

DOCKET NO. 609968

IN RE NEW BLESSINGS INC. § -- BEFORE THE
D/B/A AM-PM MINI MART II §
PERMIT/LICENSE NO. BF299560 § TEXAS ALCOHOLIC
§
TARRANT COUNTY, TEXAS §
§ BEVERAGE COMMISSION
(SOAH DOCKET NO. 458-04-7737) §

O R D E R

CAME ON FOR CONSIDERATION this 18th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge. The hearing convened on September 17, 2004, and adjourned on September 17, 2004. The Administrative Law Judge Monica Garza made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 21, 2004. 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. 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.

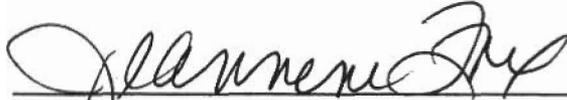
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the above described permits and/or licenses are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on November 8, 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 and by mail as indicated below.

SIGNED on this 18th day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Monica Garza
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX NO. 817/377-3706

NEW BLESSINGS INC.
D/B/A AM-PM MINI MART
RESPONDENT
2721 N. COLLINS
ARLINGTON, TX 76006
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 1811

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Tarrant County Tax Assessor-Collector's Office

Licensing Division

Fort Worth District Office

SOAH DOCKET NO. 458-04-7737
TABC DOCKET NO. 609968

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

§
§
§

BEFORE THE STATE OFFICE

V.

§
§
§
§
§
§

OF

NEW BLESSINGS, INC.
D/B/A AM-PM MINI MART II,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against New Blessings, Inc. d/b/a AM-PM Mini Mart II (Respondent), alleging that Respondent failed to pay delinquent ad valorem taxes to Tarrant County, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested cancellation of Respondent's license. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 61.36(d). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On July 30, 2004, Petitioner issued its notice of hearing, via certified mail, return receipt requested, directed to Respondent at 2721 N. Collins, Arlington, Texas 76006. This notice was received by Respondent on August 2, 2004, as evidenced by the signature on the return receipt. 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 short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice also contained the following language in 12-point 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.

On September 17, 2004, a hearing convened before SOAH ALJ Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on September 17, 2004.

II. DISCUSSION

Based on Respondent's failure to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations contained in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

III. PROPOSED FINDINGS OF FACT

1. New Blessings, Inc. d/b/a AM-PM Mini Mart II (Respondent) holds a Beer Retailer's Off-Premise License for the premises located at 2721 N. Collins, Arlington, Tarrant County, Texas.
2. Respondent has failed to pay delinquent ad valorem taxes to Tarrant County, Texas.
3. On July 30, 2004, the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) issued its notice of hearing, via certified mail, return receipt requested, directed to Respondent at 2721 N. Collins, Arlington, Texas 76006.

4. This notice was received by Respondent on August 2, 2004.
5. 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 short, plain statement of the matters asserted.
6. The notice also contained the following language in 12-point 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.
7. On September 17, 2004, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on September 17, 2004.

IV. PROPOSED CONCLUSIONS OF LAW

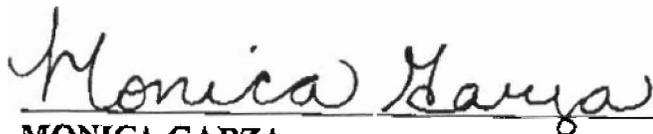
1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and § 61.36(d).
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052
4. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. § 61.36(d).
5. Respondent's license should be canceled. TEX. ALCO. BEV. CODE ANN. § 61.36(d).

SOAH Docket No. 458-04-7737

Proposal for Decision

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SIGNED September 21, 2004.

A handwritten signature in cursive script that reads "Monica Garza". The signature is written in black ink on a white background.

MONICA GARZA

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



SEP 21 2004 ✓

Shelia Bailey Taylor
Chief Administrative Law Judge

September 21, 2004

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

New Blessings, Inc.
d/b/a AM-PM Mini Mart II
2721 N. Collins
Arlington, Texas 76006

VIA REGULAR MAIL

RE: Docket No. 458-04-7737; Texas Alcoholic Beverage Commission vs New Blessings, Inc.
d/b/a AM-PM Mini Mart II (TABC Case No. 609968)

Dear Mr. Steen:

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 Timothy Griffin, attorney for Texas Alcoholic Beverage Commission, and to New Blessings, Inc. d/b/a AM-PM Mini Mart II, Respondent. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against New Blessings, Inc. d/b/a AM-PM Mini Mart II (Respondent), alleging that Respondent failed to pay delinquent ad valorem taxes to Tarrant County, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested cancellation of Respondent's license. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) agrees with this recommendation.

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Monica Garza
Administrative Law Judge

attachments

6777 Camp Bowie Blvd., Suite 400 ♦ Fort Worth, Texas 76116
(817) 731-1733 Fax (817) 377-3706
<http://www.suah.state.tx.us>