

DOCKET NO. 581911

IN RE DOUA HASSAN ALTAL	§	BEFORE THE
D/B/A CHAMPION'S MART	§	
PERMIT NO. BQ413001	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1870)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of August, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ed Shipper. The hearing convened on October 28, 1999 and adjourned October 28, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 7, 2000. This Proposal For Decision 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 No. BQ413001 is herein **SUSPENDED**.

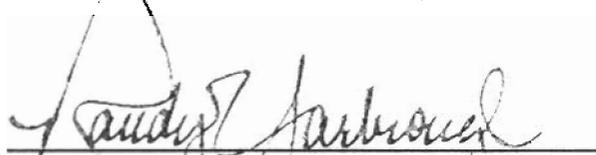
IT IS THEREFORE ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,250.00** on or before the **6th day of October, 2000**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **fifteen (15) days, beginning at 12:01 A.M. on the 13th day of October, 2000**.

This Order will become final and enforceable on **August 28, 2000**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 7th day of August, 2000.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Ed Shipper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

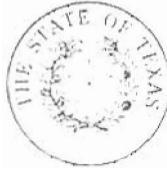
Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Doua Hassan Altal
RESPONDENT
6424 FM 1960 W
Houston, Texas 77069
CERTIFIED MAIL/RRR NO. Z 473 041 947

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Compliance Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 7, 2000

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

CERTIFIED MAIL NO. P 332 127 606
RETURN RECEIPT REQUESTED

**RE: Docket No. 458-99-1870; TABC vs. Douhassan Altal d/b/a Champion's Mart
Permit No. BQ413001 (TABC Case No. 581911)**

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 Doua Hassan Altal d/b/a Champion Mart. For reasons discussed in the Proposal for Decision, I have recommended that the license be suspended for a period of 15 days or that Permittee should be allowed to pay a \$150.00 civil penalty per day of violation in lieu of suspension of its permits and licenses.

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, appearing to read "Ed Shipper".

Ed Shipper
Administrative Law Judge

ES/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**
Doua Hassan Altal, 6424 FM 1960 W, Houston, TX 77069-
VIA CERTIFIED MAIL NO. P 332 127 607, RETURN RECEIPT REQUESTED
Holly Wise, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**



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

DOCKET NO. 458-99-1870

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.S.	§	OF
	§	
DOUA HASSAN ALTAL	§	
D/B/A CHAMPION'S MART	§	
PERMIT NO. BQ-413001	§	ADMINISTRATIVE HEARINGS
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 581911)	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Doua Hassan Altal d/b/a Champion's Mart (the Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original container and packages with dishonored checks in violation of Section 61.73(b) of the code. The violations are as follows:

1. On or about September 7, 1998, Permittee, its agent, servant, or employee gave a check for \$258.39 to Silver Eagle Distributors, Inc, of Houston, Texas. On or about September 30, 1998, Drawee, First Bank of Houston, Texas returned the check for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
2. On or about August 31, 1998, Permittee, its agent, servant, or employee gave a check for \$366.98 to Silver Eagle Distributing, Inc., of Houston, Texas. On or about September 18, 1998, Drawee, First Bank of Houston, Texas returned the check 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 15 days or that Permittee be allowed to pay a fine of \$150.00 civil penalty per day of violation 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). 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 checks to a distributor that were subsequently returned for insufficient funds.

The staff attorney introduced the following four exhibits into evidence:

Exhibit TABC 1 is the 18(c) letter to Permittee, setting out the alleged violations.

Exhibit TABC 2 is the Notice of Hearing Letter sent to Doua Hassan Altal, with the attached green card showing Permittee received notice.

Exhibit TABC 3 contains copies of affidavits of Silver Eagle Distributors, Inc. The affidavits evidence receipt of returned checks in the amounts of \$258.39 and \$366.98, which drawee, First Bank of Houston, Texas dishonored.

Exhibit TABC 4 is an affidavit of Brian L. Guenther, Licensing Department Director, evidencing that Permit No. BQ-413001 was issued to Doua Hassan Altal d/b/a Champion's Mart, by the Texas Alcoholic Beverage Commission and evidencing Permittee's history of violations. The mailing address of Doua Hassan Altal is 6424 FM 1960 West, Houston Texas.

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 14, 1999.

III. RECOMMENDATION

Because the Permittee made payment for beer in its 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 fifteen days, or in lieu of suspension, Permittee should pay a fine of \$150.00 per day of violation.

IV. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission issued Permit No. BQ-413001 to Doua Hassan Altal, d/b/a Champion's Mart. Permittee's address is 6424 FM 1960 West, Houston, Texas.

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 attached green card which bears the signature of Permittee or his agent.

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.
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 dishonored checks in violation of Section 61.73(b) of the code. A violation occurred on or about September 7, 1998, when Permittee, its agent, servant, or employee gave a check for \$258.39 to Silver Eagle Distributors, Inc. of Houston, Texas. On or about September 30, 1998, the check was returned by Drawee, First Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

Another violation occurred on or about August 31, 1998, when Permittee, its agent, servant, or employee gave a check for \$366.98 to Silver Eagle Distributors, Inc., of Houston, Texas. On or about September 18, 1998, the check was returned by Drawee, First 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. §§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 dishonored checks in violation of Section 61.73(b).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a fifteen-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 \$150.00 civil penalty per day of violation in lieu of suspension of its permits and licenses.

SIGNED this _____ day of July, 2000.

A handwritten signature in black ink, appearing to read 'Ed Shipper', is written over a horizontal line. The signature is contained within a light gray rectangular box.

Ed Shipper
Administrative Law Judge
State Office of Administrative Hearings