

DOCKET NO. 579674

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
KLASSE RGV LLC	§	
D/B/A SAPPHIRE	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB694214, LB &	§	
PE	§	
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-2597)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

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

After proper notice was given, this case was heard by Administrative Law Judge Steven Rivas. The hearing convened on March 24, 2009 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 21, 2009. This 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 Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that 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 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 Respondent's permits are herein **SUSPENDED for thirty-five (35) days**.

IT IS FURTHER ORDERED that all rights and privileges under the above described permits will be **SUSPENDED for a period of thirty-five (35) days beginning at 12:01 A.M. on the 7th day of July 2009**.

This Order will become final and enforceable on June 29, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 3rd day of June, 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
5155 Flynn Parkway, Suite 200
Corpus Christi, TX 78411
VIA FACSIMILE (361) 884-5427

Klasse RGV LLC
d/b/a Sapphire
RESPONDENT
5248 N 10th St
McAllen, TX 78504
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

McAllen Enforcement Office

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 21, 2009

RECEIVED

APR 23 2009

TABC HOUSTON
LEGAL

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

VIA INTERAGENCY MAIL

RE: **Docket No. 458-09-2597; Texas Alcoholic Beverage Commission v. Klasse RGV, LLC d/ba Sapphire Hidalgo County, Texas (TABC Case No. 579674)**

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 § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Rivas".

Steven M. Rivas
Administrative Law Judge

SMR/lh
Enclosure

xc Sandra K. Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - VIA REGULAR MAIL
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (Exhibits returned: TABC exhibits 1-2 and 1 data CD dated 3-24-09)
Javier Villalobos, Attorney, 5804 North 23rd St., McAllen, TX 78504 - VIA REGULAR MAIL
Klasse RGV LLC, d/b/a Sapphire, 5248 N. 10th St., McAllen, TX 78504 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-09-2597

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
KLASSE RGV, LLC D/B/ASAPPHIRE HIDALGO COUNTY, TEXAS (TABC CASE NO. 579674)	§ § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Klasse RGV, L.L.C. d/b/a Sapphire (Respondent), alleging that Respondent possessed, or permitted others to possess, and sold or permitted others to sell, a narcotic on the licensed premises, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permits/licenses be suspended for 35 days or Respondent be assessed an administrative penalty of \$10,500. The Administrative Law Judge (ALJ) agrees that Respondent's permit should be suspended for a period of 35 days with no administrative penalty on the basis that Petitioner failed to provide notice of an administrative penalty to Respondent in either the notice of hearing or in the notice of violation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested issues in this proceeding. Therefore, those matters are addressed only in the Findings of Fact and Conclusions of Law

On February 13, 2009, Petitioner issued its notice of hearing, directed to Respondent at 5428 North 10th Street, McAllen, Texas 78504, via certified mail, return receipt requested as evidenced by the letter returned to Petitioner and marked "unclaimed." On March 24, 2009, a hearing convened before ALJ Steven M. Rivas at Lark Branch Library, Study Room B, 2601 Lark Avenue, McAllen, Texas. Petitioner was represented at the hearing by Sandra Patton, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After the presentation of evidence establishing notice and jurisdiction, the record was closed.

II. DISCUSSION

Based on the Respondent's failure to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with TEX. GOV'T CODE §§ 2001.051 and 2001.052, 1 TEX. ADMIN. CODE §§ 155.401 and 155.501, and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the Texas Alcoholic Beverages Commission Code as mentioned in the notice, and that a 35-day suspension of Respondent's permit is appropriate.

III. FINDINGS OF FACT

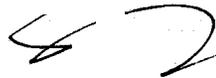
- 1 Klasse RGV, L.L.C. d/b/a Sapphire holds a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit, Permit No. MB694214, LB & PE, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 5428 North 10th Street, McAllen, Texas.
2. On February 13, 2009, Petitioner issued its notice of hearing to Respondent via certified mail to Respondent's last known mailing address as evidenced by the letter returned to Petitioner marked "unclaimed."
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 you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default..."
- 5 A hearing convened before Steven M. Rivas, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on March 24, 2009. Respondent did not appear and was not represented at the hearing and the record was closed.

6. On or about September 5, 2008, Respondent or Respondent's agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises.
7. On or about September 5, 2008, Respondent or Respondent's agent, servant, or employee, sold or permitted others to sell a narcotic on the licensed premises.

IV. CONCLUSIONS OF LAW

- TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), and 61.71(a).
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. Petitioner issued its notice of hearing in compliance with TEX. GOV'T CODE §§ 2001.051 and 2001.052, 1 TEX. ADMIN. CODE §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63.
 4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.501
 5. Respondent violated TEX. ALCO. BEV. CODE ANN. § 104.01(9); and 16 TEX. ADMIN. CODE § 35.31.
 6. TABC has authority to suspend Respondent's license under TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (7).
 7. Based upon Conclusion of Law Nos. 5 and 6, Respondent's permits/licenses should be suspended for a period of 35 days.

SIGNED April 21, 2009.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS