DOCKET NO. 458-06-1876

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	**BEFORE THE STATE OFFICE**
	§	
	§	
V.	§	
	§	
DOUBLE 11 INC.	§	**OF**
D/B/A LOVE FIELD MART	§	
PERMIT NO. Q-558346 AND	§	
LICENSE NO. BF-558341	§	
DALLAS COUNTY TEXAS	§	
(TABC NO. 519283)	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Double 11 Inc., d/b/a Love Field Mart (Respondent) seeking a six-day suspension of Respondent's Wine Only Package Store Permit Q-558346 and Beer Retail Dealer's License BF-558341. TABC alleged that between July 27, 2005, and November 30, 2005, Respondent, its agent, servant, or employee, issued six separate checks for purchases of beer, which were dishonored when presented for payment to wholesale distributors, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2), 61.71 (a)(1), 61.73 (b) and/or 102.31.

This Proposal for Decision finds the Respondent's Permit and License should be suspended for six days.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on June 7, 2006. Attorney Diane Brown represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same

day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On June 11, 2004, Respondent was issued Wine Only Package Store Permit Q-558346 and Beer Retail Dealer's License BF-558341.

(b) On May 4, 2006, Petitioner sent a Notice of Hearing, by certified mail, return receipt requested, to Respondent's address of record asserting that the TABC was seeking to suspend Respondent's permit and license. The return receipt was signed on May 8, 2006.

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ALCO. BEV.CODE § 61.71 (a) (1) states:

> 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 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.

TEX. ALCO. BEV.CODE § 11.61 (b) (2) states:

> The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: the permittee violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV.CODE § 61.73 (b) states:

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 gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

1. Double 11 Inc., d/b/a Love Field Market (Respondent) is the holder of Wine Only Package Store Permit Q-558346 and Beer Retail Dealer's License BF-558341.

2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on May 4, 2006. The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

3. Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing dated May 4, 2006.

4. On June 7, 2006, the hearing in this matter convened before ALJ Kyle J. Groves. Diane Brown appeared for Petitioner. Respondent failed to appear.

5. Between July 27, 2005, and November 30, 2005, Respondent, its agent, servant, or employee, issued six separate checks for purchases of beer which were dishonored when presented for payment to wholesale distributors, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2), 61.71 (a)(1), 61.73 (b) and/or 102.31.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.

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. The factual allegations in the notice of hearing are deemed admitted as true.

5. By issuing six separate checks for purchases of beer, which were dishonored when presented for payment to wholesale distributors, Respondent, his agent, servant, or employee violated TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2), 61.71 (a)(1), 61.73 (b) and/or 102.31.

6 Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine Only Package Store Permit Q-558346 and Beer Retail Dealer's License BF-558341 should be suspended for six days.

SIGNED JUNE 28TH, 2006

KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Double 11 Inc. d/b/a Love Field Mart

DOCKET NUMBER: 458-06-1876

AGENCY CASE NO: 519283

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RESPONDENT
VIA REGULAR MAIL

as of June 28, 2006