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DOCKET NO. 613799

IN RE DEWAN INVESTMENTS, INC. § BEFORE THE
D/B/A HIGHWAY 80 TEXACO §
PERMIT/LICENSE NOS. Q-527852, §
BF527853 § TEXAS ALCOHOLIC
§
TARRANT COUNTY, TEXAS §
(SOAH DOCKET NO. 458-05-5277) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of September, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on June 17, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 14, 2005. 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.

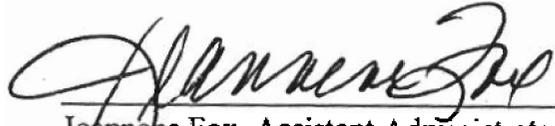
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and licenses be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on October 21, 2005 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 this 30th day of September, 2005

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 731-1964

DEWAN INVESTMENTS, INC.
d/b/a HIGHWAY 80 TEXACO
RESPONDENT
6800 Camp Bowie West
Fort Worth, Texas 76116-7127
VIA CM/RRR NO. 7005 0390 0005 7550 4433

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

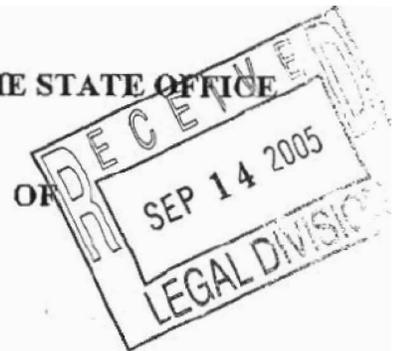
Licensing Division

Fort Worth District Office

DOCKET NO. 458-05-5277

TEXAS ALCOHOLIC BEVERAGE §
 COMMISSION, Petitioner §
 §
 V. §
 §
 DEWAN INVESTMENTS, INC. D/B/A §
 HIGHWAY 80 TEXACO, Respondent §
 TARRANT COUNTY, TEXAS §
 (TABC CASE NO. 613799) §

BEFORE THE STATE OFFICE



ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

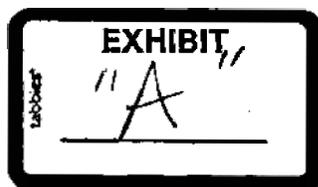
The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Dewan Investments, Inc. d/b/a Highway 80 Texaco (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County in violation of the Texas Alcoholic Beverage Code (the Code).¹ TABC Staff sought cancellation of Respondent's permits.

The ALJ finds the evidence was sufficient to establish that Respondent failed to pay ad valorem taxes to taxing authorities in Tarrant County. As a result, the ALJ recommends that Respondent permits be cancelled.

¹ The commission or administrator may cancel...a permit for the retail sale or service of alcoholic beverages...if it finds that the permit holder...has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. TEX. ALCO. BEV. CODE ANN. §§ 11.38(c) and 61.36(d).

* * * * *

If a person holding a wine only package store permit who also holds a retail dealer's off-premises license for the same location violates a provision of this Code or a rule or regulation of the Commission, the violation is a ground for the suspension or cancellation of both the wine only package store permit and the retail dealer's off-premises license for the premises where the violation was committed. TEX. ALCO. BEV. CODE ANN. § 24.06.



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PROPOSAL FOR DECISION

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I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 24, 61, and 71 and 16 TEX. ADMIN. CODE § 31.1 *et. seq.* (the Rules). 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 findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. chs. 2001 and 2003. There were no contested issues of notice or jurisdiction in this proceeding.

On June 17, 2005, a hearing convened before ALJ Tanya Cooper, at the SOAH offices located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Hassan Zaman. The hearing concluded that day. However, the record was left open in order to allow Respondent the opportunity to pay delinquent taxes via the Tarrant County Tax Office. Payment of any delinquent taxes owed was due to be paid on or before August 22, 2005. A status report received from Mr. Griffith reflects that no payments have been received by the Tarrant County Tax Office on Respondent's behalf. The record closed upon receipt of this information.

II. EVIDENCE

Respondent holds a Wine Only Package Store Permit, Q-527852, and Beer Retailer's Off-Premise License, BF-527853, issued by TABC for Respondent's premises, located at 6800 Camp Bowie West, Fort Worth, Texas, on December 23, 2002. The permit and license have been continuously renewed since that date.

Morris Booth testified at the hearing. Mr. Booth, Delinquent Tax Collection Manager for the Tarrant County Tax Office, testified that Respondent was currently on the Delinquent Tax Roll for Tarrant County, and that Respondent had previously received notice of this situation as

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PROPOSAL FOR DECISION

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demonstrated by TABC Staff's Exhibit 3. According to Mr. Booth, Respondent owed property taxes to the following taxing authorities: the City of Fort Worth, the Fort Worth Independent School District, the Regional Water District, Tarrant County College, the Tarrant County Hospital District, and Tarrant County. Mr. Booth said that the property taxes presently owed by Respondent for the years 2003 and 2004 totaled \$4,316.26, as of June 2005. No evidence was presented by Respondent's representative, Mr. Zaman.

III. ANALYSIS

It is undisputed that Respondent failed to pay property taxes to various taxing authorities within Tarrant County, Texas, for its licensed premises located at 6800 Camp Bowie West, Fort Worth, Tarrant County, Texas. The Code provides that a permit or license held for retail sales of alcoholic beverages may be cancelled if the permit- or license-holder has not paid delinquent ad valorem taxes due on the licensed premises or due from a business operated on that premises to any taxing authority in the county of the premises. TEX. ALCO. BEV. CODE ANN. §§ 11.38(b) and 61.36(d). Respondent was afforded an opportunity by the ALJ to mitigate the severity of any penalty recommended in this case, but failed to make any payment to the Tarrant County Tax Office to discharge the amount of delinquent taxes it owes to the various taxing entities.

The ALJ has reviewed Respondent's licensing history. In addition to the violation that is the subject of this proceeding, Respondent received a warning for a cash law violation² on March 14, 2003. Further, Respondent's permit and license were suspended, or the payment of civil penalty in lieu of suspension was made, for cash law violations in relation to Respondent's issuance of five insufficient funds checks. These penalties were agreed to by Respondent on June 25, 2003, and November 17, 2003. Accordingly, based upon factors cited within this section, the ALJ agrees that TABC Staff's requested penalty is appropriate.

² A cash law violation is the issuance of an insufficient funds ("NSF" or "Returned") check by a permit- or license-holder in payment for alcoholic beverages.

IV. RECOMMENDATION

The ALJ recommends that Respondent's permit and license be cancelled.

V. PROPOSED FINDINGS OF FACT

1. Dewan Investments, Inc. d/b/a Highway 80 Texaco (Respondent) holds a Wine Only Package Store Permit, Q-527852, and Beer Retailer's Off-Premise License, BF-527853, issued by the Texas Alcoholic Beverage Commission (TABC) for Respondent's premises located at 6800 Camp Bowie West, Fort Worth, Texas.
2. Respondent failed to pay ad valorem (property) taxes on the licensed premises described in Finding of Fact No. 1 for the years 2003 and 2004 to the following taxing authorities: the City of Fort Worth, the Fort Worth Independent School District, the Regional Water District, Tarrant County College, the Tarrant County Hospital District, and Tarrant County.
3. Respondent was placed on the Delinquent Tax Roll by the Tarrant County Tax Office and received notice of its placement on this roll.
4. Respondent's licensing history shows a warning and two suspensions, or payment of civil penalties in lieu of any suspension, of its permit and license for cash law violations in 2003.
5. A hearing in this matter was conducted on June 17, 2005, at the State Office of Administrative Hearings, 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. ALJ Tanya Cooper presided. TABC Staff was represented by TABC Staff Attorney, Timothy Griffith. Respondent was represented by its representative, Hassan Zaman. The hearing concluded on that day and the record closed upon receipt of a status report from TABC's Staff Attorney.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 24, 61, and 71 and 16 TEX. ADMIN. CODE § 31.1 *et. seq.*
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. chs. 2001 and 2003.

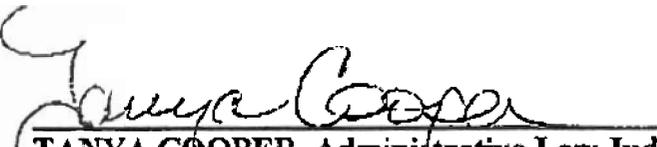
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PROPOSAL FOR DECISION

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3. Respondent received adequate notice of the proceedings and hearing as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon Proposed Findings of Fact Nos. 1 - 3, Respondent failed to pay delinquent ad valorem taxes to taxing entities in Tarrant County, Texas, in violation of TEX. ALCO. BEV. CODE ANN. § 11.38(e) and 61.36(d).
5. Based on the foregoing Proposed Findings of Fact Nos. 1 - 4 and Conclusion of Law No. 4, Respondent's Wine Only Package Store Permit, Q-527852, and Beer Retailer's Off-Premise License, BF-527853, issued by TABC should be cancelled.

SIGNED September 14, 2005.



TANYA COOPER, Administrative Law Judge
State Office of Administrative Hearings

9.29

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



September 14, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Dewan Investments, Inc.
d/b/a Highway 80 Texaco
6800 Camp Bowie Blvd. West
Fort Worth, Texas 76116-7127

VIA REGULAR MAIL

RE: Docket No. 458-005-5277; Texas Alcoholic Beverage Commission vs Dewan Investments, Inc.
d/b/a Highway 80 Texaco, (TABC Case No. 613799)

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 Griffith, attorney for Texas Alcoholic Beverage Commission, and to Hassan Zaman, Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Dewan Investments, Inc. d/b/a Highway 80 Texaco (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County in violation of the Texas Alcoholic Beverage Code (the Code). TABC Staff sought cancellation of Respondent's permits.

The ALJ finds the evidence was sufficient to establish that Respondent failed to pay ad valorem taxes to taxing authorities in Tarrant County. As a result, the ALJ recommends that Respondent's permits be cancelled.

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,

Tanya Cooper
Administrative Law Judge

enclosure