

DOCKET NO. 610007

IN RE	§	BEFORE THE TEXAS
MFC BUSINESS CORPORATION	§	
D/B/A ROSENBERG CHEVRON	§	
PERMIT NO. Q 448709	§	ALCOHOLIC
LICENSE NO. BF448710	§	
	§	
FORT BEND COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6095)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of September, 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 July 30, 2004 and adjourned July 30, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 10, 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 Permit No. Q 448709 and License No. BF448710 are herein **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the 3rd day of November, 2004, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of three (3) days, beginning at 12:01 A.M. on the 10th day of November, 2004.

This Order will become final and enforceable on **SEPTEMBER 29, 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 the 7th day of September, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/v/

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

MFC Business Corporation
d/b/a Rosenberg Chevron
RESPONDENT
1804 Ave H
Rosenberg, TX. 77471
CERTIFIED MAIL NO. 7000 1530 0003 1902 6342

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 610007

REGISTER NUMBER:

NAME: MFC Business Corp.

TRADENAME: Rosenberg Chevron

ADDRESS: 1804 Ave. H, Rosenberg, Tx. 77471

DATE DUE: November 3, 2004

PERMITS OR LICENSES: Q 448709 & BF448710

AMOUNT OF PENALTY: \$450.00

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 3RD DAY OF NOVEMBER, 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

Overnight Delivery Address: 5806 Mesa Dr., 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.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 10, 2004

FILED
AUG 10 2004
FBI

Ms. Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-04-6095; *TABC vs. MFC Business Corporation d/b/a Rosenberg Chevron*

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Don Smith".

Don Smith
Administrative Law Judge

DS\mc
Enclosure

xc: Gayle Gordon, *TABC*, P.O. Box 13127, Austin, Texas 78711 - VIA REGULAR MAIL
MFC Business Corporation d/b/a Rosenberg Chevron, 1804 Ave H, Rosenberg, Texas 77471 - VIA REGULAR MAIL

DOCKET NO. 458-04-6095

TEXAS ALCOHOLIC BEVERAGE COMMISSION § BEFORE THE STATE OFFICE
§
§
V.S. § OF
§
MFC BUSINESS CORPORATION §
D/B/A ROSENBERG CHEVRON §
PERMIT NO. Q-448709 §
LICENSE NO. BF448710 §
FORT BEND COUNTY, TEXAS §
(TABC CASE NO. 610007) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against MFC Business Corporation d/b/a Rosenberg Chevron (Permittee) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31. TABC alleged that Permittee made a payment for beer in its original containers and packages with a dishonored check.

The Permittee did not make an appearance at the hearing on July 30, 2004. This Proposal for Decision finds the allegations to be proven and adopts the recommendation of the Staff that the permit and license be suspended for a period of three days or that Permittee be allowed to pay a fine of \$450.00 in lieu of suspension.

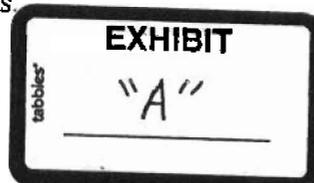
I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on July 30, 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 Army Harrison, Licensing Department Director, that the Permit No. Q-448709 and License No. BF-448710 were issued to MFC Business Corporation, doing business as Rosenberg Chevron, by the Texas Alcoholic Beverage Commission. The mailing address of MFC Business Corporation is 1804 Ave H, Rosenberg, Texas 77471. Attached to the affidavit is the permit and violation history.

Exhibit TABC 2 is an affidavit of Buck Fuller, Compliance Department Director, that Silver Eagle Distributors, L.P. filed an affidavit that MFC Business Corporation, doing business as Rosenberg Chevron, 1804 Ave H, Rosenberg, Texas, issued an insufficient check for the payment of beer in its original containers and packages. Attached to the affidavit is a true and correct copy of the affidavit and copy of the insufficient check.

Exhibit TABC 3 is the proof of service to MFC Business Corporation showing Permittee refused receipt of the notice of hearing and of staff's motion to appear by telephone.

The ALJ took judicial notice of the SOAH file which shows the hearing was scheduled for June 25, 2004. The parties filed a joint Motion for Continuance on June 24, 2004, and the hearing was continued to July 30, 2004. On June 25, 2004, Petitioner was properly served with the Order re-setting the hearing to July 30, 2004. The hearing convened on July 30, 2004, and Permittee did not appear.

III. RECOMMENDATION

Because the Permittee made payment for beer in its original containers and packages with a dishonored check in violation of §61.73(b) and §102.31 of the Alcoholic Beverage Code, the license should be suspended for a period of three days, or in lieu of suspension, Permittee should pay a fine of 450.00.

IV. FINDINGS OF FACT

1. Permit No. Q-448709 and License No. BF448710 were issued to MFC Business Corporation, doing business as Rosenberg Chevron, by the Texas Alcoholic Beverage Commission. The mailing address of MFC Business Corporation is 1804 Ave H, Rosenberg Texas 77471.
2. The Staff sent a notice of hearing regarding the violation of the Texas Alcoholic Beverage Code (the Code) to the Permittee.
3. TABC and Permittee requested a continuance, and the hearing was re-set to July 30, 2004.
4. On June 25, 2004, the Order re-setting the hearing to July 30, 2004 was deposited in the mail to Permittee at Permittee's mailing address.

5. The hearing on the merits was held on July 30, 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.
6. The hearing proceeded on a default basis, and the factual allegations are deemed admitted as follows:

Permittee made a payment for beer in its original containers and packages with a dishonored check in violation of §61.73(b) and §102.31 of the Code. The violation occurred on or about March 2, 2004, when Permittee, its agent, servant, or employee gave a check or draft for the purchase of beer that was 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 and Order re-setting 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 three-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 \$450.00 civil penalty in lieu of suspension of its permit and license.

SIGNED August 10, 2004.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS