

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 12, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

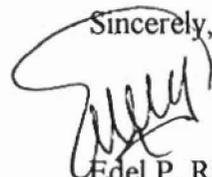
VIA CERTIFIED MAIL
P 906 424 086

**RE: Docket No. 458-99-0105; Texas Alcoholic Beverage Commission vs.
Hae Kyung Moon d/b/a Ann's Pantry (TABC Case No. 579414)**

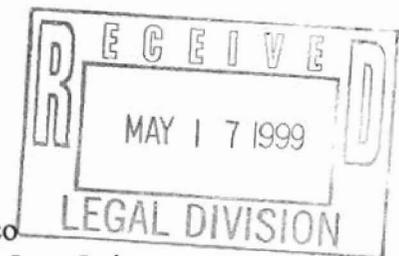
Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Andrew DelCueto, attorney for Texas Alcoholic Beverage Commission, and to Hae Kyung Moon d/b/a Ann's Pantry. For reasons discussed in the proposal, I agreed with the Staff's recommendation of cancellation of the Respondent's Wine and Beer Retailer's Permit.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Edel P. Ruiseco
Administrative Law Judge



EPR:mar
Enclosure

xc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing - **FACSIMILIE, 512-475-4994**
Andrew Del Cueto Staff Attorney, Texas Alcoholic Beverage Commission -
Certified Mail No. P 906 424 088, Return Receipt Requested
Hae Kyung Moon d/b/a Anns's Pantry, 5857 Leopard, Corpus Chrsiti, Tx. 78408 - **CERTIFIED MAIL NO.
P 906 424 089, RETURN RECEIPT REQUESTED**

DOCKET NO. 458-99-0105

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

HAE KYUNG MOON

§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking suspension or cancellation of the Wine and Beer Retailer's Off Premise Permit, number BQ-309671, held by Hae Kyung Moon, d/b/a Ann's Pantry (Respondent), because Respondent is shown on the records of the Comptroller of Public Accounts as subject for final determination of sales taxes due and payable under the Limited Sales, Excise and Use Tax Act. Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) recommends that the permit and license be canceled based on the proof produced by Commission's staff (Staff).

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

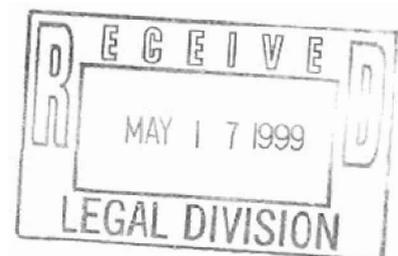
The hearing in this matter convened on April 2, 1999, at the offices of the State Office of Administrative Hearings (SOAH), in Corpus Christi, Nueces County, Texas. The Staff was represented by its counsel, Andrew del Cueto, who appeared by telephone with the approval of the Court. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the 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. ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

There was one allegation in this proceeding, asserting the Respondent is shown on the records of the Comptroller of Public Accounts as subject for the final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act, Tex. Tax Code Ann. Ch. 151, which constitutes a violation of Tex. Alco. Bev. Code Ann. §§11.61(c)(2) and 61.712(2).

TABC/Default-No Sales Tax (5/99)



III. RECOMMENDATION

In this case, Staff recommended cancellation of the Respondent's Wine and Beer Retailer's Permit, and the ALJ agrees with the recommendation. Pursuant to both, Tex. Alco. Bev. Code Ann. §§11.61(c)(2) and 61.712(2), "the commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee: (2) is shown on the records of the Comptroller of Public Accounts 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. . . ."

IV. FINDINGS OF FACT

1. Hae Kyung Moon d/b/a Anna's Pantry, located at 5857 Leopard, Corpus Christi, Nueces County, Texas 78408, holds Permit No. BQ-309671.
2. On January 25, 1999, the staff of the Texas Alcoholic Beverage Commission sent a notice of hearing by certified mail, return receipt requested, to the Respondent at his address of record, regarding an alleged violation of the Texas Alcoholic Beverage Code.
3. The hearing on the merits was held on April 2, 1999, at the offices of SOAH in Corpus Christi, Nueces County, Texas. The Staff was represented by counsel, Mr. Andrew del Cueto, Assistant Attorney General.
4. The Respondent did not appear and was not represented at the hearing.
5. On or about the 2nd day of April, 1999, the Comptroller of Public Accounts certified that Respondent was subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Tex. Tax Code Ann. §151).
6. The staff of the Comptroller of Public Accounts testified that Respondent's check number 1803, dated February 22, 1999, was returned NSF on March 3, 1999; a jeopardy letter sent and a second attempt to deposit made and returned NSF on March 9, 1999; Respondent underpaid a bond in the amount of \$3,025.00; and Respondent currently owes a total of \$6,437.97; and Respondent further admitted to a cash law violation on February 18, 1997, and having purchased beer from a Retailer for Resale on January 15, 1997.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. §§6.01, 11.61(c), 61.71, and 61.712 (Vernon 1995 & supp. 1999).
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 findings of fact and conclusions of law pursuant to Tex. Gov't Code Ann. Ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), Tex. Gov't Code Ann. Ch. 2001 (Vernon 1999), and 1 Tex. Admin. Code §155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Respondent violated provisions of the Limited Sales, Excise and Use Tax Act (Tex. Tax Code Ann. §151), which requires payment of taxes and the providing of a bond, in that Respondent failed to pay taxes of \$1,340.76 and underpaid a bond in the amount of \$3,025.00, which are due and payable.
5. Respondent is shown on the records of the Commission to have had two prior violations of Commission rules and the Code.
6. Based on the foregoing Findings and Conclusions, cancellation of the Wine and Beer Retailer's Permit is warranted.

SIGNED this 10th day of May, 1999.



Edel P. Ruiseco, ALJ, Corpus Christi
State Office of Administrative Hearings