

DOCKET NO. 458-03-0429

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

VS.

OF

AUGUSTINE AZIEGBE EKUPKE  
D/B/A PALM BEACH CLUB  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 600183)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of Augustine Aziegbe Ekupke d/b/a Palm Beach Club's (Respondent) permits, or in the alternative, payment of a penalty. The Staff alleged Respondent had paid for beer with a check which was dishonored. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends Respondent's permits be suspended for 10 days, or in the alternative, that Respondent pay of a penalty of \$1,500.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of notice or jurisdiction in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion here.

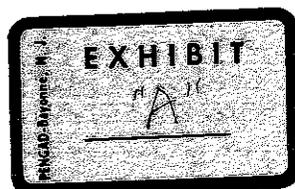
On November 15, 2002, a hearing convened before ALJ Robert F. Jones Jr., State Office of Administrative Hearings (SOAH). The Texas Alcoholic Beverage Commission (TABC) was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared and represented himself. The record was closed on November 15, 2002.

**II. EVIDENCE**

**A. Staff's Evidence**

Respondent's licensed premise is located at 2816 Main Street, Dallas, Dallas County, Texas. TABC issued mixed-beverage permit MB433648 and mixed-beverage-late-hours permit LB433649 to Respondent.

On October 15, 2002, Staff served Respondent with Requests for Admissions (the Requests), a copy of which (along with proof of service) was admitted in evidence. Respondent failed to either admit or deny the Requests. The Requests are deemed admitted, and are conclusively established against Respondent. 1 TEX. ADMIN. CODE §§ 155.31(d)(2). Those matters admitted are set out in the findings of fact and conclusions of law without further discussion here.



The Staff also proved that

- on January 23, 2001, Respondent received a warning for a cash law violation.
- on July 2, 2001, Respondent's permits were suspended for five days for a cash law violation which occurred on May 16, 2001. Respondent was given the option of paying a \$750 penalty in lieu of the suspension.

#### B. Respondent's Evidence

Respondent testified that his check number 1034 given to Miller of Dallas Inc. in payment for beer was dishonored. Respondent explained that he had written a large check on the account in question on the same day that check number 1034 was given to Miller of Dallas Inc. Respondent's manager, a Ms. Miller, wrote the check without his knowledge. He testified he immediately contacted Margaret Elizondo of Miller of Dallas Inc. He explained to Ms. Elizondo that check 1034 would be dishonored, and made arrangements with her to redeem the check once it was dishonored. Respondent stated that he replaced the dishonored check with a postal money order.

With respect to the two prior violations, Respondent explained that

- the January 23, 2001, cash law violation occurred when he mistakenly wrote a check for beer relying on an out of state check which he had deposited, and which his bank had put on hold for collection.
- the May 16, 2001, cash law violation occurred when his manager Ms. Miller wrote a check for beer while he was out of the country.

### III. DISCUSSION

TABC is authorized to suspend a permit for not more than 60 days for any violation of the Code. TEX. ALCO. BEV. CODE § 11.61(b)(2)(Vernon 2002) (the Code). A permittee violates the code if it gives checks as payment for beer and the checks are dishonored when presented for payment. §61.73(b) of the Code. The facts deemed admitted establish Respondent's violation of §61.73(b).

The Staff recommended a suspension of Respondent's permits for 10 days, or in the alternative that Respondent pay a penalty of \$1,550. §61.73(b) of the Code is a "strict liability" statute, and Respondent's excuse for the checks being dishonored is no defense to his liability. Respondent's violation history was admitted into evidence. The record shows that Respondent has two prior violations of this kind.

Under the TABC's "standard penalty chart" a violation of §61.73(b) of the Code calls for a maximum of a three-day suspension for a first violation and a five to ten day suspension for a second violation. See 16 TEX. ADMIN. CODE § 37.60. These violations are "major regulatory violations" under the penalty chart. Generally, A "repeat violation" "justifies the penalty for a second or third violation if . . . it is a major regulatory violation within 24 months of the first violation." *Id.* § 37.60(c). A penalty for a repeat violation is not "assessed unless the alleged violation occurs after

the permittee . . . has been notified, in writing, of the first alleged violation." *Id.* § 37.60(d). The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. § 11.64(a) of the Code. The standard penalty chart is not binding. The facts developed in the record are the determining factors "as to the sufficiency of the penalty assessed." 16 TEX. ADMIN. CODE § 37.60(g).

Respondent's manager issued the check which was dishonored. A penalty is justified because of the violation of §61.73(b) of the Code.

The ALJ recommends Respondent's permits be suspended for 10 days, or in the alternative, that Respondent pay a penalty of \$1,500.

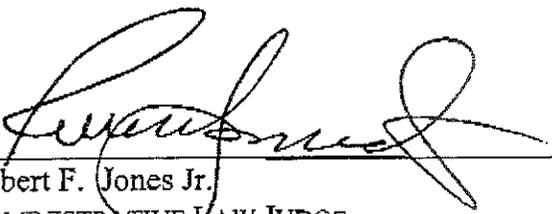
#### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued mixed-beverage permit MB433648 and mixed-beverage-late-hours permit LB433649 to Augustine Aziegbe Ekupke d/b/a Palm Beach Club (Respondent).
2. Respondent's licensed premise is located at 2816 Main Street, Dallas, Dallas County, Texas.
3. On April 12, 2002, Respondent gave Miller of Dallas Inc. a check as payment for beer and the check was dishonored when presented for payment.
4. On January 23, 2001, Respondent received a warning for a cash law violation.
5. On July 2, 2001, Respondent's permits were suspended for five days for a cash law violation which occurred on May 16, 2001. Respondent was given the option of paying a \$750 penalty in lieu of the suspension.
6. On October 15, 2002, the Staff served its Notice of Hearing (the NOH) on Respondent by certified mail.
7. The NOH alleged Respondent had violated the Code in several specified instances. It informed the Respondent the hearing would be held on November 15, 2002, at 10:00 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
8. On November 15, 2002, a hearing convened before Administrative Law Judge Robert F. Jones Jr., State Office of Administrative Hearings (SOAH). TABC was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared and represented himself. The record was closed on November 15, 2002.

### V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 2000)(the Code).
2. 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, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 2000).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on the foregoing findings and conclusions, Respondent has violated §61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent has one previous violation of §61.73(b) of the Code.
6. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for 10 days, or in the alternative, Respondent should pay a penalty of \$1,500.

SIGNED December 11, 2002.



---

Robert F. Jones Jr.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 600183**

IN RE AUGUSTINE AZIEGBE EKUKPE	§	BEFORE THE
D/B/A PALM BEACH CLUB	§	
PERMIT NOS. MB433648, LB433649	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0429)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 3<sup>rd</sup> day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones. The hearing convened on November 15, 2002, and adjourned on November 15, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 11, 2002. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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, Transcripts, 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 Permit Nos. MB433648 and LB433649 are hereby **SUSPENDED** for ten (10) days.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the 3<sup>rd</sup> day of April, 2003, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at **12:01 A.M. on the 10<sup>th</sup> day of April, 2003.**

**This Order will become final and enforceable on January 24, 2003**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

**SIGNED** this 3<sup>rd</sup> day of January, 2003.

On Behalf of the Administrator,



---

Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Robert Jones  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (817) 377-3706**

AUGUSTINE AZIEGBE EKUKPE  
D/B/A PALM BEACH CLUB  
**RESPONDENT**  
1937 Redcloud Dr.  
Dallas, Texas 75217  
**VIA FAX (214) 742-6801 and**  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 7756**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division  
Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 600183**

**REGISTER NUMBER:**

**NAME: AUGUSTINE AZIEGBE EKUKPE**

**TRADENAME: PALM BEACH CLUB**

**ADDRESS: 2816 Main Street, Dallas, Texas 75226**

**DATE DUE: April 3, 2003**

**PERMITS OR LICENSES: MB433648, LB433649**

**AMOUNT OF PENALTY: \$1,500.00**

---

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 3RD DAY OF APRIL 2003, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

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

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.