

DOCKET NO. 593937

IN RE MONTICELLO III GROUP, INC.	§	BEFORE THE
D/B/A CARLSBAD TAVERN	§	
PERMIT NOS. MB401140, LB401141	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0030)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6th day of December, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on October 30, 2001, and adjourned October 30, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 12, 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 Nos. MB401140 and LB401141 are herein **SUSPENDED**.

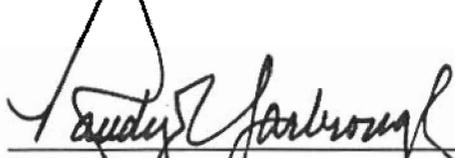
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$3,000.00 on or before the 6th day of February, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of twenty (20) days, beginning at 12:01 A.M. on the 13th day of February, 2002.

**This Order will become final and enforceable on December 27, 2001**, 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 6th day of December, 2001.

On Behalf of the Administrator,



\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Leah Davis Bates  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (210) 308-6854**

Monticello III Group, Inc.  
**RESPONDENT**  
d/b/a Carlsbad Tavern  
11407 West Avenue  
San Antonio, Texas 78213  
**CERTIFIED MAIL NO. 7000 1530 0003 1929 0439**  
**& VIA REGULAR MAIL**

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

Licensing Division  
San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 12, 2001

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



RE: Docket No. 458-02-0030, Texas Alcoholic Beverage Commission vs.  
Monticello III Group, Inc., d/b/a Carlsbad Tavern,  
TABC Case No. 593937

Dear Administrator:

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 Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Monticello III Group, Inc., d/b/a Carlsbad Tavern. For reasons discussed in the proposal, I recommend that the Permittee's permits be suspended for twenty days or that Permittee pay a fine of \$3,000.00 in lieu of suspension.

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 cursive script that reads "Leah Davis Bates".

Leah Davis Bates  
Administrative Law Judge

LDB:msw  
Enclosure

xc: Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission -  
**FACSIMILE**, 512-206-3498  
Monticello III Groups, Inc. Respondent, USPS 11407 West Avenue, San Antonio,  
Tx 78213.

Castle Hills Executive Center  
1015 Jackson Keller, Suite 102B ♦ San Antonio, Texas 78213  
(210) 308-6681 Fax (210) 308-6854

DOCKET NO. 458-02-0030

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
V.	§	
MONTICELLO III GROUP, INC.	§	OF
D/B/A CARLSBAD TAVERN	§	
PERMIT NOS. MB-401140 & LB-401141	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 593937)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this enforcement action against Monticello III Group, Inc., d/b/a Carlsbad Tavern (the Permittee) for paying for beer with a check for which funds were insufficient. The Permittee did not appear at the hearing. The Staff recommended that Permittee's permits be suspended for twenty days or that Permittee pay a fine of \$3,000.00 in lieu of suspension. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation.

**I. Procedural History, Notice, and Jurisdiction**

The hearing in this matter convened on October 30, 2001, before ALJ Leah Davis Bates, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Permittee did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true.

The Texas Alcoholic Beverage Commission (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 the notice 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. The Allegations and Applicable Statutory Provisions**

The allegations in this proceeding asserted the Permittee, its agent, or employee paid beer distributors for beer with checks that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. (the Code) § 61.73(b) for a permittee to give a beer distributor a check for payment of beer which is dishonored when presented

for payment. Such a violation may be punished by cancellation or a maximum 60-day suspension of a permit.

### **III. Checks for Insufficient Funds**

As described in the Findings of Fact, the Permittee violated the Code § 61.73(b) by writing checks for beer that were subsequently returned for insufficient funds. The Permittee, its agent, servant, or employee wrote the checks. Pursuant to the Code § 1.04(11), the Permittee is responsible for its own acts and the acts of its agents.

### **IV. Recommendation**

Penalties for the violations of the Code § 61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

In this case, Staff recommended a twenty-day suspension based upon numerous prior cash law violations and that the present Notice of Hearing alleges nine separate instances of cash law violations; the ALJ agrees with the recommendation. Pursuant to the Code § 11.64, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150.00 nor more than \$25,000.00 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty. The ALJ agrees with Staff's recommendation.

### **V. Findings of Fact**

1. Monticello III Group, Inc. d/b/a Carlsbad Tavern (the Permittee), located at 11407 West Avenue, San Antonio, Bexar County, Texas 78213, holds Permit Nos. MB-401140 and LB-401141.
2. Permittee received proper and timely notice of the hearing from the staff of the Texas Alcoholic Beverage Commission (Staff) in a notice of hearing, dated October 2, 2001. The notice was properly sent to Permittee at the address provided in Finding of Fact No. 1. The Permittee received the notice as shown by the signed return receipt date of October 3, 2001.
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in 10-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

5. The hearing was convened on October 30, 2001, at 9:00 a.m. at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Permittee did not appear and was not represented at the hearing. Gayle Gordon, Assistant Attorney General, represented the Staff.
6. On or about February 2, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$323.00 to BudCo., Ltd., of San Antonio, Texas. On or about February 8, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
7. On or about March 2, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$317.10 to Halo Distributing Company, of San Antonio, Texas. On or about March 6, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
8. On or about March 7, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$237.50 to BudCo., Ltd., of San Antonio, Texas. On or about March 13, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
9. On or about May 9, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$329.00 to BudCo., Ltd., of San Antonio, Texas. On or about May 15, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
10. On or about May 21, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$273.00 to BudCo., Ltd., of San Antonio, Texas. On or about May 25, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
11. On or about May 26, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$51.00 to BudCo., Ltd., of San Antonio, Texas. On or about June 1, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
12. On or about June 1, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$337.80 to BudCo., Ltd., of San Antonio, Texas. On or about June 8, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
13. On or about June 4, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$340.40 to BudCo., Ltd., of San Antonio, Texas. On or about June 8, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.
14. On or about September 3, 2001, Permittee, its agent, servant, or employee gave a check written in the amount of \$124.80 to Halo Distributing Company, of San

Antonio, Texas. On or about September 7, 2001, the check was returned by Drawee, Frost National Bank, of San Antonio, Texas for insufficient funds.

## VI. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 61.73.
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. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d), 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. The Permittee, its agent, servant, or employee gave a check in payment for beer, which was dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. Based on the foregoing Findings and Conclusions, a twenty-day suspension of the permits is warranted pursuant to 16 TEX. ADMIN. CODE § 37.60.
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$3000.00 civil penalty in lieu of suspension of its permits.

SIGNED this 12<sup>th</sup> day of November, 2001.

  
LEAH DAVIS BATES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS