

DOCKET NO. 458-02-2478

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
JOSEPH BLAKE ETTREDGE	§	
D/B/A BLAKE'S BUTCHER BLOCK	§	
DENTON COUNTY, TEXAS	§	
(TABC CASE NO. 587489)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought to suspend the permit of Joseph Blake Ettredge d/b/a Blake's Butcher Block (Respondent), or in the alternative, to invoke payment of a penalty. The Staff alleged Respondent had paid for beer with checks which were dishonored when presented for payment. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends Respondent's permit be suspended for 45 days, or in the alternative, Respondent pay a penalty of \$6,750.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of notice, jurisdiction or venue in this proceeding. Those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On June 20, 2002, a hearing convened before ALJ Brenda Coleman, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received and the record closed on June 20, 2002.

Staff alleged that (1) Respondent had been issued a permit, (2) gave checks as payment for beer, and (3) those checks, in nine specified instances, were dishonored when presented for payment.

**II. EVIDENCE**

**A. Staff's Evidence**

Respondent's licensed premise is located at 1001 North Washington, Pilot Point, Denton County, Texas. TABC issued wine and beer retailer's off-premise permit, BQ 280726, to Respondent on October 30, 1992.

On April 22, 2002, Staff served Respondent with Requests for Admissions (the Requests),

a copy of which (along with proof of service) was admitted into evidence. Respondent failed to either admit or deny the Requests. The Requests are deemed admitted, and are conclusively established against Respondent. 1 TEX. ADMIN. CODE § 155.31(d)(2). Those matters admitted are set out in the findings of fact and conclusions of law without further discussion here. Nine affidavits signed by the managers of Miller of Denton, Ben E. Keith Beers and Golden Distributing Co. were also admitted into evidence.

#### B. Respondent's Evidence

Respondent testified at the hearing. Respondent acknowledged that the violations had occurred and stated that the Internal Revenue Service (IRS) had seized his checking account for back taxes owed by him. According to Respondent, that was the main cause for the checks dishonored.

### III. DISCUSSION

TABC is authorized to suspend a permit for not more than 60 days for any violation of the Code. TEX. ALCO. BEV. CODE § 11.61(b)(2) (the Code). A permittee violates the code if it gives a check as payment for beer and the check is dishonored when presented for payment. § 61.73(b) of the Code. The facts deemed admitted establish Respondent's violation of § 61.73(b).

Staff recommended a suspension of Respondent's permit for 45 days, or in the alternative, that Respondent pay a penalty of \$6,750. Respondent's violation history was admitted into evidence. The record shows that Respondent has eight cash law violations between September 9, 1999, and November 21, 2001. Seven of these cash law violations are the subject of this case. The record shows that Respondent has no other violations of any kind and that Respondent's permit has not been previously suspended.

Under the TABC's "standard penalty chart," a violation of § 61.73(b) of the Code calls for a maximum of a three-day suspension for a first violation, a five to ten day suspension for a second violation, and 10 to 15 days for a third violation. *See* 16 TEX. ADMIN. CODE § 37.60. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. § 11.64(a) of the Code. The standard penalty chart is not binding. The facts developed in the record are the determining factors "as to the sufficiency of the penalty assessed." 16 TEX. ADMIN. CODE § 37.60(g).

This case involves a total of nine checks issued by Respondent, which were dishonored when presented for payment. The first check was dishonored in November, 1999; the next check was dishonored in January, 2001; six checks were dishonored in March, 2001; and another check was dishonored in November, 2001. While Respondent testified that the IRS had seized his account, no other evidence was offered in support of this contention; nor was there any evidence regarding the time period during which the account was seized or whether any of the dishonored checks had been redeemed. Having considered the testimony of Respondent, the ALJ finds his defense non-compelling. The penalty recommended by Staff is reasonable and within the guidelines of the standard penalty chart. 16 TEX. ADMIN. CODE § 37.60.

The ALJ recommends Respondent's permits be suspended for 45 days, or in the alternative, that Respondent pay a penalty of \$6,750.

#### IV. PROPOSED FINDINGS OF FACT

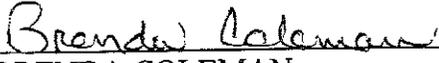
1. The Texas Alcoholic Beverage Commission (TABC) issued wine and beer retailer's off-premise permit, BQ 280726, to Joseph Blake Ettredge d/b/a Blake's Butcher Block (Respondent).
2. Respondent's licensed premise is located at 1001 North Washington, Pilot Point, Denton County, Texas.
3. On November 4, 1999, Respondent gave Miller of Denton a check as payment for beer, and the check was dishonored when presented for payment.
4. On January 12, 2001, Respondent gave Ben. E. Keith Beers a check as payment for beer, and the check was dishonored when presented for payment.
5. On March 2, 2001, Respondent gave Ben. E. Keith Beers a check as payment for beer, and the check was dishonored when presented for payment.
6. On March 20, 2001, Respondent gave Ben. E. Keith Beers a check as payment for beer, and the check was dishonored when presented for payment.
7. On March 20, 2001, Respondent gave Miller of Denton a check as payment for beer, and the check was dishonored when presented for payment.
8. On March 21, 2001, Respondent gave Golden Distributing Co. a check as payment for beer, and the check was dishonored when presented for payment.
9. On March 23, 2001, Respondent gave Ben E. Keith Beers a check as payment for beer, and the check was dishonored when presented for payment.
10. On March 30, 2001, Respondent gave Ben E. Keith Beers a check as payment for beer, and the check was dishonored when presented for payment.
11. On November 28, 2001, Respondent gave Golden Distributing Co. a check as payment for beer, and the check was dishonored when presented for payment.
12. On April 22, 2002, Staff served its notice of hearing on Respondent by certified mail. It informed the Respondent the hearing would be held on June 20, 2002, at 10:00 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. This notice was received on April 29, 2002.

13. The notice alleged Respondent had violated the Code in nine specified instances. The notice made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
14. On June 20, 2002, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received, and the record closed on June 20, 2002.

#### V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (the Code).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 3 - 11, Respondent violated § 61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for 45 days, or in the alternative, Respondent should pay a penalty of \$6,750.

ISSUED this 19th day of August, 2002.

  
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BRENDA COLEMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 587489**

IN RE JOSEPH BLAKE ETTREDGE	§	BEFORE THE
D/B/A BLAKE'S BUTCHER BLOCK	§	
PERMIT NO. BQ280726	§	
	§	TEXAS ALCOHOLIC
	§	
DENTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2478)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 10th day of September 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened and adjourned on June 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 19, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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. BQ280726 is hereby **SUSPENDED** for forty-five (45) days.

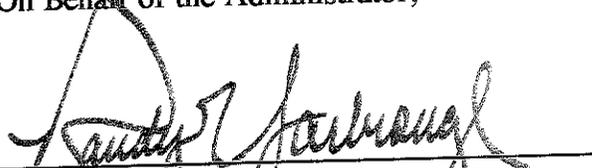
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$6,750.00 on or before the 25th day of October, 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of forty-five (45) days, beginning at 12:01 A.M. on the 1st day of November, 2002.

This Order will become final and enforceable on October 1, 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 or through the U.S. Mail, as indicated below.

**SIGNED** this the 10th day of September, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (214) 956-8611**

**JOSEPH BLAKE ETTREDGE**  
**D/B/A BLAKE'S BUTCHER BLOCK**  
**RESPONDENT**  
PO Box 838  
Pilot Point, TX 76258  
**CERTIFIED MAIL NO. 7001 2510 0000 7277 6562**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division  
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 587489

REGISTER NUMBER:

NAME: JOSEPH BLAKE ETTREDGE

TRADENAME: BLAKE'S BUTCHER BLOCK

ADDRESS: 1001 N Washington, Pilot Point, TX 76258

DATE DUE: October 25, 2002

PERMITS OR LICENSES: BQ280726

AMOUNT OF PENALTY: \$6,750.00

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 25TH, DAY OF OCTOBER, 2002, 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.