75 days

Shelia Bailey Taylor  
Chief Administrative Law Judge



July 31, 2006

Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

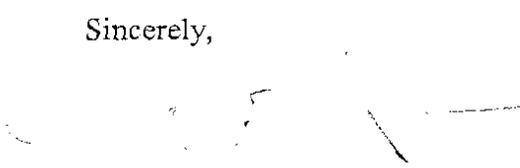
**RE:** Docket # 458-06-1979  
TABC VS. FATBOYS BAR INC.  
D/B/A FATBOYS BAR

Dear Ms. Fox:

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,

  
Jerry Van Hamme  
Administrative Law Judge

JVH/sr  
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,  
Fatboys Bar Inc., D/B/A Fatboys Bar, Respondent, **Via Mail**