

DOCKET NO. 458-08-0389

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
LAKE CONROE PUB INC. d/b/a LAKE CONROE PUB MONTGOMERY COUNTY, TEXAS (TABC CASE NO. 568103)	§	
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking forfeiture of the conduct surety bond of Lake Conroe Pub d/b/a Lake Conroe Pub (Respondent) Mixed Beverage Permit, which includes the Mixed Beverage Late Hours Permit, following final adjudication of three violations by Respondent since September 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

On November 2, 2007, a hearing convened before Administrative Law Judge (ALJ) Timothy J. Horan of the State Office of Administrative Hearings, 2020 North Loop West, Suite # 111, Houston, Texas. The Commission was represented by its staff attorney Lindy Hendricks. Respondent did not appear at the hearing. After the taking of evidence, Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55, and the ALJ recommends that it be granted. The record was closed the same day.

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. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. Lake Conroe Pub d/b/a Lake Conroe Pub (Respondent) holds a Mixed Beverage Permit MB-645636, which includes the Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (Commission).
2. Respondent has committed three Alcoholic Beverage Code violations since September 1995.
3. On October 8, 2007, the Commission sent a notice to Respondent by certified mail to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2, was subject to forfeiture of the full amount of his conduct surety bond.
4. The notice of hearing was signed for by Respondent on October 9, 2007, as evidenced by the green return receipt card.
5. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
6. On November 2, 2007, a hearing convened before ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas.
7. The notice of hearing also contained language in 12-point type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
8. Respondent did not appear in this matter held November 2, 2007.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).
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2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos. 1 through 8, and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.
6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited to the State of Texas.

SIGNED December 18, 2007.



**TIMOTHY HORAN
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

VIA REGULAR MAIL

RE: Docket No. 458-08-0389/Texas Alcoholic Beverage Commission vs. Lake Conroe Pub Inc. d/b/a Lake Conroe Pub

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 "T. Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TJH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Lindy Hendricks, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 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**
Lake Conroe Pub Inc d/b/a Lake Conroe Pub. Respondent, 1120 N. Frazier Street, Conroe, TX 77301 -**VIA REGULAR MAIL**