

DOCKET NO. 458-03-1841

TEXAS ALCOHOLIC BEVERAGE § **BEFORE THE STATE OFFICE**
COMMISSION, Petitioner §
§
V. §
§ **OF**
§
CANNING DISTRIBUTORS, INC. §
D/B/A DRUG EMPORIUM, Respondent §
DALLAS COUNTY, TEXAS §
(TABC No. 602329) § **ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Canning Distributors, Inc. d/b/a Drug Emporium (Respondent), alleging that on or before November 11, 2002, Respondent failed to timely provide reports or other data to TABC Staff. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that Staff's allegations are true and recommends that Respondent's permit be canceled and any pending renewal application denied.

I. PROCEDURAL HISTORY

On January 23, 2003, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 5603 Willers Way, Houston, Texas 77056-2608. The Notice was sent by certified mail (7001 2510 0003 8688 6711), return receipt requested. The Notice was received at that address as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on January 24, 2003.

A hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas, on March 14, 2003. Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing concluded and the record closed on the same day.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and § 11.63 of the Code. Pursuant to 1 TEX. ADMIN. CODE § 155.55, 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.

TABC Staff requested that the ALJ recommend a penalty in this case of cancellation of Respondent's permit. In addition, TABC Staff requested denial of any pending renewal applications.

III. PROPOSED FINDINGS OF FACT

1. Canning Distributors, Inc., d/b/a Drug Emporium (Respondent) holds a Wine and Beer Retailers Off Premises Permit, BQ310191, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1021 N. Central Expressway, Plano, Collin County, Texas.
2. On January 23, 2003, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 5603 Willers Way, Houston, Texas 77056-2608. The Notice was sent by certified mail (7001 2510 0003 8688 6711), return receipt requested. The Notice was received at that address as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on January 24, 2003.
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 also 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 as true, and the relief sought may be granted by default.
5. On March 14, 2003, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or before November 11, 2002, Respondent failed to timely provide reports or other data to TABC Staff.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.32, 5.44, 26.03, and 61.71.
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, 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 Proposed 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 Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 26.03 and 61.71 (a)(1).
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permit should be canceled and any pending renewal application denied.

SIGNED on this the 21st day of March 2003.



Tanya Cooper

ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 602329

IN RE CANNING DISTRIBUTORS INC.	§	BEFORE THE
D/B/A DRUG EMPORIUM	§	
PERMIT NO. BQ310191	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1841)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 11th day of July 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on March 14, 2003, and adjourned on March 14, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 21, 2003. 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 No. BQ310191 is hereby **CANCELED FOR CAUSE** and any pending renewal application **DENIED**.

This Order will become final and enforceable on August 1, 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 11th day of July, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

CANNING DISTRIBUTORS INC.
D/B/A DRUG EMPORIUM
RESPONDENT
5603 Willers Way
Houston, TX 77056-2608
CERTIFIED MAIL NO. 7001 2510 0003 8686 9738

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Dallas District Office