

DOCKET NO. 458-98-1937

TEXAS ALCOHOLIC § BEFORE THE STATE OFFICE
BEVERAGE COMMISSION §
§
V. §
§ OF
DOUA HASSAN ALTAL §
D/B/A CHAMPION'S MART §
PERMIT NO. BQ-413001 §
HARRIS COUNTY, TEXAS §
(TABC CASE NO. 570681) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Doua Hassan Altal d/b/a Champion's Mart (the Permittee), asserting the Permittee paid for beer with a check for which funds were insufficient. The Permittee did not attend the November 20, 1998, hearing. This Proposal for Decision finds the allegation proven and agrees with Staff's recommended sanction of a ten-day suspension of the license or, in lieu of suspension, payment of a \$1,500 penalty.

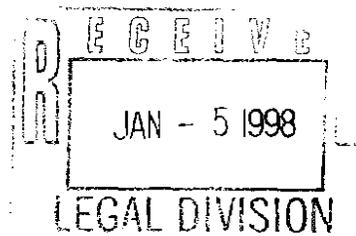
I. REASONS FOR PROPOSED DECISION

Staff alleged two instances of issuing insufficient funds checks. In the notice of hearing,¹ Staff failed to specifically allege that the Permittee's check was written to pay for beer or its containers. However, Staff alleged the transaction violated TEX. ALCO. BEV. CODE §61.73(b) which provides:

(b) 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.

Staff also issued a notice of violation on September 23, 1998. That letter was sent by certified mail, return receipt requested, and received by the Permittee or her agent on September 26, 1998, as evidenced by the signed return receipt card. The notice of violation includes the statement, "Permittee made payment for beer in its original containers and packages, with a dishonored check," and goes on to state the specific dates and entities involved in for two insufficient funds checks.

¹The Permittee received this letter on October 27, 1998.



The ALJ finds that by citing the specific provision in the notice of hearing and including all the elements of the violation in the notice of violation, Staff's notice met the TEX. GOV'T CODE ANN. §2001.051(a)(4) (Vernon (1998) requirement of providing "a short plain statement of the matters asserted."

Because the Permittee did not appear for the hearing, Staff requested a default decision, pursuant to 1 TEX. ADMIN. CODE §155.55. The notice of hearing contained the warning required by that rule. Agreeing with Staff that such action is appropriate, the ALJ recommends the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Doua Hassan Altal d/b/a Champion's Mart (the Permittee) holds permit BQ-413001 issued by the Texas Alcoholic Beverage Commission (Commission).
2. On September 23, 1998, the Commission's Staff sent a notice of violation and on October 22, 1998, the Staff sent notice of the hearing to consider alleged violations of the TEX. ALCO. BEV. CODE ANN. (Vernon 1995 and Vernon Supp. 1998) (Code) to the Permittee by certified mail, return receipt requested.
3. The Permittee or her agent received the notices, as evidenced by signed return receipts.
4. By order dated November 9, 1998, and sent by certified mail, return receipt requested, the Administrative Law Judge changed the date of the hearing from the originally scheduled date of November 19, 1998, to November 20, 1998.
5. The hearing on the merits convened November 20, 1998, at SOAH's Houston, Texas, office (2020 North West Loop, Suite 111). The Commission's Staff was represented by its counsel, Clyde Burleson. The Permittee did not appear and was not represented at the hearing. The record closed on the same day.
6. On or about May 22, 1998, the Permittee, her agent, servant, or employee gave a check written in the amount of \$618.70 to Silver Eagle Distributors, Inc. of Conroe, Texas, in payment for beer or the containers or packages in which it is contained or packaged.
7. On or about July 24, 1998, the Permittee, its agent, servant, or employee gave a check written in the amount of \$281.28 to Republic Beverage Company of Houston, Texas, in payment for beer or the containers or packages in which it is contained or packaged.
8. The checks described in Findings 6-7 and were returned by the drawee, First Bank of Houston, Texas, for insufficient funds.
9. On February 27, 1998, the Permittee agreed to a five-day suspension of her permit or, in lieu of suspension, to pay a civil penalty of \$750 based on a "cash law" violation on December 5, 1997.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code §§6.01, 11.61, and 61.73.
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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 (Vernon 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1998).
4. Based upon Findings 6-8, the Permittee violated Code §61.73(b).
5. Based on the foregoing Findings and Conclusions, a ten-day suspension of Permit BQ-413001 is warranted.
6. Pursuant to Code §11.64, the Permittee should be allowed to pay a \$1,500 civil penalty in lieu of suspension of its permit.

SIGNED this 5th day of January, 1999.



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