

**DOCKET NO. 580659**

THE ROOF BAR LP  
D/B/A THE ROOF BAR  
PERMIT/LICENSE NO(s). MB627190, PE &  
LB

HARRIS COUNTY, TEXAS  
(*SOAH DOCKET NO. 458-09-2257*)

§ BEFORE THE TEXAS  
§  
§  
§ ALCOHOLIC  
§  
§  
§ BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 29th day of May 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on March 27, 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 23, 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 three (3) days.**

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$450.00** on or before the **7<sup>th</sup> day of July 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of three (3) days beginning at 12:01 A.M. on the 15<sup>th</sup> day of July 2009.**

This Order will become final and enforceable on June 22, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on May 29<sup>th</sup>, 2009



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Hon. Rex A. Shaver  
Administrative Law Judge  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 7718  
**VIA FACSIMILE (713) 812-1001**

The Roof Bar LP  
d/b/a The Roof Bar  
**RESPONDENT**  
2121 Kirby Drive #124  
Houston, Texas 77019  
**VIA U. S. FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Houston District Office

Houston Compliance Office

SKP/aa

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 580659**

**REGISTER NUMBER:**

**NAME: THE ROOF BAR LP**

**TRADENAME: THE ROOF BAR**

**ADDRESS: 2600 TRAVIS 'R', HOUSTON, TX 77006**

**DUE DATE: JULY 7, 2009**

**PERMITS OR LICENSES: MB627190, LB & PE**

**AMOUNT OF PENALTY: \$450.00**

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 with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**P.O. Box 13127**

**Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., 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.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED

APR 24 2009

TABC HOUSTON  
LEGAL

April 23, 2009

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

VIA REGULAR MAIL

**RE: Docket No. 458-09-2257; Texas Alcoholic Beverage Commission vs. The Roof Bar LP d/b/a The Roof Bar**

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,

A handwritten signature in black ink that reads "Rex A. Shaver".

Rex A. Shaver  
Administrative Law Judge

RAS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> 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  
The Roof Top Bar, LP d/b/a The Roof Bar, 2121 Kirby Drive #124, Houston, Texas 77019 -VIA REGULAR MAIL



ALJ has incorporated those allegations into the findings of fact without further discussion.

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.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 102.31(b)(2) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the permittee violated a provision of the Code. As described in the findings of fact, Respondent violated CODE § 102.31 by issuing a check or draft to a distributor that was subsequently dishonored by the drawee.

Staff introduced two exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Mixed Beverage Permit, MB-627190 including the Beverage Cartage Permit and Mixed Beverage Late Hours Permit was issued to The Roof Bar LP, doing business as The Roof Bar, 2600 Travis "R", Houston, Harris County, Texas, by the Commission. The record states that the mailing address of the permit holder is 2121 Kirby Dr. #124 Houston, Texas, 77019. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the signed US Postal Service Certified Mail Receipt for article number 7006 0810 0000 2143 0451, the Notice of Hearing, sent to Respondent by certified mail at 2121 Kirby Dr. #124 Houston, Texas 77019 and advising that the hearing was set for March 27, 2009 at 9:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas.

### III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§155.501 and TEX. ALCO. BEV. CODE ANN. § 63. Pursuant to 1 TAC § 155.501, 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.

### IV. FINDINGS OF FACT

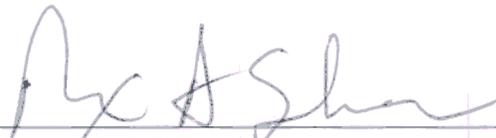
- 1 Respondent holds a Mixed Beverage Permit MB-627190 which includes the Beverage Cartage Permit, and Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (Petitioner).
2. On June 18, 2008, Respondent or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
- 3 On February 2, 2009, Petitioner sent a Notice of Hearing to Respondent by certified mail to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2 and 3, Respondents permits or licenses could be denied, refused, cancelled, or suspended.
4. The Notice of Hearing was delivered and the return receipt signed and returned to Petitioner.
5. The Notice of Hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.
- 6 On March 27, 2009, a hearing convened before ALJ Rex A. Shaver at 2020 North Loop West, Suite 111, Houston, Texas 77018.
- 7 The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.

8. Petitioner appeared and was represented by Sandra Patton, Staff Attorney. Respondent did not appear

### V. CONCLUSIONS OF LAW

- The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).
- 2 SOAH 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 TAC § 155.501.
- 4 Based on Findings of Fact Nos. 1 through 9, and Conclusion of Law Nos. 1 through 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
- 5 The license should be suspended for a period of 3 days and Respondent be allowed to pay a civil penalty of \$450 in lieu of suspension.

**Signed on April 23, 2009.**

  
\_\_\_\_\_  
REX A. SHAVER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS