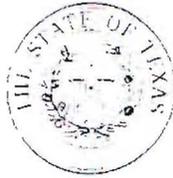


State Office of Administrative Hearings



574054

Cathleen Parsley
Chief Administrative Law Judge

September 17, 2008

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

VIA INTERAGENCY MAIL

RE: Docket No. 458-08-3670; Texas Alcoholic Beverage Commission v. Adarrab Abdelaziz d/b/a AZ Mart Permit/License No. BQ674055

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,



Travis Vickery
Administrative Law Judge

TV/lb

Enclosure

xc Emily E. Helm, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL**

Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA MAIL INTERAGENCY MAIL**

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with exhibits Nos. 1 - 4 and 1 hearing CD)

Adarrab Abdelaziz, d/b/a AZ Mart, 2314 E. 7th Street, Austin, TX 78702-3428 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-08-3670

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	
	§	
ADARRAB ABDELAZIZ d/b/a AZ	§	OF
MART PERMIT/LICENSE NO(s).	§	
BQ674055	§	
	§	
TABC CASE NO. 574054,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against Adarrab Abdelazziz d/b/a AZ Mart (Respondent), alleging that Respondent, or its agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §§ 61.71 and 102.31. Staff recommended that Respondent's permit be cancelled or suspended for five days and that Respondent be allowed to pay a civil penalty of \$300.00 per day in lieu of suspension. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened before ALJ Travis Vickery on August 21, 2008, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Emily E. Helm, Staff Attorney, represented TABC. Respondent did not appear and was not represented at the hearing. TABC's four exhibits were admitted in evidence, the ALJ took administrative notice of the pleadings in SOAH's file, and the record closed at the conclusion of the hearing.

On July 23, 2008, TABC issued a notice of hearing, directed to Respondent at 2314 E. 7th Street, Texas 78702, via certified mail, return receipt requested. The notice of hearing was

addressed to the Respondent's last known address on record with the TABC. The notice of hearing was returned by the US Postal Service as "not deliverable as addressed unable to forward."¹ After the admission of Staff's four exhibits, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE § 155.55. 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 incorporated the allegation into the findings of fact without further discussion here. The facts, as deemed admitted, support Staff's recommendation for a five-day suspension and a fine of \$300 per day in lieu of suspension.

II. FINDINGS OF FACT

1. Adarrab Abdelazziz d/b/a AZ Mart (Respondent) is the holder of Wine and Beer Retailer's Off Premise Permit, BQ-674055, issued on October 12, 2007. Under the permit, AZ Mart was doing business at 2314 E. 7th Street, Austin, Texas 78702.
2. On July 23, 2008, the Texas Alcoholic Beverage Commission (TABC) issued its notice of hearing, directed to Respondent at 2314 E. 7th Street, Austin, Texas 78702, via certified mail, return receipt requested. The notice of hearing was returned by the US Postal Service as "not deliverable as addressed unable to forward."
3. Notice of the hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and a statement of the matters asserted.
4. Notice of the hearing also contained language in 12-point, bold-face type informing Respondent that failure to appear at the hearing could result in the factual allegations being deemed admitted as true, and the relief sought as set out in the hearing notice being granted by default.
5. The hearing in this matter convened before ALJ Travis Vickery on August 21, 2008, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Emily E. Helm, Staff Attorney, represented TABC. Respondent did not appear and was not represented at the hearing. After the taking of evidence, the hearing concluded and the record closed that same day.
6. The hearing proceeded on a default basis, and the allegation contained in the Notice of Hearing was deemed admitted as true.

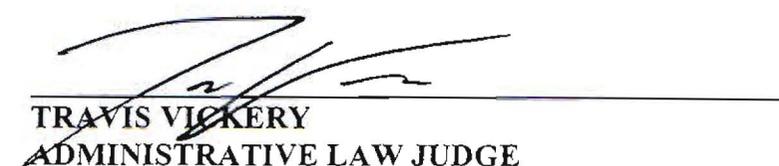
¹ TABC Ex. 4.

7. On November 21, 2007 and on December 11, 2007, Respondent, or its agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case, pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and ch. 61.
2. SOAH 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. Respondent is required to maintain a current mailing address on file with the TABC and to notify the TABC of any change in the address within seven days of the date of the change, under 16 TEX. ADMIN. CODE § 33.33.
5. By twice giving checks or drafts for the purchase of beer that were dishonored when presented for payment, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.71, 61.73, and 102.31.
6. As authorized by 1 TEX. ADMIN. CODE § 155.55, a default decision is appropriate.
7. As a result of committing two violations of TEX. ALCO. BEV. CODE ANN. §§ 61.71, 61.73, and 102.31, Respondent's license should be suspended for five days, or in lieu of suspension, Respondent should be allowed to pay a penalty of \$300 per day, as authorized by TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED September 17, 2008.



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 574054

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	OF
ADARRAB ABDELAZIZ	§	
D/B/A A-Z MART	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BQ674055	§	
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-3670)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Travis Vickery. The hearing convened on the 21st day of August, 2008 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 17th day of September, 2008. The Proposal For Decision, (PFD) was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record. As of this date no exceptions have been filed.

The 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.

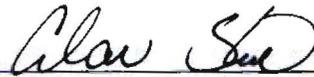
IT IS THEREFORE ORDERED, by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Wine and Beer Retailer's Off Premise Permit, BQ674055, be hereby **SUSPENDED** for **five (5) days** and be assessed a civil penalty of **\$300.00 per day** for a total of **\$1,500.00**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **15th day of November, 2008**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **five (5) days** beginning at 12:01 A.M. on the **22nd day of November, 2008**.

This Order will become final and enforceable on November 3, 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 13th day of October, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

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

Adarrab Abdelaziz
RESPONDENT
d/b/a A-Z MART
2314 E 7th St.
Austin, TX 78702-3428

Emily E. Helm
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
District Office

EH/cj

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 574054

REGISTER NUMBER:

NAME: ADARRAB ABDELAZIZ

TRADENAME: A-Z MART

ADDRESS: 2314 E 7TH ST, AUSTIN, TX 78702-3428

DUE DATE: November 15, 2008

PERMITS OR LICENSES: BQ674055

AMOUNT OF PENALTY: \$1,500.00

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 with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., 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.