

DOCKET NO. 565899

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| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE TEXAS |
| | § | |
| VS. | § | |
| | § | |
| CINDY'S GONE HOG WILD INC. D/B/A CINDY'S GONE HOG WILD PERMIT/LICENSE NO(s). MB573697 TRAVIS COUNTY, TEXAS (SOAH DOCKET NO. 458-07-4094) | § § § § § § | ALCOHOLIC BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this day, in the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on the 13th day of September 2007 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 18th day of December 2007. 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. Exceptions have been filed.

The 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, 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.

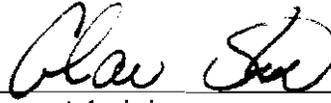
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit(s) are hereby **SUSPENDED** for **six (6) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$900.00 on or before the 14th day of April 2008, all rights and privileges under the above described permits will be **SUSPENDED for a period of six (6) days, beginning at 12:01 A.M. on the 21st day of April 2008.**

This Order will become final and enforceable on March 25, 2008, 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 February 29, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FAX (512) 475-4994

Mike & Cynthia Herman
CINDY'S GONE HOG WILD INC.
RESPONDENT
d/b/a CINDY'S GONE HOG WILD
164 ESTATE ROW
CEDAR CREEK, TX 78612

JUDITH L. KENNISON
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 565899

REGISTER NUMBER:

NAME: CINDY'S GONE HOG WILD, INC.
TRADENAME: CINDY'S GONE HOG WILD

ADDRESS: 5694 HWY. 71 EAST, CEDAR CREEK, TX. 78612

DATE DUE: APRIL 14, 2008

PERMITS/LICENSES NO(S): MB573697

AMOUNT OF PENALTY: \$900.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form along with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

Overnight Delivery Address: 5806 Mesa Drive, Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

LEGAL

SOAH DOCKET NO. 458-07-4094

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| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION, | § | |
| Petitioner | § | |
| V. | § | |
| | § | |
| CINDY'S GONE HOG WILD, INC. | § | OF |
| d/b/a CINDY'S GONE HOG WILD | § | |
| PERMIT NO. MB573697 | § | |
| TRAVIS COUNTY, TEXAS | § | |
| (TABC CASE NO. 565899), | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against Cindy Gone Hog Wild, Inc. d/b/a Cindy Gone Hog Wild (Respondent), alleging that Respondent, or its agent, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours, in violation of TEX. ALCO. BEV. CODE ANN. § 105.06. Staff recommended that Respondent's permit be suspended for six days and that Respondent be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened before ALJ John H. Beeler on November 1, 2007, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Christopher G. Gee, Staff Attorney, represented TABC. Respondent did not appear and was not represented at the hearing.

On September 13, 2006, TABC issued its notice of hearing, directed to Respondent at 164 Estate Row, Cedar Creek, Texas 78612, via certified mail, return receipt requested. Respondent's agent signed for notice on September 14, 2007. After the admission of jurisdictional documents, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing

proceeded on a default basis, Staff's factual allegation contained in the Notice of Hearing is deemed admitted as true; therefore, the ALJ has incorporated the allegation into the findings of fact without further discussion here. The facts, as deemed admitted, support the recommendation for suspension.

II. FINDINGS OF FACT

1. Cindy Gone Hog Wild, Inc. d/b/a Cindy Gone Hog Wild (Respondent), is the holder of Mixed Beverage and Mixed Beverage Late Hours Permit MB-573697.
2. On or about June 30, 2007, Respondent, or its agent, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
3. On September 13, 2006, the Texas Alcoholic Beverage Commission (TABC) issued its notice of hearing, directed to Respondent at 164 Estate Row, Cedar Creek, Texas 78612, via certified mail, return receipt requested. Respondent's agent signed for notice on September 14, 2007.
4. Notice of the hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and a statement of the matters asserted.
5. Notice of the hearing also contained language in 12-point, bold-face type informing Respondent that failure to appear at the hearing could result in the factual allegations being deemed admitted as true, and the relief sought as set out in the hearing notice being granted by default.
6. The hearing in this matter convened before ALJ John H. Beeler on November 1, 2007, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Christopher G. Gee, Staff Attorney, represented TABC. Respondent did not appear and was not represented at the hearing. After the taking of evidence, the hearing concluded and the record closed that same day.
7. The hearing proceeded on a default basis, and the allegation contained in the Notice of Hearing was deemed admitted as true.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 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 judgment pursuant to 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE ANN. § 105.06.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permit should be suspended for six days and Respondent should be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension, pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED December 18, 2007.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 18, 2007

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

HAND DELIVERY

**RE: Docket No. 458-07-4094; Texas Alcoholic Beverage Commission vs. Cindy's
Gone Hog Wild**

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,

John H. Beeler
Administrative Law Judge

JHB/sb
Enclosure

xc Christopher G. Gee, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Cindy's Gone Hog Wild, Inc.d/b/a Cindy's Gone Hog Wild, 164 Estate Row, Cedar Creek, TX 78612-**VIA REGULAR MAIL**

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