

**DOCKET NO. 616246**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
AGA TRADING INC. D/B/A SAN DIEGO FOOD MART PERMIT/LICENSE NO(s). BQ574859 DUVAL COUNTY, TEXAS (SOAH DOCKET NO. 458-07-3027)	§	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 Melissa M. Ricard. The hearing convened on 17th day of August 2007 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 16th day of October 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. As of this date no exceptions have been filed.

The Assistant 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.

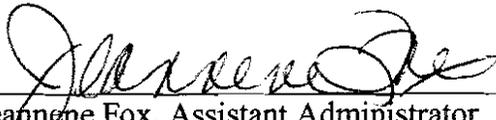
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit(s) and/or license(s) are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable December 6, 2007, 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 November 17, 2007 at Austin, Texas.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

CGG\bc

The Honorable Melissa M. Ricard  
Administrative Law Judge  
State Office of Administrative Hearings  
Corpus Christi, Texas  
**VIA FAX (361) 884-5427**

AGA TRADING INC.  
**RESPONDENT**  
d/b/a SAN DIEGO FOOD MART  
311 S DOCTOR EE DUNLAP ST  
SAN DIEGO, TX 78384

Christopher G. Gee  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Enforcement Division

DOCKET NO. 458-07-3027

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

AGA TRADING D/B/A  
SAN DIEGO FOOD MART  
PERMIT/LICENSE NOS. BQ574859  
DUVAL COUNTY, TEXAS  
(TABC CASE NO. 616249)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Aga Trading d/b/a San Diego Food Mart (Permittee) for offenses committed in violation of the Texas Alcoholic Beverage Code. The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the Permittee's permit/license issued by the TABC be cancelled.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter was convened on August 17, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by Melissa M. Ricard, Administrative Law Judge (ALJ). TABC's Staff was represented by its counsel, Christopher G. Gee. The Permittee did not make an appearance at the hearing. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

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## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

Texas Administrative Code, 1 TEX. ADMIN. CODE (Rules) § 155.55, provides that if a party does not appear for a hearing, the factual allegations contained in the notice of hearing will be deemed as admitted. Therefore, as described in the findings of fact, it is deemed as admitted that the Permittee violated TEX. ALCO. BEV. CODE ANN CODE (CODE) § 11.61 (b)(4). CODE § 11.61 authorizes the Commission to cancel a license or permit if it is found, after notice and hearing, that the Permittee violated a provision of the Code or the rules.

## III. RECOMMENDATION

The notice of hearing, dated July 3, 2007, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegation in this notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's address, as shown by the agency's records. The return receipt has a delivery date to Permittee of July 5, 2007. Therefore, the allegation that Permittee violated CODE § 11.61 (b)(4) is admitted as true. The relief sought should be granted, the permits should be cancelled, and renewals should be denied.

## IV. FINDINGS OF FACT

1. Permit BQ-5574859 was issued to Aga Trading d/b/a San Diego Food Mart (Permittee) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Permittee is 311 S. Doctor Ee Dunlap Street, San Diego, Texas 78384.
2. TABC's Staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified mail, return receipt requested, and mailed the notice to Permittee's address as shown in the agency's records.

3. The Notice of Hearing contained a statement of the time, location, date, 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 allegations and the relief sought by the TABC.
4. Permittee received the Notice of Hearing on July 5, 2007.
5. The notice of hearing contained the following language in capital letters in 12-point boldface type:  
  
**If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**
6. The hearing on the merits was held on August 17, 2007, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Christopher Gee. The Permittee did not appear and was not represented at the hearing and the record was closed on the same day.
7. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
8. On or about February 28, 2005, Permittee, Permittee's agents, servant or employee made a false or misleading statement in connection with an original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its officers, or employees.

## V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61.
2. SOAH has jurisdiction to conduct the administrative 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 AND 2001.052.

4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings rules, 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 8, Permittee violated TEX. ALCO. BEV. CODE ANN. §§11.61 (a)(4).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a cancellation of the permit and license is warranted.

SIGNED this 16th day of October, 2007.



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MELISSA M. RICARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings

Shelia Bailey Taylor  
Chief Administrative Law Judge

October 16, 2007

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

**RE: Docket No. 458-07-3027/Texas Alcoholic Beverage Commission vs. AGA Trading D/B/A San Diego Food Mart**

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](http://www.soah.state.tx.us).

Sincerely,

  
Melissa M. Riocard  
Administrative Law Judge

MMR/MAR  
Enclosure

cc: Natalie Howard, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Christopher G. Gee, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA REGULAR MAIL**  
AGA TRADING INC., 311 S Doctor Ee Dunlap Hwy, San Diego, Tx 78384-9998 - **VIA REGULAR MAIL**