

DOCKET NO. 458-03-4667

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
V.	§	
	§	
AVALON BUSINESS CORPORATION	§	OF
D/B/A LITTLE BUDDY #5	§	
PERMIT NO. BF487553	§	
BRAZORIA COUNTY, TEXAS	§	
(TABC CASE NO. 603347)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against Avalon Business, d/b/a Little Buddy #5 (the Permittee) for paying for beer with a check for which funds were insufficient. Mr. Sayed Ali appeared at the hearing for Respondent and represented himself. The Staff recommended that Permittee's permits be suspended for three days or that Permittee pay a fine of \$150.00 per day in lieu of suspension.

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

The hearing in this matter convened on October 28, 2003, before ALJ Cyrena Benson, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Staff was represented by attorney Gayle Gordon. The Permittee represented himself at the hearing. Both parties appeared by telephone.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

**II. ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS**

The allegations in this proceeding asserted the Permittee, its agent, or employee paid beer distributors for beer with a check on January 8, 2003, that was subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. (the Code) § 61.73(b) for a permittee to tender a beer distributor a check for payment of beer which is dishonored when presented for payment. Such a violation may be punished by cancellation or a maximum 60-day suspension of a permit.

**III. SUMMARY OF THE EVIDENCE**

TABC introduced sufficient and undisputed evidence of the dishonored checks written to Del Papa Distributing Company and accompanying affidavits. TABC also called Mr. Ali as a witness to verify that he is an officer of the Avalon Corporation and that he was aware of the check that was written. In his case, Mr. Ali did not dispute the evidence, but testified that at the time the check was

written he was a new owner of the business.

#### IV. RECOMMENDATION

Penalties for the violations of the Code § 61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

In this case, Staff recommended a three-day suspension, based on the evidence of the one violation. The evidence does support the allegations. The ALJ therefore recommends a three-day suspension. Pursuant to the Code § 11.64, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150.00 nor more than \$25,000.00 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty.

#### V. FINDINGS OF FACT

1. Avalon Business Corporation d/b/a Little Buddy #5 (the Permittee), located at 101 E. Main, Clute, Brazoria County, Texas 77531, holds Permit No. BF487553.
2. Permittee received proper and timely notice of the hearing from the staff of the Texas Alcoholic Beverage Commission (Staff) in a notice of hearing, dated September 29, 2003. The notice was properly sent to Permittee at the address provided in Finding of Fact No. 1.
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 short, plain statement of the matters asserted.
4. The hearing was convened on October 28, 2003, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Mr. Sayed Ali appeared for Permittee and represented himself at the hearing. Gayle Gordon, attorney, represented the Staff.
5. On or about January 8, 2003, Permittee, its agent, servant, or employee tendered a check written in the amount of \$1,285.70 to Del Papa Distributing Company, of Galveston, Texas. On or about January 15, 2003, the check was returned by Drawee, Bank of America, for insufficient funds.

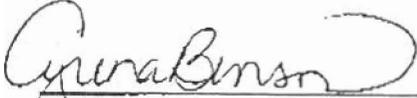
#### VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 61.73.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55(d).
4. The Permittee, its agent, servant, or employee tendered a check in payment for beer, on January 8, 2003, which was dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. Based on the foregoing Findings and Conclusions, a three-day suspension of the permits is warranted pursuant to 16 TEX. ADMIN. CODE § 37.60.
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$450.00 civil penalty in lieu of suspension of its permits.

SIGNED this 11<sup>th</sup> day of February, 2004.

4.

  
CYRENA BENSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 603347

IN RE AVALON BUSINESS CORPORATION	§	BEFORE THE TEXAS
D/B/A LITTLE BUDDY #5	§	
LICENSE NO. BF487553	§	
	§	ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-4667)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 2nd day of April, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cyrena Benson. The hearing convened on October 28, 2003 and adjourned October 28, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 11, 2004. 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 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 License No. BF487553 is herein **SUSPENDED**.

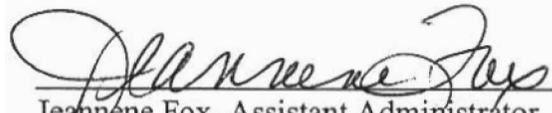
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the 2nd day of June, 2004, all rights and privileges under the above described license will be **SUSPENDED for a period of three (3) days, beginning at 12:01 A.M. on the 9th day of June, 2004.**

**This Order will become final and enforceable on APRIL 23, 2004, unless a Motion for Rehearing is filed before that date.**

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

**SIGNED** on this the 2nd day of April, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Cyrena Benson  
Administrative Law Judge  
State Office of Administrative Hearings  
San Antonio, Texas  
**VIA FACSIMILE (210) 308-6854**

Avalon Business Corporation  
**RESPONDENT**  
d/b/a Little Buddy #5  
101 E. Main  
Clute, Texas 77531  
**CERTIFIED MAIL NO. 7001 2510 0007 0098 5328**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Compliance Division  
Licensing Division  
San Antonio District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 603347**

**REGISTER NUMBER:**

**NAME: Avalon Business Corporation    TRADENAME: Little Buddy's #5**

**ADDRESS: 101 E. Main, Clute, Texas 77531**

**DATE DUE: June 2, 2004**

**PERMITS OR LICENSES: BF487553**

**AMOUNT OF PENALTY: \$450.00**

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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 2ND DAY OF JUNE, 2004, 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.