

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 1, 2000

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

CERTIFIED MAIL NO. Z 409 580 974
RETURN RECEIPT REQUESTED

RE: Docket No. 458-99-1880; TABC vs. Norman Lee Jetty d/b/a Sherwoods Beer Garden, TABC Case No. 582400

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Norman Lee Jetty, d/b/a Sherwoods Beer Garden. For reasons discussed in the Proposal for Decision, I have recommended that the license be suspended for a period of 5 days or that Permitte be allowed to pay a fine of \$750.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - ~~REGULAR MAIL~~
Norman Lee Jetty, 2830 S. Shaver, Pasadena, TX 77502 -
VIA CERTIFIED MAIL NO. Z 409 580 973, RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - ~~VIA REGULAR MAIL~~



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

DOCKET NO. 458-99-1880

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE
COMMISSION §
§
V.S. §
§ OFFICE OF
NORMAN LEE JETTY §
D/B/A SHERWOODS BEER GARDEN §
PERMIT NO. BG-279176 §
HARRIS COUNTY, TEXAS §
(TABC CASE NO. 582400) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) initiated this action seeking suspension of the permit held by Norman Lee Jetty Jr. d/b/a Sherwoods Beer Garden (the Permittee) because the Permittee made payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73 (b) TEX. ALCO. BEV. CODE on four separate occasions.

The Permittee made an appearance at the original hearing on October 28, 1999 and requested a continuance in order to hire an attorney. The hearing was re-set to January 14, 2000. Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00 in lieu of suspension.

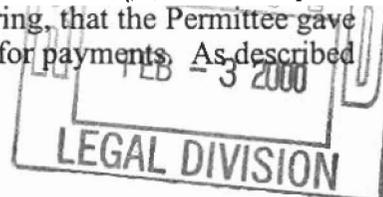
I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on October 28, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Gayle Gordon. Norman Lee Jetty, Sr. was present and requested a continuance in order to obtain an attorney. The State Office of Administrative Hearings sent a letter to the parties that the matter was continued to January 14, 2000 at 9:00 a.m. for final hearing. On November 22, 1999, the State Office of Administrative Hearings received the return receipt signed by Norman Jetty, showing the Petitioner received notice of the hearing. The Permittee did not make an appearance at the hearing on January 14, 2000. 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 the State Office of Administrative Hearings 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. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §61.73 (b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee gave a distributor a check for payment which is dishonored when presented for payments. As described



in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73 (b) on four separate occasions by writing a check to a distributor that was subsequently returned for insufficient funds.

The staff attorney introduced four exhibits into evidence:

Exhibit TABC 1 are two TABC 18(c) letters of February 17, 1999 and June 28, 1999, to Permittee setting out the violations.

Exhibit TABC 2 is the Notice of Hearing to Permittee with attached green card showing Permittee received notice.

Exhibit TABC 3 is an affidavit of Brian L. Guenther, Licensing Department Director, and custodian of records, stating the Wine and Beer Retailer's Permit, BG-279176 was issued to Norman Lee Jetty Jr., doing business as Sherwoods Beer Garden, 2830 S. Shaver, South Houston, Harris County, Texas, and attached correct copies of the said permit and violation history.

Exhibit TABC 4 are affidavits from distributors stating that on nine different occasions they delivered beer to Permittee and received checks from Permittee, that were dishonored when presented.

The ALJ took judicial notice of the Court's file which shows the hearing was originally scheduled for October 28, 1999. On October 28, 1999, Permittee requested a continuance to obtain an attorney. The hearing was continued, and a letter went out to the parties on November 16, 1999 setting the matter for final hearing on January 14, 2000. Permittee received the notice on November 22, 1999.

III. RECOMMENDATION

Because the Permittee made payments for beer in their original containers and packages with dishonored checks in violation of Section 61.73 (b) of the code, the license should be suspended for a period of five days, or in lieu of suspension, Permittee should pay a fine of \$750.00.

IV. FINDINGS OF FACT

1. Permit No. BG-279176 was issued to Norman Lee Jetty, Jr., doing business as Sherwoods Beer Garden, by the Texas Alcoholic Beverage Commission. The mailing address of Norman Lee Jetty, Jr. is Sherwoods Beer Garden, 2830 S. Shaver, Pasadena, Texas 77502.
2. The staff sent a Notice of Hearing, setting the case for October 28, 1999, and regarding the violations of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice as shown by the attached green card.
3. On October 28, 1999 the Petitioner and Respondent appeared and requested a continuance.
4. On November 16, 1999, the State Office of Administrative Hearings sent the parties a letter that the matter had been continued to January 14, 2000 at 9:00 a.m. for final hearing. Permittee received the letter on November 22, 1999.

5. The hearing on the merits was held on January 14, 2000, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
6. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

On or about August 21, 1998, Permittee, its agent, servant, or employee gave a check for \$85.62 to Faust Distributing Company, of Houston, Texas. On or about August 26, 1998, the check was returned by Drawee, Merchants Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73 (b).

On or about September 11, 1998, Permittee, its agent, servant, or employee gave a check for \$99.99 to Faust Distributing Company, of Baytown, Texas. On or about September 16, 1998, the check was returned by Drawee, Merchants Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73 (b).

On or about September 18, 1998, Permittee, its agent, servant, or employee gave a check for \$42.81 to Faust Distributing Company, of Houston, Texas. On or about September 25, 1998, the check was returned by Drawee, Merchants Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73 (b).

On or about May 25, 1999, Permittee, its agent, servant, or employee gave a check for \$725.46 to Wismer Distributing Co., of Houston, Texas. On or about June 2, 1999, the check was returned by Drawee, Merchants Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73 (b).

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
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.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73 (b) by making payment for beer in its original containers and packages with dishonored checks in violation of §61.73 (b).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a five-day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64,

the Permittee should be allowed to pay a \$750.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 1 day of February, 2000.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS