

DOCKET NO. 564222

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
SCOTT NARAMORE RITCHEY D/B/A MARKET STREET PUB PERMIT/LICENSE NO(s). BG579075 CALDWELL COUNTY, TEXAS (SOAH DOCKET NO. 458-08-0144)	§ § § § §	ALCOHOLIC BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this day, in the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sarah G. Ramos. The hearing convened on the 8th day of November 2007 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 13th day of November 2007. The 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 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 your permit No. BG-579075, is hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$3,000.00** on or before the **6th** day of **February 2008** all rights and privileges under the above described permits will be **SUSPENDED** for a period of **twenty (20) days, beginning at 12:01 A.M. on the 13th day of February 2008**.

This Order will become final and enforceable on January 4, 2008, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this December 11, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/bc

Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

Scott Naramore Ritchey
d/b/a Market Street Pub
RESPONDENT
211 E Market St
Lockhart, TX 78644

Judith Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 564222

REGISTER NUMBER:

NAME: SCOTT NARAMORE RITCHEY

TRADENAME: MARKET STREET PUB

ADDRESS: 211 E. Market Street, Lockhart, Caldwell County, Texas 78644

DATE DUE: February 6, 2008

PERMITS OR LICENSES: BG579075

AMOUNT OF PENALTY: \$3,000.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form along with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

Overnight Delivery Address: 5806 Mesa Drive, Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code Telephone No.

LEGAL

SOAH DOCKET NO. 458-08-0144

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
SCOTT NARAMORE RITCHEY D/B/A MARKET STREET PUB PERMIT/LICENSE NO. BG579075 CALDWELL COUNTY, TEXAS (TABC CASE NO. 564222)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action against Scott Naramore Ritchey d/b/a Market Street Pub (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer that were dishonored when presented for payment. Staff recommended that Respondent's license be suspended for 20 days, or in lieu of suspension, Respondent be allowed to pay a \$3,000 penalty. The Administrative Law Judge (ALJ) agrees with that recommendation.

I. PROCEDURAL HISTORY

The hearing convened as scheduled on November 8, 2007, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, before the undersigned ALJ. Staff attorney Judith Kennison represented Staff. Respondent did not appear and was not represented. Staff's three exhibits were admitted into evidence, and the record closed at the conclusion of the hearing.

Because the hearing proceeded on a default basis, Staff's factual allegations contained in the notice of hearing are deemed admitted as true; therefore, the ALJ has based the findings of fact upon these allegations.

II. APPROPRIATE PENALTY

Staff alleged that Respondent issued checks to pay for beer on five occasions in April 2007, but the checks were later dishonored because there were insufficient funds in Respondent's account to cover the checks. Staff requested a 20-day suspension of Respondent's license, or in lieu of suspension, imposition of a \$3,000 penalty. As reflected in Respondent's licensing record, the Commission has imposed sanctions against Respondent for previous violations of issuing "insufficient-funds" checks to pay for beer. Based on the five checks written in April 2007 and Respondent's violation history, Staff's recommended penalty is appropriate, and the ALJ recommends that the Commission issue an order imposing that penalty.

III. FINDINGS OF FACT

1. Scott Naramore Ritchey d/b/a Market Street Pub (Respondent) holds Wine and Beer Retailer's On-Premise Permit/License No. BG579075, issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 211 E. Market Street, Lockhart, Caldwell County, Texas.
2. On September 11, 2007, the Commission's Staff sent a notice of hearing by certified mail, return receipt requested, to Respondent at his address of record.
3. The notice of hearing was returned to the Staff unclaimed, and the U.S. Postal Service notations on the returned envelope indicate that Respondent was notified about the letter on September 18, October 3, and October 13, 2007.
4. The notice of hearing included the date, time, and place of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing also contained a statement in 12-point, bold-face type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought may be granted by default.
6. The hearing on the merits was held on November 8, 2007. Staff attorney Judith Kennison represented the Staff, and Respondent did not appear and was not represented at the hearing.
7. The hearing proceeded on a default basis, and the allegations contained in the notice of hearing were deemed admitted as true.

8. On November 17, 2006, the Commission's Administrator issued an order finding that Respondent had committed a "cash law" violation and suspended Respondent's permit/license for three days, or in lieu of suspension, allowed Respondent to pay a civil penalty of \$550.
9. On February 2, 2007, the Commission's Administrator issued an order finding that Respondent had committed a "cash law" violation and suspended Respondent's permit/license for five days, or in lieu of suspension, allowed Respondent to pay a civil penalty of \$750.
10. On the following dates in 2007, Respondent or Respondent's agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment: April 2 (two checks); April 5 (one check); April 6 (one check); and April 13 (one check).

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case, pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and ch. 61.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing 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. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. By giving checks or drafts for the purchase of beer that were dishonored when presented for payment, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73 and 102.31.
5. As authorized by 1 TEX. ADMIN. CODE § 155.55, a default decision is appropriate.
6. Respondent's license should be suspended for 20 days, or in lieu of suspension, Respondent should be allowed to pay a penalty of \$3,000, as authorized by TEX. ALCO BEV. CODE ANN. § 11.64.

SIGNED November 13, 2007.

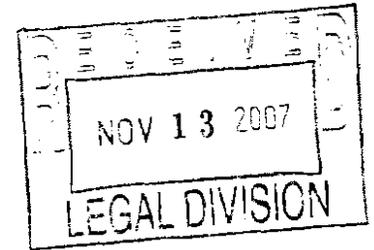


SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



November 13, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-08-0144; Texas Alcoholic Beverage Commission v. Scott Naramore Ritchey d/b/a Market Street Pub Permit/License No. BG579075, Caldwell County, Texas (TABC CASE NO. 564222)

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Sarah G. Ramos".

Sarah G. Ramos
Administrative Law Judge

SGR/ed
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Judith Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Scott Naramore Ritchey, d/b/a Market Street Pub, 211 E. Market Street, Lockhart, TX 78664-**VIA REGULAR MAIL**