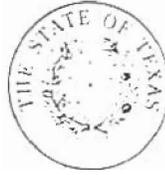


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 25, 1999

DOYNE BAILEY
ADMINISTRATOR
TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 MESA DRIVE, SUITE 160
AUSTIN, TEXAS 78731

VIA CERTIFIED MAIL P 332 127 832
RETURNED RECEIPT REQUESTED

RE: Docket No. 458-98-0711; Texas Alcoholic Beverage Commission vs. Abdul Saleem d b a Plaza Food Mart (Permit No. BQ-320323) (TABC Case No. 577432)

Dear Mr. Bailey:

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 Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Abdul Saleem for Plaza Food Mart. For reasons discussed in the proposal: 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.

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. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

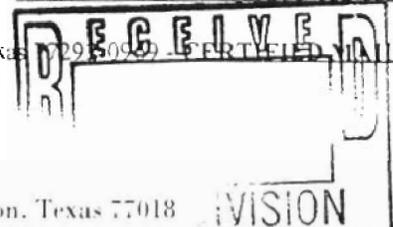
Sincerely,

A handwritten signature in black ink that appears to read "Don Smith".

Don Smith
Administrative Law Judge

DS:cj
Enclosure: 1

cc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing - REGULAR U.S. MAIL
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. P 622 053 381
RETURN RECEIPT REQUESTED
Abdul Saleem d b/a Plaza Food Mart, P. O. Box 920969, Houston, Texas 77292-0969 - CERTIFIED MAIL NO.
P 622 053 382. RETURN RECEIPT REQUESTED



DOCKET NO. 458-98-0711

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE

V.S.

OFFICE OF

ABDUL SALEEM
D/B/A PLAZA FOOD MART
PERMIT NO. BQ-320323
HARRIS COUNTY, TEXAS
(TABC CASE NO. 577432)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Abdul Saleem d/b/a Plaza Food Mart (the Permittee) for an offense 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. The violation occurred on or about November 11, 1997, when Permittee, its agent, servant, or employee gave a check for \$392.65 to Silver Eagles Distributors, Inc., of Houston, Texas. On or about November 24, 1997, the check was returned by Drawee, First Interstate Bank for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

The Permittee did not make an appearance at the hearing on June 21, 1999. 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.

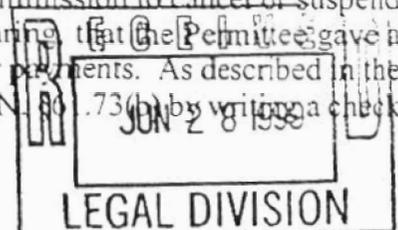
I. Procedural History, Notice, and Jurisdiction

The hearing in this matter convened on June 21, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Gayle Gordon. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

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 payments. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by writing a check to a distributor that was subsequently returned for insufficient funds.



The staff attorney introduced four exhibits into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenther, Licensing Department Director, that the Permit No. BQ-320323 was issued to Abdul Saleem, doing business as Plaza Food Mart, by the Texas Alcoholic Beverage Commission. The mailing address of Abdul Saleem is P.O. Box 920969, Houston, Texas 77292-0969.

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

Exhibit TABC 3 is the TABC 18(c) letter of February 2, 1998, to Permittee setting out the violation.

Exhibit TABC 4 is the Notice of Hearing to Abdul Saleem with attached green card showing Permittee received notice.

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 8, 1998, and received by Permittee on April 13, 1998. The Hearing convened on May 13, 1998, and the parties agreed to continue this hearing at 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 6, 1999.

III. Recommendation

Because the Permittee made payment for beer in its original containers and packages with a dishonored check 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. PROPOSED FINDINGS OF FACT

1. Permit No. BQ-320323 was issued to Abdul Saleem, doing business as Plaza Food Mart, by the Texas Alcoholic Beverage Commission. The mailing address of Abdul Saleem is P.O. Box 920969, Houston, Texas 77292-0969.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee and Permittee received the Notice as shown by the attached 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 6, 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.

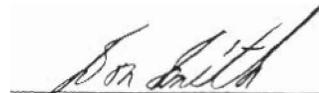
6. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee made payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b) of the code. The violation occurred on or about November 11, 1997, when Permittee, its agent, servant, or employee gave a check for \$392.65 to Silver Eagles Distributors, Inc., of Houston, Texas. On or about November 24, 1997, the check was returned by Drawee, First Interstate Bank for insufficient funds.

V. PROPOSED 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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by making payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b).
6. 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 25 day of June, 1999.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS