

TABC DOCKET NO. 589083

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
BABBO BRUNO INC. D/B/A BABBO BRUNO MANGIA E RIDI PERMIT/LICENSE NO(s). MB512561, FB	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-2364)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 2nd day of July, 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Timothy Horan, presiding. The hearing convened on March 5, 2010, and the record was closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on April 22, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent's permits/licenses be **CANCELED FOR CAUSE**.

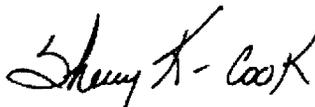
This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on July 26, 2010, unless a Motion for Rehearing is filed before that date.

at

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

SIGNED this the 2nd day of July, 2010, at Austin, Texas.

On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 2, 2010.



Alejandra Argueta, Paralegal
Texas Alcoholic Beverage Commission

State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Babbo Bruno Inc.
d/b/a Babbo Bruno Mangia E Ridi
RESPONDENT
2517 Mountain Fall Court
Friendswood, Texas 77546
VIA U. S. FIRST CLASS MAIL

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d/b/a Babbo Bruno Mangia E Ridi
RESPONDENT
2517 Mountain Fall Court
Friendswood, Texas 77546
VIA U. S. FIRST CLASS MAIL

Babbo Bruno Inc.

d/b/a Babbo Bruno Mangia E Ridi
RESPONDENT
3104 FM 528
Webster, Texas 77598
VIA U. S. FIRST CLASS MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 22, 2010

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

VIA REGULAR MAIL

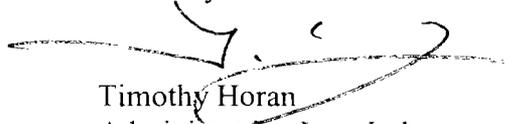
RE: Docket No. 458-10-2364; Texas Alcoholic Beverage Commission v. Babbo Bruno Inc. d/b/a Babbo Bruno Mangia E. Ridi

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, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,



Timothy Horan
Administrative Law Judge

TH/rlm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Babbo Bruno d/b/a Babbo Bruno Mangia E. Ridi, 2517 Mountain Fall Court, Friendswood, TX 77546 -**VIA REGULAR MAIL**

I. PROCEDURAL HISTORY AND DEFAULT

The hearing in this matter convened on March 5, 2010, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy Horan presided.

On January 28, 2010, Petitioner issued its Notice of Hearing, directed to Babbo Bruno Inc. d/b/a Babbo Bruno Mangia E Ridi, 2517 Mountain Fall Court, Friendswood, Texas 77546 via certified mail, return receipt requested, to Respondent's last known mailing address and was returned to TABC as "unclaimed". After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.501. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

II. FINDINGS OF FACT

1. Babbo Bruno Inc. d/b/a Babbo Bruno Mangia E Ridi (Respondent), located at 3104 FM 528, Webster, Harris County, Texas, holds Mixed Beverage Permit MB-512561, which includes the Food and Beverage Certificate.
2. On January 28, 2010, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 2517 Mountain Fall Court, Friendswood, Texas 77546. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
3. The Notice of Hearing also contained language in 12-point, bold-face 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.
4. The hearing on the merits convened on March 5, 2010. Respondent did not appear at the hearing and the record was closed on the same day.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.

6. Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by this Texas Alcoholic Beverage Code or rule of the Commission or by Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act).
7. Respondent is shown on the records of the Comptroller of Public Account as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing 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 provided as required by 1 TEX. ADMIN. CODE (TAC) §§ 155.401 and 155.501; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC §155.501.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b)(5), 11.61 (b)(2), and 11.61 (c)(2).
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits/license is warranted.

SIGNED April 22, 2010.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS