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DOCKET NO. 615506

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|-------------------------------|---|---------------------|
| IN RE NEW BLESSINGS, INC. | § | BEFORE THE TEXAS |
| D/B/A AM PM MINI MART II | § | |
| PERMIT NO. BF-299560 | § | ALCOHOLIC |
| TARRANT COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-06-0453) | § | BEVERAGE COMMISSION |

DISMISSAL ORDER

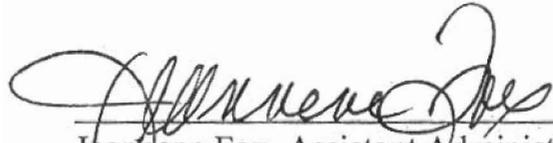
On this day the Texas Alcoholic Beverage Commission moved to dismiss the above styled and numbered cause for the following reason:

The Licensee has fulfilled its obligation to Tarrant County.

IT IS THEREFORE ORDERED that the complaint in Docket No.615506 is **DISMISSED** without prejudice.

SIGNED on this the 23rd day of February, 2006 at Austin, Texas.

On behalf of the Administrator,



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/yt

NEW BLESSINGS, INC.
d/b/a AM PM MINI MART II
RESPONDENT
2721 N. Collins
Arlington, Tx. 76006

Christopher Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 1, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 458-06-0453; Texas Alcoholic Beverage Commission vs. New Blessings, Inc. d/b/a AM-PM Mini Mart II (TABC Case No. 615506)

Dear Mr. Steen:

I have received a Motion to Dismiss From SOAH Docket from TABC Staff in this matter. This Motion was filed after my Proposal for Decision (PFD) was issued to you in this matter. As a result, I do not have authority or jurisdiction to rule on this Motion. I will not be issuing any order in relation to this Motion's request since the matter is now within the scope of your authority to make any decision you find appropriate.

I have received a Dismissal Order signed by Jeannene Fox, TABC Assistant Administrator, concerning this matter and will forward this information on to SOAH Docketing in support of the disposition that has been made by TABC Staff in this case.

Sincerely,

A handwritten signature in black ink that reads "Tanya Cooper".

Tanya Cooper
Administrative Law Judge

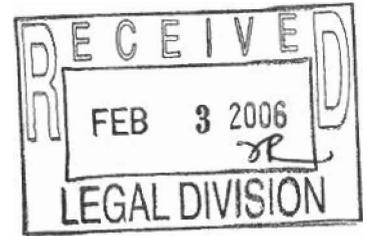
TC/ds

Christopher Gee, TABC Staff Attorney, VIA FACSIMILE; New Blessings, Inc d/b/a AM PM Mini Mart II, 2721 N. Collins, Arlington, Texas 76005, VIA REGULAR MAIL

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



February 3, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 458-06-0453; Texas Alcoholic Beverage Commission vs New Blessings, Inc.
d/b/a AM PM Mini Mart II (TABC Case No. 615506)

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Christopher Gee, attorney for Texas Alcoholic Beverage Commission, and to the Respondent, New Blessings, Inc. d/b/a AM PM Mini Mart II. The Texas Alcoholic Beverage Commission brought this disciplinary action against New Blessings, Inc. d/b/a AM PM Mini Mart II (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County, Texas. As Respondent did not appear and was not represented at the hearing, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) deems TABC Staff's allegation to be true and recommends cancellation of Respondent's permit.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Tanya Cooper
Administrative Law Judge

cc: Christopher Gee, TABC Staff attorney, via fax 512/206-3498; New Blessings, Inc. d/b/a AM PM Mini Mart II, 2721 N. Collins, Arlington, Texas 76005, via Regular Mail

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DOCKET NO. 458-06-0453

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

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§

BEFORE THE STATE OFFICE

V.

OF

**NEW BLESSINGS, INC. D/B/A
AM PM MINI MART II,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against New Blessings, Inc., d/b/a AM PM Mini Mart II (Respondent), alleging that Respondent failed to pay ad valorem taxes to Tarrant County, Texas. As Respondent did not appear and was not represented at the hearing, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) deems TABC Staff's allegation to be true and recommends cancellation of Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11 and 61. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2001.

On November 16, 2005, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permit. The Notice of Hearing was sent by U.S. Post Office certified mail, return receipt requested. Although the U.S. Post Office's return receipt "green card" was not presented by TABC Staff, the Notice of Hearing is presumed to have been

SOAH DOCKET NO. 458-06-0453

PROPOSAL FOR DECISION

PAGE 2

received¹ at its address of record pursuant to 16 TEX. ADMIN. CODE § 37.3,² based upon the Certificate of Service included in TABC Staff's Notice of Hearing that was filed with SOAH in this matter on November 17, 2005.

The initial hearing date scheduled in this case through TABC Staff's Notice of Hearing was December 8, 2005, at 10:30 a.m. On that date, inclement weather resulted in hazardous driving conditions. Accordingly, the ALJ cancelled the initial hearing and rescheduled the hearing for January 27, 2006, at 9:00 a.m.³ Notice of the rescheduled hearing was provided to both parties. Respondent is presumed to have received its notice of the hearing's new date, time, and location by regular mail from SOAH sent to Respondent's address of record.

A hearing was convened as scheduled before ALJ Tanya Cooper at the SOAH office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas, on January 27, 2006. TABC Staff was represented at the hearing by Christopher Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. During the hearing, TABC Staff offered evidence to support a default decision against Respondent. The hearing concluded and the record closed on

¹ 1 TEX. ADMIN. CODE § 155.25 provides that any person filing a document with SOAH in a case shall, on the same date as the document is filed, provide a copy to each party. . . by regular, certified or registered mail.

(d) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding the party's receipt of documents served by another party:

(3) If a document was sent by regular mail, certified mail, or registered mail, the judge shall presume that it was received no later than three days after mailing. . .

² TABC's Rule 37.3 provides that service of notices of hearing, . . . related to contested cases shall be by certified mail addressed to the licensee/permittee/certificate holder's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the licensee/permittee/certificate holder. This rule further requires that licensee/permittee/certificate holders and applicants for licenses, permits, or certificates, and their representatives, shall notify the commission in writing of any change of address within seven days of such change. Licensee/permittees shall file their change of address with the Licensing Division of the Texas Alcoholic Beverage Commission.

³ 1 TEX. ADMIN. CODE §§ 155.15(b), 155.27(b) and 155.33(a).

that same day.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. TABC Staff's Notice of Hearing complies with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegation presented in the Notice of Hearing is deemed admitted as true. Accordingly, the ALJ incorporates this allegation into the Findings of Fact below.

Further, the ALJ agrees that TABC Staff's penalty recommendation is appropriate. Section 11.38(e) of the Code authorizes the commission or administrator to cancel or deny a permit for the retail sale of alcoholic beverage if it is found that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. Based upon the above-listed Code provision and Respondent's failure to appear at the hearing as scheduled, cancellation of Respondent's permit is recommended.

III. FINDINGS OF FACT

1. New Blessings, Inc. d/b/a AM PM Mini Mart II (Respondent) holds a Beer Retailer's Off-Premises License, BF-299560, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2721 N. Collins, Arlington, Tarrant County, Texas.
2. On November 16, 2005, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 2721 N. Collins, Arlington, Texas, 76006. This Notice was sent by U.S. Post Office certified mail, return receipt requested, and is presumed to have been received at that address by November 21, 2005.
3. The Notice of Hearing contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.

4. The Notice of Hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed to be admitted as true, and the relief sought may be granted by default.
5. On January 27, 2006, a hearing was convened at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Christopher Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. Respondent failed to pay ad valorem taxes to Tarrant County, Texas.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11 and 61.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
3. Based upon Findings of Fact Nos. 2 - 4, TABC Staff issued its Notice of Hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.38(e).
6. Based upon Findings of Fact Nos. 1-6, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §11.38 (e), Respondent's permit should be cancelled.

DATE SIGNED: FEBRUARY 3, 2006



TANYA COOPER,
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: New Blessings, Inc. d/b/a AM PM Mini Mart II

DOCKET NUMBER: 458-06-0453

AGENCY CASE NO: 615506

Christopher Gee
Staff Attorney
Texas Alcoholic Beverage Commission
Ph: 512/206-3490
Fax: 512/206-3498

AGENCY COUNSEL
BY FAX

New Blessings, Inc
d/b/a AM PM Mini Mart II
2721 N. Collins
Arlington, Texas 76006

RESPONDENT
BY MAIL

as of February 3, 2006

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd., Suite 400
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

FACSIMILE TRANSMISSION

DATE: February 3, 2006

SOAH DOCKET NO.: 458-06-0453
TABC vs. New Blessings, Inc.
d/b/a AM PM Mini Mart II

FROM: Diana Dupre', Administrative Tech

NUMBER OF PAGES: 7
(Including cover sheet)

| FAX TO: | FAX NO.: | Transaction No./Time: |
|-----------------|--------------|-----------------------|
| Alan Steen | 512/206-3498 | |
| Christopher Gee | 512/206-3498 | |

Message: Attached is the **Proposal for Deciston** for the above referred to cause number.**Note:** If all pages are not received, please contact Diana Dupre' at 817/731-1733