

TABC DOCKET NO. 591561

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
L & E VENTURES INC.	§	
D/B/A TOM TOM ASIAN GRILL	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB712156, FB & LB	§	
	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-3733)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 2nd day of September, 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 Brenda Coleman, presiding. The hearing convened on June 1, 2010 and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on July 30, 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 Mixed Beverage Permit, Mixed Beverage Late Hours Permit and Food and Beverage Certificate 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.

[Faint signature or stamp]

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

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

On Behalf of the Administrator,



(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 September 2, 2010.



Joan Bates
Texas Alcoholic Beverage Commission
Legal Division

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE TO: (214) 956-8611

L & E Ventures Inc.
D/B/A Tom Tom Asian Grill
RESPONDENT
3699 McKinney Ave., Bldg C319
Dallas, TX 75204
U.S. REGULAR MAIL

Lisa Crissman
ATTORNEY FOR PETITIONER
TABC Legal Section

Sandy Higdon- Licensing Division

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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DATE: **07/30/2010**

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REGARDING: **PROPOSAL FOR DECISION**

DOCKET NUMBER: **458-10-3733**

JUDGE BRENDA S COLEMAN

FAX TO:

FAX TO:

L & E Ventures Inc. d/b/a Tom Tom Asian Grill

VIA REGULAR MAIL

LISA CRISSMAN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(713) 426-7965

EMILY HELM (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(512) 206-3226

ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 30, 2010

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

VIA FACSIMILE 512/206-3203

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
L & E VENTURES INC. D/B/A TOM TOM ASIAN GRILL
SOAH DOCKET NO. 458-10-3733**

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 cursive script that reads "Brenda Coleman".

Brenda Coleman
Administrative Law Judge

BC/lan
Enclosure

Xc: Lisa Crissman, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
L & E Ventures Inc d/b/a Tom Tom, Respondent, **VIA REGULAR MAIL 3699 McKinney Ave. Bldg C 319 Dallas,
Texas 75204**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3226**

6333 Forest Park Road, Suite 150A ♦ Dallas, Texas 75235
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SOAH DOCKET NO. 458-10-3733

**TEXAS ALCOHOLIC BEVERAGE,
COMMISSION,
Petitioner**

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§

BEFORE THE STATE OFFICE

v.

OF

**L & E VENTURES INC. D/B/A
TOM TOM ASIAN GRILL,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission or Petitioner) brought this action against L & E Ventures Inc. d/b/a Tom Tom Asian Grill (Respondent) alleging that Respondent failed to pay taxes to the State of Texas. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be cancelled, and the Administrative Law Judge (ALJ) agrees with that recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.61. The State Office of Administrative Hearings (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.

On April 19, 2010, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known address, via regular mail and certified mail, return receipt requested. The United States Postal Service attempted to deliver the notice on April 22, 2010. The notice was returned unclaimed on May 15, 2010.

On June 1, 2010, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest

Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing, via telephone, by Lisa Crissman, Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding proper notice and jurisdiction. The record closed on June 1, 2010.

II. DISCUSSION

Based on 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 §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. 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. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's permits be cancelled.

III. FINDINGS OF FACT

1. L & E Ventures Inc. d/b/a Tom Tom Asian Grill (Respondent) was issued Mixed Beverage Permit MB-712156, which includes a Food and Beverage Certificate and a Mixed Beverage Late Hours Permit, for the premises located at 3699 McKinney Avenue #C319, Dallas, Dallas County, Texas.
2. Respondent's last known mailing address, as reflected in Petitioner's records, is 3699 McKinney Avenue #C319, Dallas, Dallas County, Texas, 75204.
3. Respondent is delinquent in paying its mixed beverage gross receipts taxes, sales taxes and franchise taxes.
4. On April 19, 2010, The Staff of the Texas Alcoholic Beverage Commission (Petitioner) issued its notice of hearing by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for June 1, 2010.
5. 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.

6. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
7. The certified mail was returned unclaimed.
8. A hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Brenda Coleman on June 1, 2010. Petitioner appeared through Staff Attorney, Lisa Crissman. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) ch. 5 and § 11.61.
2. SOAH has jurisdiction to conduct the 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. ch. 2001 and 1 TAC § 155.501.
4. A default decision should be entered against Respondent pursuant to 1 TAC § 155.501.
5. Based on the foregoing findings, Respondent is indebted to the state for taxes, fees, or payment of penalties imposed by Code §§ 11.61(b)(2), 11.61(b)(5) and 11.61(c)(2), and by TEX. TAX CODE ANN. ch. 151, 171 and 183.
6. Based on the foregoing findings and conclusions, Respondent's permits should be cancelled. Code § 11.61(b)(5).

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PROPOSAL FOR DECISION

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SIGNED July 30, 2010.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS