

DOCKET NO. 458-03-0875

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

DIAMOND MART, INC.
D/B/A DIAMOND MART
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

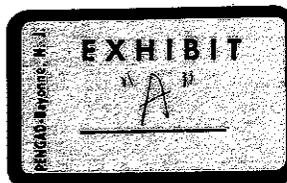
The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Diamond Mart, Inc. d/b/a Diamond Mart (Respondent), alleging that Respondent failed to pay a local fee to Tarrant County, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.38 and 61.71. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On November 15, 2002, Petitioner issued its notice of hearing, directed to Diamond Mart, Inc. d/b/a Diamond Mart at its address of record, 1001 Terminal Road, Fort Worth, Texas, 76106-3887, via certified mail, return receipt requested. 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 was returned by the United States Postal Service with the notation: No Forward Order on File; Unable to Forward; Return to Sender.

On December 6, 2002, a hearing convened before SOAH ALJ Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Following presentation of evidence, the record closed on December 6,



2002.

II. APPLICABLE LAW

In reference to a permittee's responsibilities regarding a local fee, TEX. ALCO. BEV. CODE ANN. § 11.38 provides as follows:

(a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 351, Tax Code, and the local sales and use tax levied under Chapter 321, Tax Code.

(b) The commission or administrator may cancel a permit if it finds that the permittee has not paid a fee levied under this section. A permittee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

In reference to the effect of a permit violation on a coexisting license, TEX. ALCO. BEV. CODE ANN. § 61.71 provides as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period[.]

III. EVIDENCE

Respondent holds Wine Only Package Store Permit, Q-489877, and Beer Retailer's Off-Premise License, BF-489878, issued by TABC, for its premises located at 1001 Terminal Road, Fort Worth, Tarrant County, Texas. On or about March 19, 2002, the Tarrant County Assessor-Collector provided written notice to Respondent that a local permit fee of \$37.50 was due. Respondent never paid the local permit fee.

IV. ANALYSIS

The evidence clearly establishes that Respondent failed to pay a local permit fee to Tarrant County as required by TEX. ALCO. BEV. CODE ANN. § 11.38(a). As such, Respondent's permit should be canceled in accordance with TEX. ALCO. BEV. CODE ANN. § 11.38(b). Due to Respondent's violation in regard to its permit, its license should also be canceled in accordance with TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1).

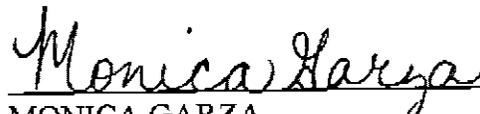
V. PROPOSED FINDINGS OF FACT

1. Diamond Mart, Inc. d/b/a Diamond Mart (Respondent) holds Wine Only Package Store Permit, Q-489877, and Beer Retailer's Off-Premise License, BF-489878, issued by the Texas Alcoholic Beverage Commission (TABC), for its premises located at 1001 Terminal Road, Fort Worth, Tarrant County, Texas.
2. On or about March 19, 2002, the Tarrant County Assessor-Collector provided written notice to Respondent that a local permit fee of \$37.50 was due.
3. Respondent never paid the local permit fee.
4. On November 15, 2002, TABC staff (Petitioner) issued its notice of hearing, directed to Diamond Mart, Inc. d/b/a Diamond Mart at its address of record, 1001 Terminal Road, Fort Worth, Texas, 76106-3887, via certified mail, return receipt requested.
5. 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.
6. The notice was returned by the United States Postal Service with the notation: No Forward Order on File; Unable to Forward; Return to Sender.
7. On December 6, 2002, a hearing convened before SOAH ALJ Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Following presentation of evidence, the record closed on December 6, 2002.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.38 and 61.71.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued proper and timely notice of the hearing. TEX. GOV'T CODE ANN. ch. 2001.
4. Respondent failed to comply with TEX. ALCO. BEV. CODE ANN. § 11.38(a).
5. Respondent's permit should be canceled. TEX. ALCO. BEV. CODE ANN. § 11.38(b).
6. Respondent's license should be canceled. TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1).

SIGNED this 28th day of January, 2003.



MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601519

IN RE DIAMOND MART INC.	§	BEFORE THE
D/B/A DIAMOND MART	§	
PERMIT NO. Q-489877	§	
LICENSE NO. BF489878	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0875)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of February 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on December 6, 2002, and adjourned on December 6, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 28, 2003. 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.

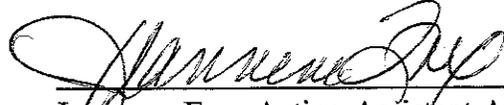
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. Q-489877 and License No. BF489878 are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on March 14, 2003, 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 21st day of February, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Monica Garza
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

DIAMOND MART INC.
D/B/A DIAMOND MART
RESPONDENT
1001 Terminal Rd.
Fort Worth, TX 76106-3887
CERTIFIED MAIL NO. 7001 2510 0003 8688 6148

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division/Compliance

Fort Worth District Office

Tarrant County Tax Assessor-Collector's Office