

DOCKET NO. 583118

IN RE JOHANNES, INC.
D/B/A NORTH LOOP MILK DEPOT
PERMIT NO. BQ-081089

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

EL PASO COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1504)

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 Louis R. Lopez. The hearing convened on September 8, 1999, was continued to October 15, 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.

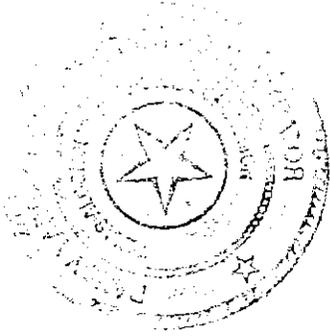
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that unless the Respondent pays a civil penalty in the amount of \$2,100.00 on or before the 16th day of February, 2000, all rights and privileges under Permit No. BQ-081089 will be **SUSPENDED** for a period of fourteen(14) 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
Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Louis R. Lopez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (915) 595-0362

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

Johannes, Inc.
d/b/a North Loop Milk Depot
RESPONDENT
327 Buena Vista
El Paso, Texas 79905
CERTIFIED MAIL/RRR NO. Z 473 039 170

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

Z 473 039 170

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent To	<i>Johannes Inc</i>
Street & Number	<i>El Paso</i>
Post Office, State, & ZIP Code	<i>El Paso TX 79905</i>
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	<i>12/10/99</i>

PS Form 3800, April 1995

FOR

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 583118
NAME: Johannes, Inc.

REGISTER NUMBER:
TRADENAME: North Loop Milk Depot

ADDRESS: 8152 N. Loop, El Paso, Texas 79907
DATE DUE: February 16, 2000
PERMITS OR LICENSES: BQ-081089
AMOUNT OF PENALTY: \$2,100.00

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 16TH DAY OF FEBRUARY, 2000, 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

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

November 12, 1999

Doyme Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

Certified Mail No. Z133586764

RE: Docket No. 458-99-1504; Texas Alcoholic Beverage Commission vs. Johannes Inc.
d/b/a North Loop Milk Depot (TABC Case No. 583118)

Dear Mr. Bailey:

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 Gayle Gordon, Legal Director for Texas Alcoholic Beverage Commission, and to Johannes Inc.

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. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

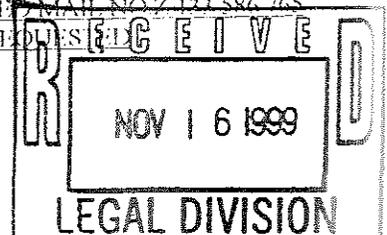
Sincerely,

Louis R. Lopez
Administrative Law Judge

LRL:et

Enclosure

xc: Shance Woodbridge, Docket Clerk, State Office of Administrative Hearing -REGULAR MAIL
Gayle Gordon, Legal Director, Texas Alcoholic Beverage Commission -CERTIFIED MAIL NO Z 133 586 765
Johannes Inc. - CERTIFIED MAIL NO Z 133 586 726, RETURN RECEIPT REQUIRED



DOCKET NO. 458-99-1504
(TABC NO. 583118)

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

JOHANNES, INC.
dba NORTH LOOP MILK DEPOT
PERMIT NO. BQ-081089
EL PASO COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Petitioner, TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), brought this action against JOHANNES, INC. dba NORTH LOOP MILK DEPOT, Respondent, alleging Respondent was subject to final determination for taxes due, a violation of the Texas Alcoholic Beverage Code [Code]. A hearing was scheduled and convened. Respondent failed to appear and defaulted.

FINDINGS OF FACT

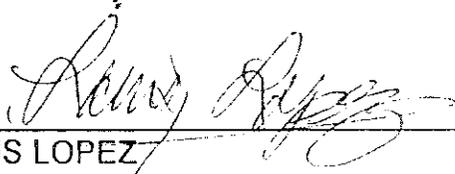
1. On August 10, 1999 Petitioner TABC sent a Notice of Hearing to Respondent at 327 Buena Vista, El Paso, Texas 79950 by certified mail, return receipt requested, Article Number Z 473 038 412, informing that a hearing in this case was to be held at the SOAH office at 9434 Viscount, Suite 102, El Paso, Texas 79925 on Wednesday, September 8, 1999, at 10:00 a.m. No green receipt was included with Petitioner's exhibits, but the envelope apparently was never returned.
2. Before that on August 2, 1999, SOAH had sent an Order Setting Prehearing Conference to Respondent at the same address which included the same information on the place and date of the hearing. To this date, the envelope has not come back to the SOAH office.
3. Both Petitioner's Notice of Hearing and the SOAH Order contained the statement in 10-point, bold-face type required by 1 Texas Administrative Code 155.55(c) regarding the consequences of failure of a party to appear at the hearing.
4. The hearing was convened on Wednesday, September 8, 1999, at 10:00 a.m., as scheduled. Johannes Vanderaa personally appeared for Respondent. He stated he was the owner of the business. He discussed the indebtedness with representatives of the State Comptroller's Office and at no time denied the indebtedness. He said he could catch up with the taxes he owed within two weeks. In order to give him time to pay the arrears, there was an agreement by the parties to continue the case until Friday, October 15, 1999, at 10:00 a.m. The agreement was put on the record.

5. The hearing was once again convened on Friday, October 15, 1999, at 10:00 a.m., as scheduled at the same SOAH office at 9434 Viscount as before. At 10:35, Mr. Vanderaa had not appeared. The telephone number available for him was called. A man named Martin Juarez answered and said Mr. Vanderaa had left, that he didn't know where he had gone, and that he didn't know how to get ahold of him. To this date Mr. Vanderaa has not appeared or contacted the SOAH office.
6. Neither TABC nor SOAH was contacted by Respondent regarding any desire for a continuance or any reason for not being able to attend the hearing.
7. Gayle Gordon, attorney for TABC, appeared along with witness Addie Bryant from the State Comptroller's Office, but Respondent failed to appear and defaulted.
8. Since Respondent did not appear, the factual allegations in the notice of hearing are deemed admitted and found to be true.
9. Based on the foregoing, Respondent is subject to final determination for taxes due and payable.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to any or all of the following: Code Sections 5.31--5.44, 6.01, 11.61, and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and the Administrative Procedure Act, Texas Government Code Chapter 2003.
3. Service of the Notice of Hearing was made pursuant to Code Section 11.63 and Texas Government Code Sections 2001.051 and 2001.052.
4. Under 1 Texas Administrative Code 155.55(b), when a respondent defaults, the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.
5. Respondent is subject to final determination of taxes due and payable under Texas Tax Code Chapters 151 and 321.
6. Based on Conclusion of Law No. 5, Respondent is subject to cancellation or suspension of his permit under Code Sections 11.61(b)(5), 11.61(c), and 61.712(2).
7. It is recommended that Respondent's permits be suspended for 14 days and, in lieu of suspension, that there be a civil penalty of \$100 per day for a total of \$1,400.

SIGNED this 10th day of November, 1999.

A handwritten signature in cursive script, appearing to read "Louis Lopez", written over a horizontal line.

LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS