

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

NEW WAY ENTERPRISES INC.
D/B/A TIME OUT FOOD MART #2
PERMIT NO. BQ454706
BRAZORIA COUNTY, TEXAS
(TABC CASE NO. 608757)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against New Way Enterprises Inc. d/b/a Time Out Food Mart #2 (Respondent) for failing to maintain its status as a corporation incorporated under the laws of the State of Texas in violation of TEX. ALCO. BEV. CODE ANN. §§109.53, 11.61(b)(2), and/or 61.71(a)(1).

Respondent did not make an appearance at the hearing on September 8, 2006. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be cancelled.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on September 8, 2006, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Ramona Perry. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, 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. The notice of intention to institute enforcement action

and 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. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §§11.61(b)(2) and 61.71(a)(1) authorizes the Commission to cancel or suspend a license if it is found, after notice and hearing, that the respondent violated a provision of the code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period.

TEX. ALCO. BEV. CODE ANN. §109.53 requires that a person must be a citizen of Texas to be eligible to receive a permit under the code. TEX. ALCO. BEV. CODE ANN. §1.04(6) defines a person as a natural person or ... corporation.

The staff attorney introduced three exhibits into evidence:

Exhibit 1 is the proof of service to New Way Enterprises Inc. d/b/a Time Out Food Mart #2 showing Respondent received the notice of hearing on August 18, 2006.

Exhibit 2 is an affidavit of Amy Harrison, Licensing Department Director, that the Permit No. BQ-454706 was issued to New Way Enterprise Inc., doing business as Time Out Food Mart #2, 1000 N. Velasco, Angleton, Brazoria County, Texas, by the Texas Alcoholic Beverage Commission. The mailing address of New Way Enterprise Inc. is 355 E. Nasa Rd 1, Ste M, Webster, Texas 77598. Attached to the affidavit is the permit and violation history.

Exhibit 3 is the Order from the Secretary of State that on July 7, 2006, the charter or certificate of authority of New Way Enterprise Inc. was forfeited.

The ALJ took official notice of the Court's file, which shows the hearing was scheduled for September 8, 2006. Notice was properly served on August 17, 2006. The Hearing convened on September 8, 2006, and the Respondent did not appear.

III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "**if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**" Because the Respondent failed to attend the hearing, the allegations that Respondent failed to maintain its status as a corporation incorporated under the laws of the State of Texas in violation of TEX. ALCO. BEV. CODE ANN. §§109.53, 11.61(b)(2), and 61.71(a)(1) is deemed admitted as true. The permit should be cancelled.

IV. FINDINGS OF FACT

1. Permit No. BQ454706 was issued to New Way Enterprise Inc., doing business as Food Mart #2, by the Texas Alcoholic Beverage Commission. The mailing address of New Way Enterprise Inc. is 335 E Nasa Rd 1, Ste M, Webster, Texas 77598.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Respondent on August 17, 2006, and Respondent received the notice on August 18, 2006.
3. The hearing on the merits was held on September 8, 2006, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Ramona Perry. The Respondent did not appear and was not represented at the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Respondent failed to maintain its status as a corporation incorporated under the laws of the State of Texas in violation of TEX. ALCO. BEV. CODE ANN. §§109.53, 11.61(b)(2), and 61.71(a)(1).

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §61.71.
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. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§109.53, 11.61(b)(2), and 61.71(a)(1) by failing to maintain its status as a corporation incorporated under the laws of the State of Texas.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the permit and license should be cancelled.

SIGNED September 13, 2006.



**DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**