

DOCKET NO. 591987

IN RE JAMES DANIEL MILLER	§	BEFORE THE
D/B/A FAMILY LIQUOR	§	
PERMIT NO. P-449233	§	
LICENSE NO. BF449234	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1165)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of April 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened and adjourned on January 25, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 28, 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. P-449233 and License No. BF449234 are hereby **SUSPENDED** for eleven (11) days.

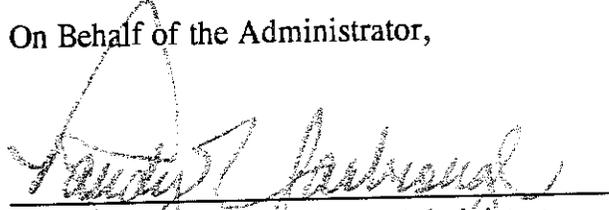
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,650.00 on or before the 10th day of July, 2002, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of eleven (11) days, beginning at 12:01 A.M. on the 17th day of July, 2002.

This Order will become final and enforceable on May 14, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 23rd day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Stephen J. Burger
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

James Daniel Miller
d/b/a Family Liquor
RESPONDENT
4115 Leighann
Houston, Texas 77047
CERTIFIED MAIL NO. 7001 2510 0000 7278 9531

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 591987

REGISTER NUMBER:

NAME: JAMES DANIEL MILLER

TRADENAME: FAMILY LIQUOR

ADDRESS: 5051 Reed Rd. #5, Houston, Texas 77033

DATE DUE: July 10, 2002

PERMITS OR LICENSES: P-449233, BF449234

AMOUNT OF PENALTY: \$1,650.00

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 10TH DAY OF JULY 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.

DOCKET NO. 458-02-1165

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
JAMES DANIEL MILLER D/B/A FAMILY LIQUOR PERMIT NO. P-449233 & LICENSE NO. BF-449234 HARRIS COUNTY, TEXAS (TABC CASE NO. 591987)	§	OF
	§	
	§	
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this enforcement action against James Daniel Miller d/b/a Family Liquor (Respondent) for giving a check or draft for the purchase of beer that was dishonored when presented for payment. The Respondent did not appear at the hearing. The Staff recommended that Respondent's permit and license be suspended for 11 days, or that Respondent pay a fine of \$1650 in lieu of suspension. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on January 25, 2002, before ALJ Stephen Burger, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Staff was represented by Lindy To, attorney. The Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and 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.

II. The Allegations and Applicable Statutory Provisions

There were allegations in this proceeding asserting the Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment in violation of TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31. Such a violation may result in cancellation or a maximum 60-day suspension of a permit.

III. RECOMMENDATION

Penalties for the violations of TEX. ALCO. BEV. CODE ANN. § 61.73(b) 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.

In this case, Staff recommended an 11 day suspension; the Administrative Law Judge agrees with the recommendation. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, 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 nor more than \$25,000 for each day of the suspension. Staff recommends an 11 day suspension, or a \$1,650 civil penalty in lieu of a suspension (11 days at \$150 per day). The ALJ agrees with Staff's recommendation.

IV . FINDINGS OF FACT

1. James Daniel Miller, d/b/a Family Liquor, (Respondent), located at 5051 Reed Rd. #5, Houston, Harris County, Texas, with a mailing address of 4115 Leighann, Houston, TX 77047, holds Permit No. P-449233 and License No. BF-449234.
2. Respondent received proper and timely Notice of the Hearing from the Commission in a notice of hearing, dated December 27, 2001. The notice was properly sent to Respondent at the address provided in findings of fact No. 1. Respondent was sent the notice by certified mail, which was unclaimed.
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 Notice of Hearing also contained the following language in 10-point or larger boldface type:

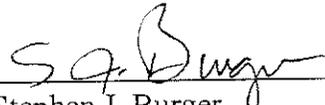
If you fail to appear at the hearing, the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default.
5. The hearing was convened on January 25, 2002, at 10:00 a.m., at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Respondent did not appear and was not represented at the hearing. Lindy To, attorney, represented the Staff.

6. On July 28, 2000; August 4, 2000; August 25, 2000; November 3, 2000; November 10, 2000; August 9, 2001; August 30, 2001; and September 21, 2001, Respondent, gave a check or draft for the purchase of beer that was dishonored when presented for payment.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 61.71, 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 Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. On the following dates, July 28, 2000; August 4, 2000; August 25, 2000; November 3, 2000; November 10, 2000; August 9, 2001; August 30, 2001; and September 21, 2001, the Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) and 102.31.
5. Based on the foregoing Findings and Conclusions, an 11 day suspension of the permit and license is warranted. 16 TEX. ADMIN. CODE § 37.60.
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$1650 civil penalty in lieu of suspension of its permit and license.

SIGNED this 28th day of March, 2002.



Stephen J. Burger
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS