

**DOCKET NO. 458-02-3704****TEXAS ALCOHOLIC  
BEVERAGE COMMISSION****V.****ERNEST VIDAL  
D/B/A ARTURO'S  
PERMIT NOS. BG-301083 & BL-301084  
BEXAR COUNTY, TEXAS  
(TABC CASE NO. 587094)**§  
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§**BEFORE THE STATE OFFICE****OF****ADMINISTRATIVE HEARINGS****PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this enforcement action against Ernest Vidal, d/b/a Arturo's (the Permittee) for paying for beer with checks for which funds were insufficient. The Staff recommended that Permittee's permits be suspended for five days or that Permittee pay a fine of \$750.00 in lieu of suspension.

**I. Procedural History, Notice, and Jurisdiction**

The hearing in this matter convened on September 17, 2002, before Administrative Law Judge (ALJ) Nancy Bage Sorenson, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Permittee appeared and represented himself at the hearing.

The Texas Alcoholic Beverage Commission (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 an enforcement action and the notice 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. Allegations and Applicable Statutory Provisions**

The allegations in this proceeding asserted the Permittee, its agent, or employee paid beer distributors for beer with checks on both September 10, 1999, and February 18, 2000, that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. (the Code) § 61.73(b) for a permittee to tender a beer distributor a check for payment of beer which is dishonored when presented for payment. Such a violation

may be punished by cancellation or a maximum 60-day suspension of a permit.

### III. Summary of the Evidence

Staff introduced sufficient and undisputed evidence of the dishonored checks written to San Antonio Coors Distributing, Ltd. of San Antonio, Texas and BudCo, Ltd., of San Antonio, Texas, and accompanying affidavits. Permittee did not dispute the evidence, but testified that the bank made an error on both occasions. However, Permittee failed to produce any evidence of a bank error on either allegation.

### IV. Recommendation

Penalties for the violations of § 61.73(b) of the Code may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

Permittee did not contest the fact that on two separate occasions checks were dishonored, as confirmed by TABC Exhibit "B". Permittee's own testimony established that the drawee, Prime Bank of San Antonio, Texas dishonored the two checks. He failed to prove that these dishonored checks were anyone's mistake, but his own.

In this case, Staff recommended a five-day suspension based on the present Notice of Hearing alleging two separate instances of cash law violations. The ALJ recommends a five-day suspension. Pursuant to § 11.64 of the Code, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150.00 nor more than \$25,000.00 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty.

### V. Findings of Fact

1. Ernest Vidal d/b/a Arturo's (the Permittee), located at 3310 S. Zarzamora, San Antonio, Bexar County, Texas 78225, holds Permit Nos. BG-301083 and BL-301084.
2. Permittee received proper and timely notice of the hearing from the staff of the Texas Alcoholic Beverage Commission (Staff) in a notice of hearing, dated August 2, 2002. The notice was properly sent to Permittee by certified mail at the address provided: 1173 CR 770, Natalia, Texas 78059.
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.

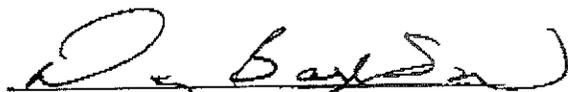
4. The hearing was convened on September 17, 2002, at 10:00 a.m. at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Permittee represented himself at the hearing. Gayle Gordon, Assistant Attorney General, represented the Staff.
5. On or about September 10, 1999, Permittee, its agent, servant, or employee tendered a check written in the amount of \$89.60 to San Antonio Coors Distributors, Ltd., of San Antonio, Texas. On or about September 24, 1999, the check was returned by Drawee, Prime Bank, of San Antonio, Texas, for insufficient funds.
6. On or about February 18, 2000, Permittee, its agent, servant, or employee tendered a check written in the amount of \$862.10 to BudCo, Ltd., of San Antonio, Texas. On or about March 2, 2000, the check was returned by Drawee, Prime Bank, of San Antonio, Texas, for insufficient funds.

#### **VI. Conclusions of Law**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 61.73.
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. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d).
4. The Permittee, its agent, servant, or employee tendered a check in payment for beer, on September 10, 1999, which was dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. The Permittee, its agent, servant, or employee tendered a check in payment for beer, on February 18, 2000, which was dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. Based on the foregoing Findings and Conclusions, a five-day suspension of the permits is warranted pursuant to 16 TEX. ADMIN. CODE § 37.60.

6. 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.

SIGNED this 19<sup>th</sup> day of November, 2002.

  
NANCY BAGE SORENSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 587094**

IN RE ERNEST VIDAL  
D/B/A ARTURO'S  
PERMIT NO. BG301083  
LICENSE NO. BL301084

BEXAR COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3704)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of December, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Nancy Bage Sorenson. The hearing convened on September 17, 2002, and adjourned September 17, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 19, 2002. 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 Permit No. BG301083 and License No. BL301084 are herein **SUSPENDED**.

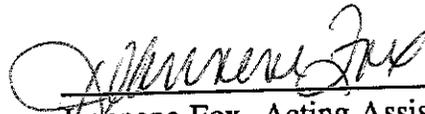
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 5th day of February, 2003, all rights and privileges under the above described permits will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 12th day of February, 2003.

This Order will become final and enforceable on **JANUARY 7, 2002**, 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** on this the 17th day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Nancy Bage Sorenson  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (210) 308-6854**

Ernest Vidal  
**RESPONDENT**  
d/b/a Arturo's  
1173 CR 770  
Natalia, Tx. 78059  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 6110**

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

Regulatory Division - Compliance Division  
San Antonio District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 587094

REGISTER NUMBER:

NAME: Ernest Vidal

TRADENAME: Arturo's

ADDRESS: 1173 CR 770, Natalia, Tx. 78059

DATE DUE: February 5, 2003

PERMITS OR LICENSES: BG301083; BL301084

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 5TH DAY OF FEBRUARY, 2003, 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.