

DOCKET NO. 582085

IN RE MAXIE LEE PARSUTT
D/B/A TWILIGHT LOUNGE
PERMIT NOS. MB-238106, LB-238107
& PE-238108

GALVESTON COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1893)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on October 28, 1999 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 November 12, 1999. 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 unless the Respondent pays a civil penalty in the amount of **\$1500.00** on or before the **16th day of February, 2000**, all rights and privileges under Permit Nos. MB-238106, LB-238107 & PE-238108 will be **SUSPENDED** for a period of **ten, (10) days, beginning at 12:01 A.M. on the 23rd day of February, 2000.**

This Order will become final and enforceable on December 31, 1999, 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 10th day of December, 1999.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

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

Maxie Lee Parsutt
d/b/a Twilight Lounge
RESPONDENT
6610 Steward Rd., #98
Galveston, Texas 77551
CERTIFIED MAIL/RRR NO. Z 473 039 169

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 12, 1999

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

CERTIFIED MAIL Z 409 580 950
RETURN RECEIPT REQUESTED

RE: Docket No. 458-99-11893 TABC vs. Maxie Lee Parsutt d/b/a Twilight Lounge Permit Nos. MB-238106, LB-238107, Galveston County, Texas (TABC No. 582085)

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and to Maxie Lee Parsutt acting as party representative. For reasons discussed in the Proposal for Decision, I have recommended that the permittee's permit No. MB-238106 and LB-238107 for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of a suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

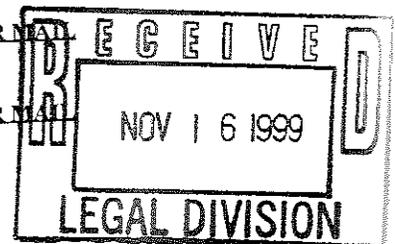
A handwritten signature in cursive script that reads "Veronica B. Dorsey".

Veronica B. Dorsey
Administrative Law Judge

DS:rfm/99-1893

Enclosure

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - REGULAR MAIL
Maxie Lee Parsutt d/b/a Twilight Lounge, 6610 Stewart Rd. #98, Galveston, TX 77551 -
VIA CERTIFIED MAIL NO. Z 409 580 951, RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - REGULAR MAIL



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.S.

MAXIE LEE PARSUTT
D/B/A TWILIGHT LOUNGE
PERMIT NOS. MB-238106, LB-238107
& PE-238108

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Maxie Lee Parsutt d/b/a Twilight Lounge (the Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code. The violations are as follows:

1. On or about July 7, 1998, Permittee, its agent, servant, or employee gave a check for \$141.50.00 to Dienst Distributing Company, of Galveston, Texas. On or about July 16, 1998, the check was returned by Drawee, Bank of Galveston of Galveston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
2. On or about September 8, 1998, Permittee, its agent, servant, or employee gave a check for \$129.50.00 to Dienst Distributing Company, of Galveston, Texas. On or about September 18, 1999, the check was returned by Drawee, Bank of Galveston of Galveston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
3. On or about October 13, 1998, Permittee, its agent, servant, or employee gave a check for \$140.39.00 to Dienst Distributing Company, of Galveston, Texas. On or about October 28, 1998, the check was returned by Drawee, Bank of Galveston of Galveston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

The Permittee did not make an appearance at the hearing on October 28, 1999. This Proposal for Decision finds the allegations by the TABC 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 \$1,500.00.00 in lieu of a suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on October 28, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Gayle Gordon represented the staff

of the Commission (Staff). Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings 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 the Commission 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 payments. 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 the following four exhibits into evidence:

Exhibit TABC 1 is the 18(c) letter to Permittee, setting out the violations.

Exhibit TABC 2 is the Notice of Hearings to Maxie Parsutt with attached green card showing Permittee received notice at his mailing address of 6610 Stewart Road #98, Galveston, Texas 77551.

Exhibit TABC 3 contains copies of affidavits of Dienst Distributing Company. The affidavits evidence receipt of returned checks in the amounts of \$141.50, \$129.50, and \$140.39 which Drawee, Bank of Galveston of Galveston, Texas dishonored.

Exhibit TABC 4 is an affidavit of Brian L. Guenthner, Licensing Department Director, evidencing that Permit Nos. MB-238106, LB-238107, and PE-238108 were issued to Maxie Lee Parsutt, doing business as Twilight Lounge, by the Texas Alcoholic Beverage Commission and evidencing Permittee's history of violations. The mailing address of Maxie Lee Parsutt is 6610 Stewart Road #98, Galveston, Texas 77551.

The ALJ took official notice of the Court's file which shows the hearing was scheduled October 28, 1999. Notice was properly sent via certified mail on September 16, 1999.

III. RECOMMENDATION

Because the Permittee made payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b) of the 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. Texas Alcoholic Beverage Commission issued Permit Nos.-203842 and E-203843 to Roscoe Hunter, doing business as Twilight Lounge. The mailing address of Maxie Lee Parsutt is 6610 Stewart Road #98, Galveston, Texas 77551.
2. Staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice as shown by the attached green card.
3. The hearing on the merits was held on October 28, 1999, 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:

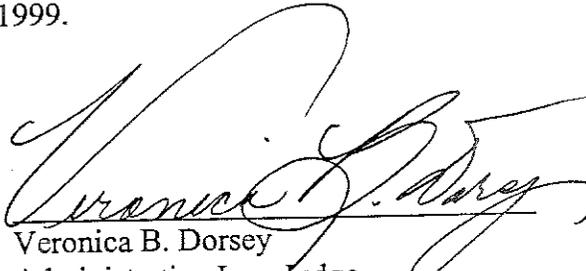
Permittee made payment for beer in its original containers and packages with a dishonored checks in violation of Section 61.73(b) of the code. The violations occurred on or about July 7, 1998, September 8, 1998, and October 13, 1998 when Permittee, its agent, servant, or employee gave checks for \$141.50, \$129.50.00, and \$140.39.00 to Dienst Distributing Company, of Galveston, Texas. On or about July 16, 1998, September 18, 1999, and October 28, 1998, respectively, the checks were returned by Drawee, Bank of Galveston, of Galveston, Texas for insufficient funds.

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) by making payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b).

6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten-day suspension of the permit and license is warranted. 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 permits and licenses.

SIGNED this 12th day of November, 1999.


Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings