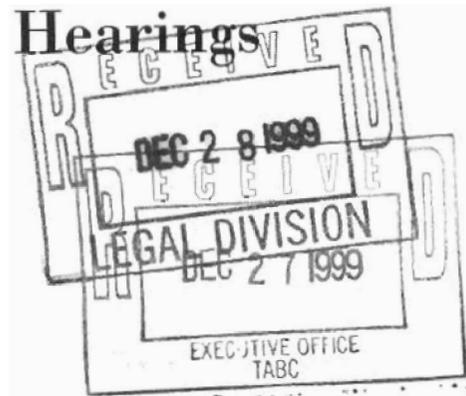


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 22, 1999



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

VIA CERTIFIED MAIL Z 269 601 830

RE: Docket No. 458-99-1647; Texas Alcoholic Beverage Commission vs. Ngoc Duong, d/b/a
LD Super Discount Liquor Beer & Wine, (TABC Case No. 584140)

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 Tim Griffith, attorney for Texas Alcoholic Beverage Commission, and to Respondent, Ngoc Duong. For reasons discussed in the proposal, I recommend Respondent's permit and license be canceled.

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,

A handwritten signature in black ink, appearing to read "Jerry Van Hamme".

Jerry Van Hamme
Administrative Law Judge

JVH:fgm

Enclosure

xc: Docket Clerk, State Office of Administrative Hearing
Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission
Ngoc Duong, 4017 Maple Ave., Dallas, Texas 75219

Regular Mail
Fax 972/547-5093
Certified Mail Z 269-601-831

Dallas County, Dallas, Texas, 75219 holds Package Store Permit No. P-442435 and Beer Retailer's Off-Premise License No. BF-442436, issued by the Commission on December 10, 1998.

2. On June 10, 1999, the Commission sent Respondent notice of its intention to institute enforcement action. The notice was sent by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records.
3. Notice of the hearing in this matter, dated August 20, 1999, was properly addressed and sent by certified mail to Respondent at Respondent's Dallas, Texas, mailing address as listed in the Commission's records. The notice of hearing notified Respondent of the statutes and rules involved, the legal authorities under which the hearing is to be held, and the date, time, and place of the hearing.
4. The notice also contained language in 10-point type informing Respondent that if Respondent failed to appear at the hearing, the Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
5. The hearing on the merits convened November 9, 1999, at the offices of the State Office of Administrative Hearings, Dallas, Texas, 6300 Forest Park Rd., Suite B-230. Staff was represented by attorney, Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.
6. On or about January 18, 1999, Respondent, or Respondent's agent, servant, or employee sold, with criminal negligence, an alcoholic beverage to a minor on the licensed premises.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN §§ 6.01 and 61.71(a)(5) (Vernon 1995 & Supp. 2000).
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 (Vernon 2000).
3. Based on Finding of Fact Nos. 3 & 4, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE § 155.55(d) (1999), 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. Based on Findings of Fact No. 5, the hearing proceeded on a default basis and, as

authorized by applicable law, the ALJ may enter a default judgment against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55 (1999).

5. Based on Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN § 106.13 (Vernon 1995).
6. Based on the foregoing findings and conclusions, cancellation of Package Store Permit No. P-442435 and Beer Retailer's Off-Premise License No. BF-442436 is warranted.

SIGNED this 22 day of December, 1999.



JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS