

SOAH DOCKET NO. 458-08-0305

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
V.	§	
	§	
TRACEY LYNN MERCHANT	§	OF
D/B/A LUCKY WAY FOOD STORE #3	§	
PERMIT LICENSE NO(s) BQ638157	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 567487),	§	
 Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Tracey Lynn Merchant d/b/a Lucky Way Food Store #3 (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 nine days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty of \$1,350.00. 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 September 28, 2007, Petitioner issued its notice of hearing, directed to Tracey Lynn

Merchant d/b/a Lucky Way Food Store #3 at its physical address of 8200 W. Bellfort, Houston, Harris County, Texas 77071, via certified mail, return receipt requested and regular mail. Respondent's mailing address is the same as the physical address. The notice of hearing sent by certified mail was refused by Respondent and returned to Petitioner on October 11, 2007. On October 26, 2007, a hearing convened before SOAH ALJ, Roshunda Pringle, at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Sandra K. Patton, 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, Tracey Lynn Merchant d/b/a Lucky Way Food Store #3, holds a Wine and Beer Retailer's Off-Premise License, BQ-638157, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 8200 W. Bellfort, Houston, Harris County, Texas 77071. Respondent's mailing address is the same as the physical address.
2. On September 28, 2007, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on October 26, 2007. The notice of hearing sent by certified mail was refused by Respondent and returned to Petitioner on October 11, 2007.
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.
5. A hearing convened before Roshunda Pringle, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 26, 2007. Respondent did not appear and was not represented at the hearing.
6. On or about July 12, 2007, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment.
7. On or about July 18, 2007, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment.
8. On or about July 19, 2007, Respondent issued a check or draft for the purchase of beer that was dishonored when presented for payment.

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 effected 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 decision should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Findings of Fact No. 6 through No. 8, 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 license should be suspended for a period of nine 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 \$1,350.00 in lieu of suspension of the permit and license.

SIGNED November 20, 2007.

**ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**