

DOCKET NO. 608473

IN RE AVALON BUSINESS CORPORATION	§	BEFORE THE
D/B/A LITTLE BUDDY #5	§	
LICENSE NO. BF487553	§	
	§	TEXAS ALCOHOLIC
	§	
BRAZORIA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-5492)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of August, 2004, 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 June 25, 2004 and adjourned June 25, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 16, 2004. The 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. 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 License No. BF487553 is herein **SUSPENDED**.

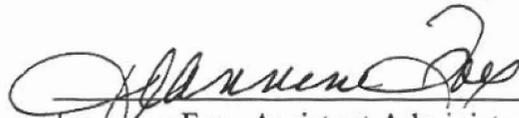
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 15th day of September, 2004, all rights and privileges under the above described license will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 22nd day of September, 2004.

This Order will become final and enforceable on AUGUST 26, 2004, unless a Motion for Reharing 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.

SIGNED on this the 5th day of August, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

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

Avalon Business Corporation
d/b/a Little Buddy #5
RESPONDENT
101 E. Main
Clute, TX. 77531
CERTIFIED MAIL NO. 7000 1530 0003 1902 5963

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Compliance Division
Victoria District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 608473 REGISTER NUMBER:
NAME: Avalon Business Corporation TRADENAME: Little Buddy #5
ADDRESS: 101 E. Main, Clute, Tx. 77531
DATE DUE: September 15, 2004
PERMITS OR LICENSES: BF487553
AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 15TH DAY OF SEPTEMBER, 2004, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE
	§	
V.S.	§	
	§	OFFICE OF
AVALON BUSINESS CORPORATION	§	
D/B/A LITTLE BUDDY #5	§	
PERMIT NO. BF487553	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 608473)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Avalon Business Corporation d/b/a Little Buddy #5 (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.

The Permittee did not make an appearance at the hearing on June 25, 2004. This Proposal for Decision finds the allegations 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.

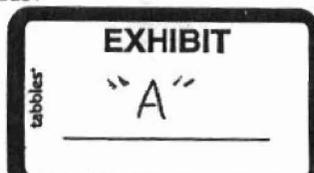
I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on June 25, 2004, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The Staff was represented by its counsel, Gayle Gordon. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact without further discussion.

TABC and SOAH 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 TABC 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 payment. 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 three exhibits into evidence:

Exhibit TABC 1 is an affidavit of Amy Harrison, Licensing Department Director, that the Permit No. BF487553 was issued to Avalon Business Corporation, doing business as Little Buddy #5, by the Texas Alcoholic Beverage Commission. The mailing address of Avalon Business Corporation is 101 E. Main, Clute, Texas 77531. Attached to the affidavit is the permit and violation history.

Exhibit TABC 2 is an affidavit of Buck Fuller, Compliance Department Director, that Del Papa Distributing Co., Inc. and Faust Distributing Company filed affidavits that Avalon Business Corporation, doing business as Little Buddy #5, 101 East Main, Clute, Brazoria County, Texas, issued insufficient checks for the payment of beer. Attached to the affidavit is a true and correct copy of the affidavits and copy of the insufficient checks.

Exhibit TABC 3 is the proof of service to Avalon Business Corporation showing Permittee received the notice of hearing and Petitioner's First Amended Motion to Appear by Telephone.

The ALJ took judicial notice of the SOAH file which shows the hearing was scheduled for June 25, 2004. Notice was properly served on June 3, 2004, and received by Permittee on June 5, 2004. The hearing convened on June 25, 2004, and Permittee did not appear.

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) and Section 102.31 of the Alcoholic Beverage Code, 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. BF487553 was issued to Avalon Business Corporation, doing business as Little Buddy #5, by the Texas Alcoholic Beverage Commission. The mailing address of Avalon Business Corporation is 101 East Main, Clute, Texas 77531.
2. The Staff sent a notice of hearing regarding the violation of the Texas Alcoholic Beverage Code (the Code) to the Permittee and Permittee received the Notice as shown by a copy of the green card
3. The hearing on the merits was held on June 25, 2004, 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.

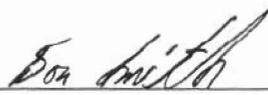
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee made 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 November 12, 2003, January 13, 2004, and February 18, 2004, 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.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten day suspension of the permit and license is warranted.
7. 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 permit and license.

SIGNED July 16, 2004.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS