

DOCKET NO. 580625

IN RE B & P GROUP LLC	§	BEFORE THE TEXAS
D/B/A CITIZEN	§	
PERMIT/LICENSE NO(s). MB679075, LB	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
<i>(SOAH DOCKET NO. 458-09-2250)</i>	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 29th day of May, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on March 27, 2009 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 23, 2009. This 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 Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that 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 permits are herein **SUSPENDED for five (5) days.**

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **7th day of July 2009**, 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 15th day of July 2009.**

This Order will become final and enforceable on June 22, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on May 29th, 2009



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Honorable Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
2020 N. Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE (713) 812-1001

B & P Group LLC
d/b/a Citizen
RESPONDENT
4606 Washington Avenue
Houston, Texas 77007
VIA U. S. FIRST CLASS MAIL

Sandra K Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Houston District Office

Houston Compliance Office

SKP/aa

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 580625

REGISTER NUMBER:

NAME: B & P GROUP LLC

TRADENAME: CITIZEN

ADDRESS: 4606 WASHINGTON AVENUE, HOUSTON, TX 77007

DUE DATE: JULY 7, 2009

PERMITS OR LICENSES: MB679075, LB

AMOUNT OF PENALTY: \$750.00

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.

SOAH DOCKET NO. 458-09-2250

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
VS.	§	
	§	
B & P GROUP LLC	§	OF
D/B/A CITIZEN	§	
PERMIT/LICENSE NO.	§	
MB679075 & LB	§	
Respondent	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 580625)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against B & P Group LLC d/b/a Citizen (Respondent) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 28.12, 61.73 and 102.31. The alleged violation occurred on or about August 1, 2008, when Respondent, 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 Code §§ 28.12, 61.73 and 102.31.

This Proposal for Decision finds the allegations by TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 5 days or that Respondent be allowed to pay a civil penalty of \$750 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on March 27, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Sandra Patton. Respondent did not appear. 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 SOAH 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

CODE § 61.73 authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the respondent gave a distributor a check for payment which is dishonored when presented for payment. As described in the findings of fact, Respondent violated CODE § 61.73 by writing a check to a distributor that was subsequently returned for insufficient funds.

Staff introduced two exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Mixed Beverage Late Hours Permit, MB-679075 was issued to B & P Group Inc. d/b/a Citizen, 4606 Washington Ave., Houston, Harris County, Texas, by the Commission. The record states that the mailing address of the permit holder is 4606 Washington Ave., Houston, Texas 77007. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the envelope returned "Unclaimed" by the Postal Service, bearing US Postal Service Certified Mail Article number 7006 0810 0000 2143 0390, containing the Notice of Hearing, sent to Respondent by certified mail at 4606 Washington Ave., Houston, Texas 77007 and advising that the hearing was set for March 27, 2009 at 10:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas.

III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

IV. FINDINGS OF FACT

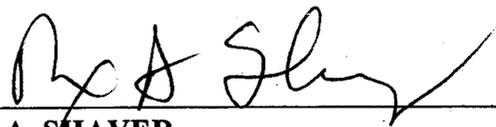
- 1 Respondent holds a Mixed Beverage Permit MB-679075 which includes the Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (Petitioner).
- 2 On August 1, 2008, Respondent or Respondent's agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
- 3 On January 30, 2009, Petitioner sent a Notice of Hearing Respondent by certified mail to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2 and 3, Respondents permits or licenses could be denied, refused, cancelled, or suspended.
- 4 The Notice of Hearing was returned to the Texas Alcoholic Beverage Commission marked "Unclaimed".
- 5 The Notice of Hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.
- 6 On March 27, 2009, a hearing convened before ALJ Rex A. Shaver at 2020 North Loop West, Suite 111, Houston, Texas 77018.
- 7 The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
- 8 Petitioner appeared and was represented by Sandra Patton, Staff Attorney. Respondent did not appear.

V. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).

- 2 SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
- 3 Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.
- 4 Based on Findings of Fact Nos. 1 through 9, and Conclusion of Law Nos. 1 through 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
- 5 The license should be suspended for a period of 5 days and Respondent be allowed to pay a civil penalty of \$750 in lieu of suspension.

Signed on April 23, 2009.



REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS