

DOCKET NO. 597517

IN RE BUCKVIN INC.  
D/B/A THE ZONE 1  
PERMIT NO. MB410715

DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-2474)

§  
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§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 26th day of August 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 on June 13, 2002 and adjourned on June 13, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 31, 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. MB410715 is hereby **SUSPENDED** for five (5) days.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 9th day of October, 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 16th day of October, 2002.

This Order will become final and enforceable on September 16, 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 26th day of August, 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**

BUCKVIN INC.  
D/B/A THE ZONE 1  
**RESPONDENT**  
3810 Congress  
Dallas, TX 75219  
**CERTIFIED MAIL NO. 7001 2510 0000 7277 6340**

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

Licensing Division  
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 597517 REGISTER NUMBER:

NAME: BUCKVIN INC.                      TRADENAME: THE ZONE 1

ADDRESS: 3810 Congress, Dallas, Texas 75219

DATE DUE: October 9, 2002

PERMITS OR LICENSES: MB410715

AMOUNT OF PENALTY: \$750.00

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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 9TH, 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.

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
BUCKVIN INC. d/b/a	§	
THE ZONE 1	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 597517)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought to suspend the permits of Buckvin Inc. d/b/a The Zone 1 (Respondent). 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 permits be suspended for five days, or in the alternative, that Respondent pay a penalty of \$750.

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

On April 11, 2002, staff issued its notice of hearing, directed to Respondent at 3810 Congress, Dallas, Texas, 75219, via certified mail, return receipt requested. This notice was received by Respondent on April 13, 2002. The notice 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, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also included a disclosure in at least 12-point, bold-face type that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. On April 24, 2002, Staff issued its amended notice of hearing to Respondent by certified mail.

There were no contested issues of 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 13, 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 did not appear and was not represented at the hearing. The record closed on June 13, 2002.



## II. THE ALLEGATIONS AND APPLICABLE LAW

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

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 checks as payment for beer and the checks are dishonored when presented for payment. § 61.73(b) of the Code.

## III. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. The facts deemed admitted establish Respondent's violation of § 61.73(b) of the Code.

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

## IV. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued mixed beverage permit, MB 410715, and mixed beverage late hours permit, LB 410716, to The Zone 1 (Respondent) on June 23, 1997.
2. Respondent's licensed premise is located at 3810 Congress, Dallas, Dallas County, Texas.
3. On June 29, 2001, Respondent gave Miller of Dallas Inc. a check as payment for beer, and the check was dishonored when presented for payment.
4. On August 9, 2001, Respondent gave Ben E. Keith Co. a check as payment for beer, and the check was dishonored when presented for payment.
5. On March 18, 2002, Respondent gave Ben E. Keith Co. a check as payment for beer, and the check was dishonored when presented for payment.
6. On April 11, 2002, the Staff served its notice of hearing on Respondent by certified mail. This notice was received by Respondent on April 13, 2002. On April 24, 2002, the Staff served its amended notice of hearing on Respondent by certified mail.

7. The notice alleged Respondent had violated the Code in three specified instances. It informed the Respondent the hearing would be held on June 13, 2002, at 10:00 a.m. at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. 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.
8. The notice of hearing also included a disclosure, in at least 12-point, bold-faced type, that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
9. On June 13, 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 did not appear and was not represented at the hearing. The record closed on June 13, 2002.

#### V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.61(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 - 5, Respondent violated § 61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for five days, or in the alternative, Respondent should pay a penalty of \$750.

ISSUED this 31<sup>st</sup> day of July, 2002.

  
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BRENDA COLEMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS