

DOCKET NO. 581929

IN RE NEWRAY INVESTMENTS, INC.	§	BEFORE THE
D/B/A BERRINGER'S	§	
PERMIT NOS. MB-400593 & LB-400594	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1554)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 14th day of April, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge James Kuvet. The hearing convened on October 19, 1999, and adjourned October 19, 1999. Ruth Casarez, Administrative Law Judge, made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 6, 2000. This Proposal For Decision 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.

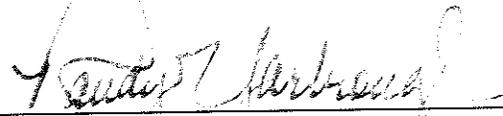
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Mixed Beverage Permit No. MB-400593 and Mixed Beverage Late Hours Permit No. LB-400594 are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on May 5, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 14th day of April, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

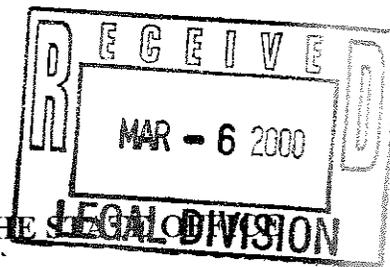
Administrative Law Judge - San Antonio
State Office of Administrative Hearings
VIA FACSIMILE: (210) 308-6854

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Newray Investments, Inc.
RESPONDENT
8632 Fredericksburg Rd., #112
San Antonio, Texas 78240
CERTIFIED MAIL NO. Z 473 040 541

San Antonio District Office
Licensing Division

DOCKET NO. 458-99-1554



TEXAS ALCOHOLIC
BEVERAGE COMMISSION

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BEFORE THE STATE

V.

OF

NEWRAY INVESTMENTS, INC.
D/B/A BERRINGER'S
PERMIT NOS. MB-400593 & LB-400594
BEXAR COUNTY, TEXAS
(TABC CASE NO. 581929)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking revocation of the Mixed Beverage Permit and Mixed Beverage Late Hours Permit held by Newray Investments, Inc. d/b/a Berringer's (Respondent), because Respondent is indebted to the state for taxes imposed by TEX. TAX CODE, ch. 183. Respondent failed to appear at the hearing and was not represented by counsel. Staff recommended that Respondent's permit be canceled, and the Administrative Law Judge (ALJ) agrees.

I. Procedural History

On October 19, 1999, a public hearing was convened before ALJ James Kuvet, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was represented by Dewey Brackin, an attorney with the Commission's Legal Division. Respondent failed to appear, either personally or through counsel. After presentation of evidence by Staff, the record was closed on the same date. The undersigned ALJ who reviewed the evidence agrees with Staff's recommendation that Respondent's permits be canceled.

II. Reasons for Decision

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received proper notice of the hearing, which included a short statement of the allegations to be proved and the statutes and rules that were involved, these jurisdictional and notice matters will be addressed in the Findings of Fact and Conclusions of Law without further discussion.

III. PROPOSED FINDINGS OF FACT

1. Newray Investments, Inc. d/b/a Berringer's (Respondent) is the holder of Mixed Beverage Permit No. MB-400593 and Mixed Beverage Late Hours Permit No. LB-400594, issued by the Texas Alcoholic Beverage Commission (the Commission) for the premises known as Berringer's located at 11874 Wurzbach Road, San Antonio, Bexar County, Texas 78240.

2. On August 31, 1999, Staff sent, by certified mail, a Notice of Hearing to Respondent, which 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 statutes and rules involved; and a statement of the matters asserted.
 - a. The Notice of Hearing was sent to Respondent at its mailing address of record, 8632 Fredericksburg Rd., #112, San Antonio, Texas 78240 by certified mail (No. Z 473 038 453), return receipt requested, and it was returned to the Commission marked, "Returned to Sender, Unclaimed."
 - b. On September 24, 1999, a Second Notice of Hearing was sent to Respondent at the same mailing address found in Finding of Fact No. 2.a. by regular mail. As of the date of the hearing, the notice of hearing had not been returned to the Commission.
 - c. Both notices disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought could be granted by default.
3. On October 19, 1999, a public hearing was convened at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was represented by Dewey Brackin, an attorney with the Commission's Legal Division, but Respondent failed to appear and was not represented by an attorney.
4. According to Staff's witness, Jerry Patterson, an enforcement officer/tax collector with the Texas State Comptroller's office, a search of the Comptroller's records show that Respondent is indebted to the state for the payment of taxes in the amount of \$11,263.59, under the TEX. TAX CODE ANN. ch. 183.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) (Vernon 1995 & Supp. 2000).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. As referenced in Finding 2, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) (Vernon 1995 & Supp. 2000), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000) and 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 (1999).

4. Based Findings of Fact No. 4, Respondent is in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(5) (Vernon 1995 & Supp. 2000), which provides that the Commission 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 this code, by a rule of the Commission, or by Chapter 183 of the Tax Code.
5. Based on Finding of Fact No. 4 and Conclusion of Law No. 4, cancellation of Respondent's Mixed Beverage Permit No. MB-400593 and Mixed Beverage Late Hours Permit No. LB-400594 is warranted.

SIGNED this 6th day of March 2000.



RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION

April 10, 2000

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-1554
TABC Case No. 581929
Newray Investments Inc. d/b/a Berringer's
Mixed Beverage Permit (MB-400593) & Mixed Beverage Late Hours
Permit (LB-400594)
Bexar County, Texas

I have read the attached Proposal for Decision in the above styled case and find the recommendations of the Hearings Examiner should be adopted and that the permits should be **CANCELLED**.

Please prepare an **ORDER** adopting the Proposal for Decision, adopting all Findings of Fact and Conclusions of Law and show that the permit should be **CANCELLED**. Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", is written over a horizontal line.

RY

DOCKET NO. 580733

IN RE DON BLAINE MARTIN, ET AL
D/B/A BLAINE'S PUB
PERMIT NO. MB-407135 & LB-407136

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

TOM GREEN COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-0313)

ORDER

CAME ON FOR CONSIDERATION this 1st day of May, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Philips. The hearing convened on January 21, 2000, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 8, 2000. This Proposal For Decision 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 conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on May 22, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 1st day of May, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Randol L. Stout
Attorney at Law
202 West Beauregard Avenue
San Angelo, Texas 76903
CERTIFIED MAIL NO. Z 473 040 461

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE: (806) 792-0149

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE: (512) 475-4994

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Lubbock District Office



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

April 10, 2000

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-2904 TABC Case No. 586642
 Docket No. 458-99-0313 TABC Case No. 580733

Conduct Surety Bonds

I have read the attached record of the above referenced case(s) and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the Conduct Surety Bond(s) issued for this(these) location(s) should be forfeited. Please prepare an **ORDER** adopting the Proposal for Decision recommendation that the Conduct Surety Bond(s) should be **FORFEITED**.

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

RY

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On September 3, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. The waiver agreement stated that on July 12, 1997, Respondent permitted an employee to consume alcoholic beverages during prohibited hours and permitted minors to consume alcoholic beverages on the licensed premises. The agreement contained the following language.

My name is DON BLAINE & JACQUELINE MARIE MARTIN. We Are OWNERS. We neither admit or deny that the violations stated above have occurred and do hereby waive my right to a hearing. We understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$3000.00 must be received by the final due date stated on the administrative order. We are aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on September 25, 1997. The order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for twenty (20) days unless Respondent paid \$3000.00 as a civil penalty.

On June 10, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on May 23, 1998, Respondent committed a place and manner violation, to wit, permittee and employees were consuming alcoholic beverages on the licensed premises during prohibited hours. The agreement contained the following language.

My name is DON BLAINE MARTIN. I am a partner in the above stated permit. I neither admit or deny that the violations stated above have occurred and do hereby waive my right to a hearing. We understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$2250.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on June 18, 1998. The order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for fifteen (15) days unless Respondent paid \$2250.00 as a civil penalty.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN, §§ 6.01 and 61.71. Texas Alcoholic Beverage Commission's (TABC) rule found at 16 Tex. Admin. Code (TAC) § 33.24(j), governs forfeiture of a conduct

surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked, or, on final adjudication, that the holder violated a provision of the Code.

PROPOSED FINDINGS OF FACT

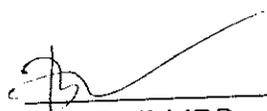
1. On February 17, 1997, the Texas Alcoholic Beverage Commission (Commission) issued a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit, which have been continuously renewed, to Respondent for the premises known as Blaine's Pub, 10 W. Harris, San Angelo, Tom Green County, Texas. On January 16, 1997, Respondent, as holder of the permits, posted a conduct surety bond for Blaine's Pub for \$5,000.
2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (Staff) in a notice of hearing, dated March 15, 1999.
3. The notice of hearing 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.
4. The hearing was convened on January 21, 2000, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent was represented by Randol L. Stout, Attorney at Law. Dewey Brackin, Assistant Attorney General, represented the Staff.
5. In September 3, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. By signing the waiver agreement, Respondent declared that on July 12, 1997, Respondent permitted an employee to consume alcoholic beverages during prohibited hours and permitted minors to consume alcoholic beverages on the licensed premises.
6. On June 10, 1998, Respondent signed an Agreement and Waiver of Hearing regarding one violation of the Code. By signing the waiver agreement, Respondent declared that on May 23, 1998, Respondent committed a place and manner violation, to wit, permittee and employees were consuming alcoholic beverages on the licensed premises during prohibited hours.
7. On September 25, 1997 and June 18, 1998, the Commission Administrator entered orders finding that Respondent had committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact No. 5.

8. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, AND 61.71 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.34 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1999).
3. Service of proper notice of the hearing was made on Respondent pursuant to Texas Alcoholic Beverage Code Ann. Section 11.63 and Texas Government Code Ann. Sections 2001.051 and 2001.052.
4. Respondent holds permit numbers MB-407135 and LB-407136 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) section 33.24 and TEX. ALCO. BEV. CODE ANN. sections 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code since September 1, 1995, as set out in Findings of Fact Nos. 5-8.
6. Respondent violated 16 TAC section 33.24 and TEX. ALCO. BEV. CODE ANN. sections 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding Mixed Beverage Permit No. MB-407135 and Mixed Beverage Late Hours Permit No. LB-407136, issued by the Commission, and the conduct surety bond should be forfeited to the State.

SIGNED this 8th day of March, 2000.


B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE