

DOCKET NO. 458-04-0367

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
vs	§	OF
	§	
CANNING DISTRIBUTORS INC.	§	
T.A.B.C. CASE NO. 605911	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this disciplinary action against Canning Distributors Inc. (Respondent), alleging that Respondent has failed to pay franchise taxes to the state and is no longer a corporation in good standing in the State of Texas. Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) finds Staff has proven the allegations and recommends cancellation of Respondent's permit based on the evidence introduced by Staff.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were sufficient. These matters are set out in the findings of fact and conclusions of law without further discussion here.

On September 24, 2003, Staff issued a notice of hearing to Respondent at its designated mailing address of record reflected on Respondent's permit and renewal application: 1021 North Central Expressway, Plano, Texas, 75075-8806. The notice was sent by certified mail (7001 2510 0003 8687 1434), return receipt requested. A U.S. Postal Service Track and Confirmation sheet indicated that the notice was "undeliverable as addressed" on September 26, 2003. At the time of the hearing, Staff had not received a return receipt card for the notice of hearing, nor had the notice itself been returned.



On October 10, 2003, a hearing was held before ALJ Brenda Coleman, State Office of Administrative Hearings (SOAH), at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. Mr. Griffith represented to the ALJ that he had been verbally informed by the taxing authority that Respondent had closed its business. Evidence and argument were heard. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to TEX. ALC. BEV. CODE ANN. § 11.61(b)(5), the Texas Alcoholic Beverage Commission (Commission) or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by the code, by a rule of the commission or by Chapter 183 of the Tax Code.

III. EVIDENCE

Staff presented evidence that Wine and Beer Retailer's Off-Premise Permit BQ312263, was issued to Respondent on November 10, 1995, and continually renewed by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 6465 East Mockingbird Lane, Suite 354, Dallas, Dallas County, Texas. On November 26, 2002, Jeffery Alan Anon, Respondent's president, executed a renewal application for the upcoming year for the permit. The designated mailing address of record reflected on Respondent's permit and renewal application is 1021 North Central Expressway, Plano, Texas 75075-8806.

By letter dated December 17, 2002, Amy Harrison, Assistant Director of the TABC Licenses and Permits Division, informed Respondent that its corporate privileges were forfeited for failure to pay franchise taxes. She also stated that in order to obtain a permit to sell alcoholic beverages, Respondent was required to be a corporation chartered in Texas and in compliance with the corporate laws of Texas. The letter was addressed to Respondent at its designated mailing address.

The letter advised that Respondent had until December 27, 2002, to submit evidence that it had made a considerable effort to come into compliance with the corporate laws. The letter also advised that if Respondent's corporate privileges had not been reinstated after some length of time, the TABC would seek to cancel its permit.

Staff also presented evidence that between January 3, 2003, and February 28, 2003, Ms. Harrison made several inquiries into the status of Respondent's corporate charter. On three occasions between January 27, 2003, and February 4, 2003, Ms. Harrison engaged in telephone conversations with Mr. Anon, in which he advised he was checking on the corporate status of Canning Distributors Inc.

At the hearing, David Doggett, an agent and regulatory officer for the Commission, identified Staff Exhibit Five as a true and accurate copy of a government document relied upon by the TABC to determine the corporate standing and charter of a permit holder. The document indicates that during the permit period, between December 17, 2002, and February 28, 2003, Respondent's charter was forfeited for failure to pay franchise taxes, and Respondent's corporate status was not in good standing. Therefore, pursuant to TABC provisions, Respondent's permit should be canceled.

IV. DISCUSSION

Staff issued appropriate notices of the allegations and the hearing. Respondent's action of closing its premises located at 6465 East Mockingbird Lane, Suite 354, Dallas, Dallas County, Texas, without leaving any forwarding address on file with the U.S. Postal Service precluded it from receiving actual notice of the hearing. Staff should be entitled to rely on the accuracy of the information provided by Respondent in its permit and renewal application. The steps taken by Staff to provide Respondent with notice of the hearing were reasonable and legally sufficient in this instance.

Based on the evidence, the ALJ finds that Petitioner met its burden of proof. Between December 17, 2002, and February 28, 2003, Respondent was indebted to the state for franchise taxes

during the indicated permit period. Respondent was not a corporation in good standing in the State of Texas during the permit period. The ALJ, therefore, recommends that Staff's request be granted, and Respondent's permit be canceled for cause.

PROPOSED FINDINGS OF FACT

1. Canning Distributors Inc. (Respondent), has held a Wine and Beer Retailer's Off-Premise Permit, BQ312263 (issued by the Texas Alcoholic Beverage Commission (TABC) on November 10, 1995) for the premises located at 6465 East Mockingbird Lane, Suite 354, Dallas, Dallas County, Texas.
2. On November 26, 2002, Respondent executed a renewal application for the upcoming year for the permit.
3. The designated mailing address of record reflected on Respondent's permit and renewal application is 1021 North Central Expressway, Plano, Texas, 75075-8806.
4. On September 24, 2003, Staff issued a notice of hearing to Respondent at its designated mailing address of record. The notice 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 statement of the matters asserted.
5. The notice of hearing was sent certified mail (7001 2510 0003 8687 1434), return receipt requested but was designated as "undeliverable as addressed" by the U.S. Postal Service.
6. Respondent failed to pay franchise taxes to the state during the permit period and was not a corporation in good standing in the State of Texas during the permit period.
7. On October 10, 2003, a hearing was convened before ALJ Brenda Coleman at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record was closed on that date.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 § 11.61.

2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based on Proposed Finding of Fact Nos. 3 through 5, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE § 155.27 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based on Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(5).
5. Based upon Proposed Conclusion of Law No. 4, Respondent's permit should be canceled.

SIGNED December 8, 2003.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 605911

IN RE CANNING DISTRIBUTORS INC.	§	BEFORE THE
D/B/A CANNING DISTRIBUTORS INC.	§	
PERMIT NO. BQ312263	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-0367)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of December 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on October 10, 2003, and adjourned on October 10, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 8, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. 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.

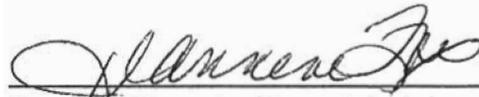
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ312263 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on January 20, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 30th day of December, 2003.

On Behalf of the Administrator,



Jeannere Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

**CANNING DISTRIBUTORS INC.
D/B/A CANNING DISTRIBUTORS INC.
RESPONDENT
1021 N Central Expy.
Plano, TX 75075-8806
CERTIFIED MAIL/RRR NO. 7001 2510 0007 0098 6318**

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office