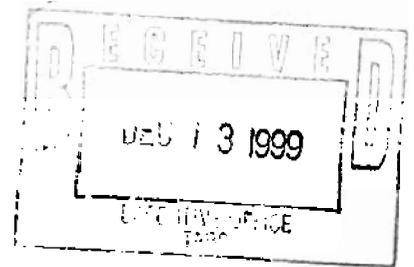


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 10, 1999



Mr. Doyme Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

CERTIFIED MAIL NO. Z 409 580 967
RETURN RECEIPT REQUESTED

RE: Docket No. 458-98-0626; TABC vs. Petra Enterprises, Inc. d/b/a Rene's Drive Inn, TABC Case No. 576568

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Petra Enterprises, Inc., d/b/a Rene's Drive Inn. For reasons discussed in the Proposal for Decision, I have recommended that the license be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

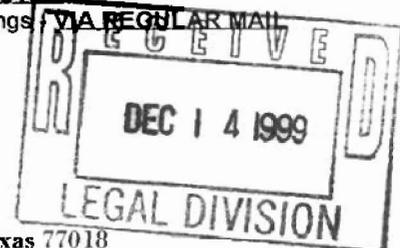
Sincerely,

A handwritten signature in cursive script that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**
Petra Enterprises Inc., 3711-A Fatta Drive, Dickinson, TX 77539-6449 -
VIA CERTIFIED MAIL NO. Z 409 580 966, RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

DOCKET NO. 458-98-0626

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE
	§	
	§	
V.S.	§	
	§	OFFICE OF
	§	
PETRA ENTERPRISE, INC.	§	
D/B/A RENE'S DRIVE INN	§	
PERMIT NOS. Q-249522 & BF-301420	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 576568)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Petra Enterprise, Inc. d/b/a Rene's Drive Inn (the Permittee) for five offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code.

This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The Permittee did not make an appearance at the hearing on June 21, 1999. A Proposal for Decision was sent to the TABC. Permittee requested a rehearing. TABC granted a rehearing. The second hearing was October 28, 1999. Ms. Gayle Gordon appeared for TABC and announced ready. Mr. Ali Telfah appeared for Permittee and announced ready.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §61.73(b) 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 Permittee gave a distributor a check for payment which is dishonored when presented for payment. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) five times by writing checks to distributors that were subsequently returned for insufficient funds.

Nine exhibits were admitted into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenthner, Licensing Department Director, that the Permit Nos. Q-249522 and BF-301420 were issued to Petra Enterprise Inc., doing business as Rene's Drive Inn, by the Texas Alcoholic Beverage Commission.

Exhibit TABC 2 is an affidavit of Brian L. Guenthner, Licensing Department Director, showing violation history.

Exhibit TABC 3 is the TABC 18(c) letter of December 15, 1997, to Permittee setting out the violations. Exhibit TABC 4 is the Notice of Hearing for June 21, 1999 to Petra Enterprises, Inc. with attached green card showing Permittee received notice.

Exhibit TABC 5 is the TABC 18(c) letter of March 26, 1998, to Permittee setting out additional violations.

Exhibit TABC 6 is Petitioner's Motion to Reset Hearing date from October 15, 1999 to October 28, 1999.

Exhibit TABC 7 is Order Re-Setting Hearing to October 28, 1999.

Exhibit TABC 8 is a fax confirmation on Motion to Reset Hearing.

Exhibit TABC 9 is Order Granting Rehearing.

The ALJ took judicial notice of the Court's file which shows the hearing was originally scheduled for May 13, 1998. Notice was properly served on April 6, 1998, and received by Permittee on April 9, 1998. The Hearing convened on May 13, 1998, evidence was admitted, and the parties agreed to continue this hearing to a later date. On March 31, 1999, the State Office of Administrative Hearings sent notice to both parties that the hearing would reconvene at 9:00 a.m. on June 21, 1999. Permittee received the notice on April 5, 1999. On June 21, 1999, Permittee did not appear at the hearing, and the ALJ proceeded on a default basis. Permittee sent a letter requesting a rehearing. TABC granted a rehearing to receive evidence of any defense Petra Enterprises, Inc. may have. On August 4, 1999, the State Office of Administrative Hearings sent notice to both parties that the hearing would be at 1:00 p.m. on October 15, 1999. Permittee received the notice on August 9, 1999. Petitioner made a Motion to Reset the Hearing Date to October 28, 1999. The Motion was granted, and on September 28, 1999, the State Office of Administrative Hearings sent notice to both parties that the hearing would be held at 9:00 a.m. on October 28, 1999. Permittee received the notice on September 30, 1999.

During the original hearing on May 13, 1998, five affidavits setting out dishonored checks received for payment of beer delivered, were admitted into evidence.

At the hearing on October 28, 1999, Permittee did not contest the allegations. All permittee wanted to do was tell the Court that there were circumstances why he wrote checks, knowing there were insufficient funds in the bank. The circumstances were that his wife had a heart attack, his mother died, he was robbed, his business was slow, and if he is forced to have to pay for his deeds, it will cause his business to fail.

III. RECOMMENDATION

Because the Permittee made five separate payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code, the license should be suspended for a period of five days, or in lieu of suspension, Permittee should pay a fine of 750.00.

IV. FINDINGS OF FACT

1. Permit Nos. Q-249522 and BF-301420 were issued to Petra Enterprise Inc., doing business as Rene's Drive Inn, by the Texas Alcoholic Beverage Commission.
2. The staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice as shown by the returned green card.
3. The Hearing was convened on May 13, 1998. The Petitioner and Respondent appeared in person. A continuance was granted as agreed to by the parties.
4. On March 31, 1999, Judge Borkland sent the parties an "Order to Reconvene the Hearing" on June 21, 1999. Permittee received the Order on April 5, 1999.
5. The hearing on the merits was held on June 21, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
6. Permittee requested a rehearing. TABC granted a rehearing. Hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. TABC was represented by its counsel, Gayle Gordon. Permittee was represented by Ali Telfah.
7. Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code. The violations are as follows:
 - a. On the 14th day of October, 1997, Permittee, its agent, servant, or employee gave a check for \$1,363.84 to Silver Eagle Distributors, Inc., of Houston, Texas. On October 28, 1997, the check was returned by Drawee, Prime Bank, of Houston, Texas for insufficient funds.
 - b. On October 15, 1997, Permittee, its agent, servant, or employee gave a check for \$937.12 to Faust Distributing Company, Inc., of Houston, Texas. On October 16, 1997, the check was returned by Drawee, Crosby State Bank, of Crosby, Texas for insufficient funds.
 - c. On October 15, 1997, Permittee, its agent, servant, or employee gave a check for \$937.12 to Faust Distributing Company, Inc., of Houston, Texas. On November 20, 1997, the check was returned by Drawee, Prime Bank, 3434 Tidwell, of Houston, Texas for insufficient funds.
 - d. On February 4, 1998, Permittee, its agent, servant, or employee gave a check for \$808.02 to Faust Distributing Company, Inc., of Houston, Texas. On February 19, 1998, the check was returned by Drawee, Prime Bank, 3434 Tidwell, of Houston, Texas for insufficient funds.

- e. On November 21, 1997, Permittee, its agent, servant, or employee gave a check for \$504.00 to Silver Eagle Distributors, Inc., of Houston, Texas. On December 8, 1997, the check was returned by Drawee, Prime Bank, 3434 Tidwell, of Houston, Texas for insufficient funds.
8. Permittee did not contest the violations, but explained to the ALJ that there were circumstances facing Permittee when he wrote the checks. None of the circumstances are legal defenses for writing checks without sufficient funds available.
9. Permittee knew there were insufficient funds when he wrote the checks.
10. Permittee has previous cash law violations committed on December 28, 1995 and December 11, 1995 that were disposed of on October 16, 1996.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
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. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Permittee has five violations of the TEX. ALCO. BEV. CODE ANN. §61.73(b) in that the Permittee made five separate payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code.
5. Based on the foregoing Findings of Fact and Conclusions of Law, a five day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64, the Permittee should be allowed to pay a \$750.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 10 day of December, 1999.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS