

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 12, 1999

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

**CERTIFIED MAIL Z 409 580 952**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-99-1881 TABC vs. Roscoe Hunter d/b/a Hunters Package Store No. 1 Nos. P-203842, E-203845, License Number BF-238447 Harris County, Texas (TABC No. 583730)**

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 to Roscoe Hunter acting as party representative. For reasons discussed in the Proposal for Decision, I have recommended that the permittee's permit No. P-203842, E-203845, License No. BF-238447 be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00 in lieu of a 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 reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

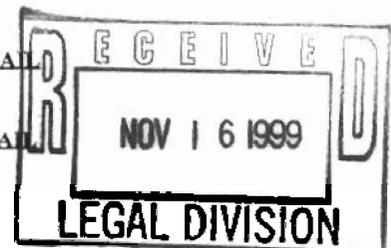
A handwritten signature in black ink, appearing to read "Veronica B. Dorsey".

Veronica B. Dorsey  
Administrative Law Judge

DS:rfm/99-1881

**Enclosure**

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **REGULAR MAIL**  
Roscoe Hunter d/b/a Hunter's Package Store No. 1, 801 E. 33rd Street, Houston, TX 77022  
**VIA CERTIFIED MAIL NO. Z 409 580 953, RETURN RECEIPT REQUESTED**  
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - **REGULAR MAIL**



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

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.S.	§	
	§	OF
ROSCOE HUNTER	§	
D/B/A HUNTERS PACKAGE STORE NO. 1	§	
PERMIT NOS. P-203842, E-203843	§	
LICENSE NUMBER BF-238447	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Roscoe Hunter d/b/a Hunters Package Store No. 1 (the Permittee) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code. The violation occurred on or about February 26, 1999, when Permittee, its agent, servant, or employee gave a check for \$63.72.00 to Houston Distributing, Ltd., of Houston, Texas. On or about March 5, 1999, the check was returned by Drawee, Chase Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

The Permittee did not make an appearance at the hearing on October 28, 1999. This Proposal for Decision finds the allegations by the TABC to be 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 a 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. Gayle Gordon represented the staff of the Commission (Staff). Veronica B. Dorsey presided as Administrative Law Judge for State Office of Administrative Hearings. 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) by writing a check to a distributor that was subsequently returned for insufficient funds.

The staff attorney introduced the following four exhibits into evidence:

Exhibit TABC 1 is the 18(c) letter of May 5, 1999 to Permittee, setting out the violation.

Exhibit TABC 2 is the Notice of Hearings to Roscoe Hunter with attached green card bearing Permittee's signature.

Exhibit TABC 3 contains a Request for Hearing, a memo from Permittee, and an affidavit of Houston Distributing, Ltd., evidencing receipt of a check in the amount of \$63.72.00 which Drawee, Chase Bank, of Houston, Texas dishonored.

Exhibit TABC 4 is an affidavit of Brian L. Guenther, Licensing Department Director, evidencing that Permit Nos. P-203842 and E-203843 were issued to Roscoe Hunter, doing business as Hunters Package Store No. 1, by the Texas Alcoholic Beverage Commission and evidencing Permittee's history of violations. The mailing address of Roscoe Hunter is 801 E. 33rd Street, Houston, Texas 77022.

The ALJ took official notice of the Court's file which shows the hearing was scheduled October 28, 1999. Notice was properly sent via certified mail on September 15, 1999.

## III. RECOMMENDATION

Because the Permittee made payment for beer in its original containers and packages with a dishonored check 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. Texas Alcoholic Beverage Commission issued Permit Nos.-203842 and E-203843 to Roscoe Hunter, doing business as Hunters Package Store No. 1. The mailing address of Roscoe Hunter is 801 E. 33rd Street, Houston, Texas 77022.
2. On September 15, 1999, Staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice as shown by the signed attached green card.

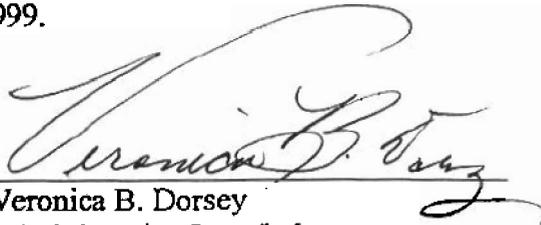
3. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing. Veronica B. Dorsey was the Administrative Law Judge who conducted the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee made payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b) of the code. The violation occurred on or about February 26, 1999 when Permittee, its agent, servant, or employee gave a check for \$63.72 to Houston Distributing Ltd., of Houston, Texas. On or about March 5, 1999, the check was returned by Drawee, Chase Bank, of Houston, Texas for insufficient funds.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
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 a dishonored check in violation of Section 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 2<sup>nd</sup> day of November, 1999.

  
Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings