

## DOCKET NO. 458-03-1722

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

V.

2 CHEAP INC.  
d/b/a 2 CHEAP INC.  
Tarrant County, Texas  
(TABC CASE NO. 601713)§  
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against 2 Cheap Inc. d/b/a 2 Cheap Inc. (Respondent). Petitioner sought cancellation of Respondent's permits and license, alleging Respondent failed to pay delinquent ad valorem taxes. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits and license.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.11(b)(2). 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, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of notice or jurisdiction in this proceeding.

On January 16, 2003, Petitioner issued its Notice of Hearing to Respondent at its address of record, 2 Cheap Inc., 2101 Evans Avenue, Fort Worth, Texas 76104. On March 6, 2003, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Jerald H. Miller appeared for Respondent. Evidence was received by the Petitioner on that date. The record closed on March 6, 2003.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 11.38 (e) to cancel Respondent's permit for the retail sale or service of alcoholic beverages if Respondent has not paid delinquent ad valorem taxes due on the permitted premises to any taxing authority in the county of the premises.



Pursuant to §11.38 (e) of the Texas Alcoholic Beverage Code:

The Commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on the permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if the permit holder or applicant:

- (1) is placed on a delinquent tax roll prepared under Section 33.03, Tax Code;
- (2) has received a notice of delinquency under Section 33.04, Tax Code; and
- (3) has not made payment required under Section 42.08, Tax Code.

#### EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent is the holder of a Package Store Permit, Local Cartage Permit, and Beer Retailer's Off-Premises License issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit Four establish that a Package Store Permit (P-234261), Local Cartage Permit (E-234262), and Beer Retailer's Off-Premises License (BF-281414) were issued to 2 Cheap Inc. d/b/a 2 Cheap Inc., 2101 Evans Avenue, Fort Worth, Tarrant County, Texas by the TABC on December 19, 2001.

In support of its allegations that Respondent failed to pay delinquent ad valorem taxes, Petitioner presented the testimony of Vicki Ansley, Cash Manager for the Tarrant County Tax Officer. Ms. Ansley testified that the Respondent is delinquent in the payment of property taxes. To further support its allegations, Respondent presented the affidavit of Betsy Price, Tax Assessor-Collector of Tarrant County. Through her affidavit, Ms. Price testified that Respondent has not paid in excess of \$5,826.16 in delinquent ad valorem taxes owed to the following Tarrant County, Texas taxing authorities for the years 1994 through 2001: the City of Fort Worth, Fort Worth Independent School District, Tarrant County College District, Tarrant County Hospital District, Regional Water District, and Tarrant County. These taxes are owed for the permitted premises located at 2101 Evans Avenue, Fort Worth, Tarrant County, Texas. Respondent was provided with notice of said delinquency by first class mail.

Respondent did not present any evidence.

#### ANALYSIS

The facts presented to this ALJ are undisputed. Respondent holds Package Store

Permit No. P-234261, Local Cartage Permit No. E-234262, and Beer Retailer's Off-Premises License No. BF-281414 for its premises located in Tarrant County, Texas. Respondent failed to pay delinquent ad valorem taxes owed to Tarrant County, Texas taxing authorities for the permitted premises, in violation of § 11.38 of the Texas Alcoholic Beverage Code.

### RECOMMENDATION

The ALJ recommends that Respondent's Package Store Permit No. P-234261, Local Cartage Permit No. E-234262, and Beer Retailer's Off-Premises License No. BF-281414, be cancelled.

### PROPOSED FINDINGS OF FACT

1. Respondent, 2 Cheap Inc. d/b/a 2 Cheap Inc., holds a Package Store Permit No. P-234261, Local Cartage Permit No. E-234262, and Beer Retailer's Off-Premises License No. BF-281414, issued on December 19, 2001, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permits and license were issued for the premises located at 2101 Evans Avenue, Fort Worth, Tarrant County, Texas.
3. Respondent failed to pay delinquent ad valorem taxes owed to the following Tarrant County, Texas taxing authorities: the City of Fort Worth, Fort Worth Independent School District, Tarrant County College District, Tarrant County Hospital District, Regional Water District, and Tarrant County.
4. Respondent was provided with notice of said delinquency by first class mail.
5. Petitioner sent Respondent written notice of its intent to seek cancellation of Respondent's permit by a letter dated October 29, 2002.
6. On January 16, 2003, Petitioner issued its Notice of Hearing to Respondent at its address of record, 2101 Evans Avenue, Fort Worth Texas 76104.
7. On March 6, 2003, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Jerald H. Miller appeared for the Respondent
8. Respondent did not contest notice or jurisdiction.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.38 (e).
2. The State Office of Administrative Hearings 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, under TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing.
4. Based upon the Proposed Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.38 (e).
5. Based upon Conclusion of Law No. 4, Respondent's Package Store Permit No. P-234261, Local Cartage Permit No. E-234262, and Beer Retailer's Off-Premises License No. BF-281414, should be cancelled.

SIGNED this 21st day of March, 2003.



Kelsie L. McQuieter  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601713

IN RE 2 CHEAP INC.	§	BEFORE THE
D/B/A 2 CHEAP INC.	§	
PERMIT NOS. P-234261, E-234262	§	
LICENSE NO. BF281414	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1722)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 16th day of April 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kelsie L. McQuieter. The hearing convened on March 6, 2003, and adjourned on March 6, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 21, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Assistant 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 Permit Nos. P-234261, E-234262 and License No. BF281414 are hereby **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on May 7, 2003**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this 16th day of April, 2003.

On Behalf of the Administrator,



Jeannere Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Kelsie L. McQuieter  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

2 CHEAP INC.  
D/B/A 2 CHEAP INC.  
**RESPONDENT**  
2101 Evans Avenue  
Fort Worth, TX 76104  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 5080**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division

Fort Worth District Office