

DOCKET NO. 589139

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
CASPER ENTERTAINMENT LLC D/B/A KARMA RESTAURANT AND CLUB, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB677847, PE & LB	§	
	§	
CAMERON COUNTY, TEXAS (SOAH DOCKET NO. 458-11-1500)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of July, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Melissa M. Ricard presiding. The hearing convened on March 1, 2011 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 27, 2011. 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. Exceptions were filed by Petitioner on May 13, 2011. On July 18, 2011, the Administrative Law Judge responded to the Exceptions by letter stating: "Because the Proposal for Decision is legally sufficient I will not amend it".

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, with the following exceptions:

Finding of Fact No. 8 in the Proposal for Decision is deleted, and the following Finding of Fact No. 8 is substituted in its stead:

Finding of Fact No. 8. On or about September 20, 2009, Respondent with criminal negligence sold, served, dispensed or delivered an alcoholic beverage to a minor.

Conclusions of Law Nos. 4 - 6 in the Proposal for Decision are deleted, and the following Conclusions of Law Nos. 4 and 5 are substituted in their stead:

Conclusion of Law No. 4. By selling, serving, dispensing or delivering with criminal negligence an alcoholic beverage to a minor, Respondent violated Alcoholic Beverage Code §106.13.

Conclusion of Law No. 6. Selling, serving, dispensing or delivering with criminal negligence an alcoholic beverage to a minor warrants a 10-day suspension, or in lieu thereof a \$3,000.00 penalty, assessed at \$300 per day for each day of the suspension (i.e., \$3,000.00).

These changes are made pursuant to Government Code §2001.058(e)(1) and (3).

The Findings of Fact and Conclusions of Law set forth in the Proposal for Decision, as modified by this Order, are incorporated into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

The Proposal for Decision in this case is unnecessarily cryptic. While the motivation for preparing such a terse Proposal may be to save SOAH time and resources, trying to put meat on this bare-bones Proposal has cost the referring agency additional time and resources. Although we are required to utilize SOAH to conduct hearings and are limited in our ability to change the Administrative Law Judge's proposed Findings of Fact and Conclusions of Law, we are ultimately responsible for the Order that is issued and for the sufficiency of those Findings and Conclusions. I do not consider the Findings and Conclusions in this generic Proposal for Decision to meet the standards that I find acceptable for Orders issued by this agency. Nor does the Proposal meet the standards I expect to receive, and am used to receiving, from SOAH.

When and if SOAH adopts its proposed revisions to 1 TAC §155.501, it will no longer prepare Proposals for Decision on the merits of a defaulted case. But until that amendment is adopted, I expect to receive from SOAH a Proposal for Decision that reflects a more thoughtful consideration of even a defaulted case.

IT IS THEREFORE ORDERED that Respondent pay a civil penalty in the amount of **\$3,000.00** on or before **August 30, 2011**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **September 7, 2011**, and shall remain suspended for **ten (10)** consecutive days.

If this Order is appealed and judgment is issued affirming the Order, Respondent shall pay the civil penalty in the amount of **\$3,000.00** on or before the **TENTH (10th)** day following the date the judgment is signed. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be

SUSPENDED beginning at 12:01 A.M. on the **EIGHTEENTH (18th)** day following the date the judgment is signed and shall remain suspended for **ten (10)** consecutive days

This Order will become final and enforceable on the 23rd day of August, 2011, unless a Motion for Rehearing is filed **before** that date.

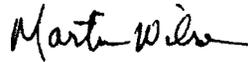
SIGNED this the 28th day of July, 2011, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 28th day of July, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Melissa M. Ricard
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
VIA FACSIMILE: (512) 475-4994

Casper Entertainment LLC
d/b/a Karma Restaurant and Club
RESPONDENT
2877 Fleet Street
Brownsville, Texas 78521
VIA REGULAR MAIL

Lisa Crissman
ATTORNEY FOR PETITIONER
TABC Legal Division

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 589139

REGISTER NUMBER:

NAME: CASPER ENTERTAINMENT LLC

TRADENAME: KARMA RESTAURANT AND CLUB

ADDRESS: 2877 FLEET STREET, BROWNSVILLE, TEXAS 78521

DUE DATE: AUGUST 30, 2011

PERMITS OR LICENSES: MB677847, PE & LB

AMOUNT OF PENALTY: \$3000.00

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

APRIL 27, 2011

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

VIA INTERAGENCY MAIL

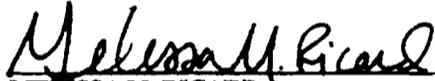
**RE: Docket No. 458-11-1500/ TEXAS ALCOHOLIC BEVERAGE
COMMISSION vs. CASPER ENTERTAINMENT d/b/a KARMA
RESTAURANT AND CLUB**

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,


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

MMR/mar
Enclosure

xc LISA CRISSMAN, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL**
Emily Helm, 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** (with Certified Evidentiary Record and Hearing CD/s)
CASPER ENTERTAINMENT LLC, 1655 FM 802, SUITE 212 BROWNSVILLE, TX 78521 VIA
REGULAR **MAIL**

RECEIVED

MAY 02 2011

**FABO HOUSTON
LEBA**

SOAH DOCKET NO. 458-11-1500

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
CASPER ENTERTAINMENT LLC D/B/A KARMA RESTURANT AND CLUB, PERMIT NOS. MB677847, PE & LB Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

This matter was scheduled for hearing at the request of the Texas Alcoholic Beverage Commission (the referring agency). Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by the referring agency should be granted on a default basis.

FINDINGS OF FACT

1. Notice of the hearing was mailed to the Respondent at the Respondent's address of record at least ten days prior to the scheduled hearing.
2. 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.
3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. The hearing was held and the record closed on March 1, 2011.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.

7. The referring agency's staff requested that Respondent's permits be suspended for a period of 10 days, or in lieu of suspension, that Respondent pay a penalty assessed at \$300 per day of the recommended suspension, which is \$3,000.
8. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. 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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T CODE ch. 2001 and 1 TEX. ADMIN. CODE ch. 155.
4. The allegations in the notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested.

SIGNED April 27, 2011.


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