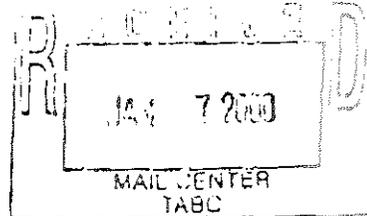


1-11-00  
O.O.B. - Vacant lot



DOCKET NO. 583730

IN RE ROSCOE HUNTER §  
D/B/A HUNTERS PACKAGE STORE NO. 1 §  
PERMIT NOS. P-203842, E-203843 & §  
LICENSE NO. BF-238447 §

BEFORE THE

HARRIS COUNTY, TEXAS §  
(SOAH DOCKET NO. 458-99-1881) §

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

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

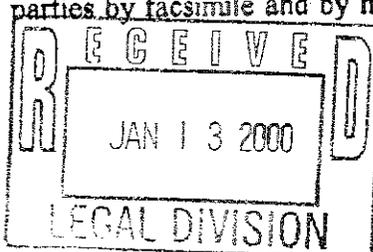
After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on October 28, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 12, 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 \$750.00 on or before the 16th day of February, 2000, all rights and privileges under Permit Nos. P-203842, E-203843 & License No. BF-238447 will be **SUSPENDED** for a period of five, ( 5 ) 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.

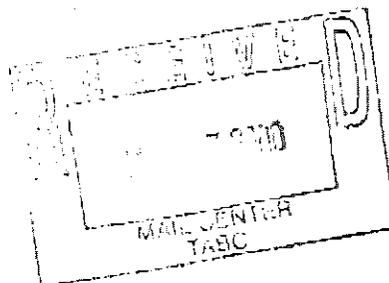
On Behalf of the Administrator,



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**

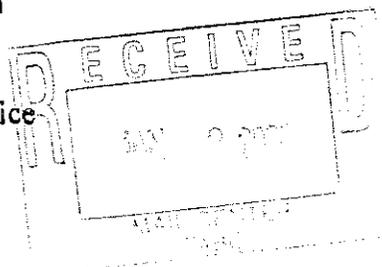


Shanee Woodbridge, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Roscoe Hunter  
d/b/a Hunter's Package Store No. 1  
**RESPONDENT**  
801 E. 33rd Street  
Houston, Texas 77022  
**CERTIFIED MAIL/RRR NO. Z 473 039 168**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office



**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER:** 583730      **REGISTER NUMBER:**  
**NAME:** Roscoe Hunter      **TRADENAME:** Hunter's Package Store No. 1

**ADDRESS:** 801 E. 33rd Street, Houston, Texas 77022  
**DATE DUE:** February 16, 2000  
**PERMITS OR LICENSES:** P-203842, E-203843 & BF-238447  
**AMOUNT OF PENALTY:** \$750.00

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

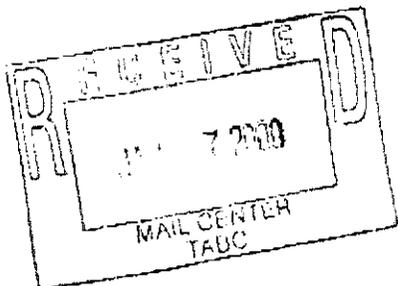
If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 16TH DAY OF FEBRUARY, 2000, YOU WILL LOSE 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

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

**CERTIFIED MAIL Z 409 580 952**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-99-1881 TABC vs. Roscoe Hunter d/b/a Hunters Package Store No. 1 Nos. P-203842, E-203845, License Number BF-238447 Harris County, Texas (TABC No. 583730)**

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 Roscoe Hunter acting as party representative. For reasons discussed in the Proposal for Decision, I have recommended that the permittee's permit No. P-203842, E-203845, License No. BF-238447 be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00 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,

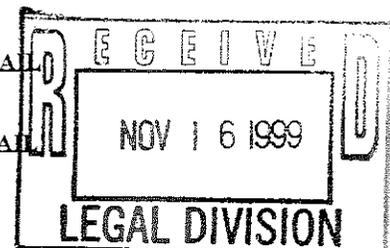
A handwritten signature in cursive script, appearing to read "Veronica B. Dorsey".

Veronica B. Dorsey  
Administrative Law Judge

DS:rfm/99-1881

Enclosure

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **REGULAR MAIL**  
Roscoe Hunter d/b/a Hunter's Package Store No. 1, 801 E. 33rd Street, Houston, TX 77022  
**VIA CERTIFIED MAIL NO. Z 409 580 953, 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.

ROSCOE HUNTER  
D/B/A HUNTERS PACKAGE STORE NO. 1  
PERMIT NOS. P-203842, E-203843  
LICENSE NUMBER BF-238447

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Roscoe Hunter d/b/a Hunters Package Store No. 1 (the Permittee) for an offense 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 violation occurred on or about February 26, 1999, when Permittee, its agent, servant, or employee gave a check for \$63.72.00 to Houston Distributing, Ltd., of Houston, Texas. On or about March 5, 1999, the check was returned by Drawee, Chase Bank, of Houston, 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 5 days or that Permittee be allowed to pay a fine of \$750.00 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). Veronica B. Dorsey presided as Administrative Law Judge for State Office of Administrative Hearings. 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 of May 5, 1999 to Permittee, setting out the violation.

Exhibit TABC 2 is the Notice of Hearings to Roscoe Hunter with attached green card bearing Permittee's signature.

Exhibit TABC 3 contains a Request for Hearing, a memo from Permittee, and an affidavit of Houston Distributing, Ltd., evidencing receipt of a check in the amount of \$63.72.00 which Drawee, Chase Bank, of Houston, Texas dishonored.

Exhibit TABC 4 is an affidavit of Brian L. Guenthner, Licensing Department Director, evidencing that Permit Nos. P-203842 and E-203843 were issued to Roscoe Hunter, doing business as Hunters Package Store No. 1, by the Texas Alcoholic Beverage Commission and evidencing Permittee's history of violations. The mailing address of Roscoe Hunter is 801 E. 33rd Street, Houston, Texas 77022.

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 15, 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 five days, or in lieu of suspension, Permittee should pay a fine of \$750.00.

## IV. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission issued Permit Nos.-203842 and E-203843 to Roscoe Hunter, doing business as Hunters Package Store No. 1. The mailing address of Roscoe Hunter is 801 E. 33rd Street, Houston, Texas 77022.
2. On September 15, 1999, 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 signed attached green card.

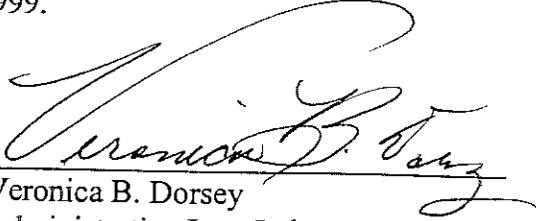
3. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing. Veronica B. Dorsey was the Administrative Law Judge who conducted 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 check in violation of Section 61.73(b) of the code. The violation occurred on or about February 26, 1999 when Permittee, its agent, servant, or employee gave a check for \$63.72 to Houston Distributing Ltd., of Houston, Texas. On or about March 5, 1999, the check was returned by Drawee, Chase Bank, of Houston, 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 a dishonored check in violation of Section 61.73(b).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a five-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 \$750.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 12<sup>th</sup> day of November, 1999.

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