

SOAH DOCKET NO. 458-07-2202

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner
V

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BEFORE THE STATE OFFICE

CEDAR LIVE
D/B/A THE ANCHOR CLUB
PERMIT/LICENSE NO(s) N224020
PE224021 & NL227003
POLK COUNTY, TEXAS
(TABC CASE NO. 554509),
Respondent

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Cedar Live d/b/a The Anchor Club (Respondent), alleging that on or about June 2, 2006, Respondent or Respondent’s agent, servant or employee, gave a check, or draft for the purchase of beer that was dishonored when presented for payment. Staff argued that by giving this check Respondent violated the Texas Alcoholic Beverage Code §§ 61.73 and 102.31 and recommended that Respondent’s permit/license be suspended for a period of ten days or in lieu of suspension Respondent be ordered to pay a penalty of \$1,500.00. The Administrative Law Judge agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened on May 4, 2007, at the State Office of Administrative Hearings office, 2020 North Loop West, Suite # 111, Houston, Texas, and the record was closed on the same day. Staff attorney Sandra Patton represented the Petitioner. Respondent did not appear and was not represented at the hearing. ALJ Rex A. Shaver presided.

On March 28, 2007, Petitioner issued its notice of hearing, directed to Cedar Live d/b/a The Anchor Club, at Respondent's last known address, 373 Navajo Trail, Onalaska, Polk County, Texas 77360, via certified mail, return receipt requested. That notice was returned as "Not Deliverable as Addressed Unable to Forward." Staff moved for a default decision pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

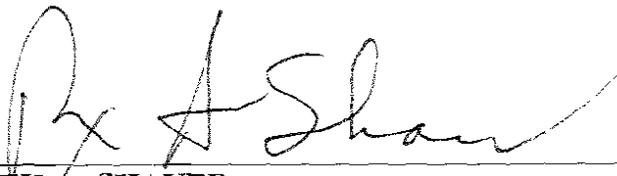
II. FINDINGS OF FACT

1. Cedar Live d/b/a , located at 373 Navajo Trail, Onalaska, Polk County, Texas 77360, holds Private Club Registration Permit, N-224020, which includes the Beverage Cartage PE-224021 and Private Club Late Hours Permit NL-227003.
2. On March 28, 2007, TABC sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 373 Navajo Trail, Onalaska,, Texas 77360. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved, and the legal authorities under which the hearing would be held.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was held May 4, 2007. Respondent did not appear at the hearing, and the record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. Respondent or Respondent's agent, servant or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, and § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default decision under State Office of Administrative Hearings rules, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 61.73 and 102.31 by giving a check or draft for the purchase of beer that was dishonored when presented for payment.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent's permit/license should be suspended for ten days and in lieu of suspension, Respondent should be allowed to pay a penalty of \$1,500.00.

SIGNED June 4, 2007.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 4, 2007



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

VIA REGULAR MAIL

**RE: Docket No. 458-07-2202; Texas Alcoholic Beverage Commission v. Cedar Live
D/B/A The Anchor Club**

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 black ink, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/jh
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra K. Patton, Attorney, Texas Alcoholic Beverage Commission, 420 West 20th Street, Suite 600, Houston, TX
77008 **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Cedar Live D/B/A The Anchor Club, 373 Navajo Trail, Onalaska, Texas 77360 -**VIA REGULAR MAIL**