

DOCKET NO. 590806

|                               |   |                     |
|-------------------------------|---|---------------------|
| IN RE ANDREW HILL JR.         | § | BEFORE THE          |
| D/B/A ANDY'S BAR-B-QUE        | § |                     |
| PERMIT NO. BG250548           | § |                     |
|                               | § | TEXAS ALCOHOLIC     |
|                               | § |                     |
| HARRIS COUNTY, TEXAS          | § |                     |
| (SOAH DOCKET NO. 458-02-0087) | § | BEVERAGE COMMISSION |

**O R D E R**

**CAME ON FOR CONSIDERATION** this 10th day of January, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on November 28, 2001, and adjourned November 28, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 30, 2001. 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. BG250548 is herein **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 20th day of March, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 27th day of March, 2002.

**This Order will become final and enforceable on JANUARY 31, 2002**, unless a Motion for Rehearing is filed before that date.

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

WITNESS MY HAND AND SEAL OF OFFICE on this the 10th day of January, 2002.

On Behalf of the Administrator,

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

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

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

Andrew Hill, Jr.  
**RESPONDENT**  
d/b/a Andy's Bar-B-Que  
2601 24<sup>th</sup> Street  
Dickinson, Tx. 77539  
**CERTIFIED MAIL NO. 7000 1530 0003 1929 1085**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Compliance Division  
Licensing Division  
Houston District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 30, 2001

Mr. Rolando Garza, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731



**RE: Docket No. 458-02-0087; TABC vs. Andrew Hill, Jr. d/b/a Andy's Bar-B-Que;  
Permit No. BG250548**

Dear Mr. Garza:

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 Andrew Hill, Jr. d/b/a/ Andy's Bar-B-Que, (Respondent). For reasons discussed in the Proposal for Decision, this proposal recommends that Respondent's license be suspended for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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 that reads "Don Smith".

Don Smith  
Administrative Law Judge

DS\mc  
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC - VIA FACSIMILE  
Andrew Hill, Jr., d/b/a Andy's Bar-B-Que, 2601 24<sup>th</sup> Street, Dickinson, Texas 77539 - VIA REGULAR MAIL

DOCKET NO. 458-02-0087

|  |   |                         |
|--|---|-------------------------|
| TEXAS ALCOHOLIC BEVERAGE<br>COMMISSION   | § | BEFORE THE STATE        |
|  | § |                         |
| V.S.   | § |                         |
|  | § |                         |
| ANDREW HILL JR.<br>D/B/A ANDY'S BAR-B-QUE<br>PERMIT NO. BG250548<br>HARRIS COUNTY, TEXAS<br>(TABC CASE NO. 590806) | § | OFFICE OF               |
|  | § |                         |
|  | § |                         |
|  | § |                         |
|  | § | ADMINISTRATIVE HEARINGS |

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Andrew Hill Jr. d/b/a Andy's Bar-B-Que (the Permittee) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31. TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and §102.31 of the code. The violations occurred on or about May 16, 2000, September 15, 2000, and September 26, 2000, when Permittee, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31.

The Permittee did not make an appearance at the hearing on November 28, 2001. 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 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on November 28, 2001, 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 and Wendy To. 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 two exhibits into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenther, Licensing Department Director, that the Permit No. BG250548 was issued to Andrew Hill Jr., doing business as Andy's Bar-B-Que, by the Texas Alcoholic Beverage Commission. A Successor-In-Interest was submitted on the 4<sup>th</sup> day of May, 2001, granting successor-in-interest privileges to Adell Marie Hill due to the death of Andrew Hill Jr. The mailing address of Andy's Bar-B-Que is 2601 24<sup>th</sup> Street, Dickinson, Texas 77539. Attached to the affidavit is the permit and violation history.

Exhibit TABC 2 is the Notice of Hearing to Andrew Hill Jr. with attached green card showing the notice was sent to Permittee on October 23, 2001, not deliverable, and unable to forward.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled for November 28, 2001 in the Notice of Hearing. Notice was properly served on October 23, 2001. The Hearing convened on November 28, 2001, and Permittee did not appear.

### III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "**if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**" TABC rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's last known address, as shown by the agency's records. Therefore, the allegations that Permittee made payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and Section 102.31 of the code is admitted as true. The relief sought should be granted, and the license should be suspended for a period of ten days, or in lieu of suspension, Permittee should pay a fine of \$1,500.00.

### IV. FINDINGS OF FACT

1. Permit No. BG250548 was issued to Andrew Hill Jr., doing business as Andy's Bar-B-Que, by the Texas Alcoholic Beverage Commission. The mailing address of Andy's Bar-B-Que is 2601 24<sup>th</sup> Street, Dickinson, Texas 77539.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee by certified or registered mail, return receipt requested, and mailed the notice to Permittee's last known address as shown in the agency's records.
3. The hearing on the merits was held on November 28, 2001, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon and Wendy To. 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

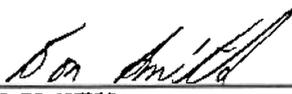
admitted as follows:

Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and §102.31 of the code. The violations occurred on or about May 16, 2000, September 15, 2000, and September 26, 2000, when Permittee, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31.

## 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) and §102.31 by making payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b) and Section 102.31.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten 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 \$1,500.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 30 day of November, 2001.

  
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DON SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS