

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 5, 1999

Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**HAND DELIVERY**

RE: **Docket No. 458-99-0125; Texas Alcoholic Beverage Commission vs. Raheem Kola Emiola d/b/a Come & Go, TABC Case No. 581776**

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 Raheem Kola Emiola, Permittee. For reasons discussed in the proposal, I recommend Respondent's permit be suspended for ten days or that a \$1500.00 fine be assessed.

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.

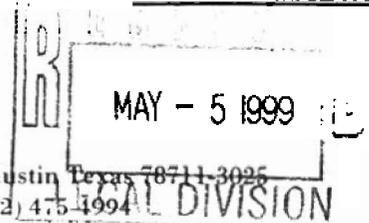
Sincerely,

John Beeler  
Administrative Law Judge

JB:es  
Enclosure

xc: Sarah Hudson, Docket Clerk, State Office of Administrative Hearing - **HAND DELIVERY**  
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission - **HAND DELIVERY**  
Raheem K. Emiola, d/b/a Come & Go, 7140 Scott Street, Houston, TX-77021 - **CERTIFIED MAIL NO. Z 383 248 482, RETURN RECEIPT REQUESTED**

William P. Clements Building  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin, Texas 78711-3025  
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994



TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

RAHEEM KOLA EMIOLA  
D/B/A COME & GO  
PERMIT NO. BQ-315921

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

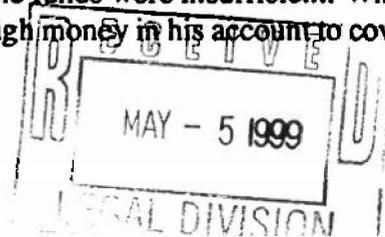
**I. Statement of the Case**

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking to cancel or suspend the Beer and Wine Off-Premises Permit of Raheem Kola Emiola d/b/a Come & Go (Respondent). The Commission seeks this relief based on its allegation that Respondent violated Texas Alcoholic Beverage Code §1.01, *et. seq.*, (V.T.C.A. 1998) (the Code) and 16 Texas Administrative Code § 31.1 *et seq.* (TAC) on two separate occasions by paying for beer with checks that were returned for insufficient funds when presented for payment.

A hearing on Staff's allegations commenced on March 10, 1999, in the State Office of Administrative Hearing's (SOAH) office at 2020 North Loop West, Houston, Texas, and concluded the same day. Gayle Gordon, an attorney with the Commission's legal section, represented the Staff. Respondent appeared in person and represented himself at the hearing.

At the hearing Staff tendered a document into evidence establishing that proper notice was provided to Respondent and an affidavit establishing that Respondent holds Beer and Wine Off-Premises Permit No. BQ-315921. In addition, Staff called Respondent as a witness. Respondent's testimony established that he tendered the two checks in question and that the checks were returned for insufficient funds.

Respondent testified on his own behalf stating that he went to his bank to speak with his bank officer after learning the checks were returned. He was told that the bank would honor the checks if sufficient funds were in the account, but would not if the funds were insufficient. When asked, on cross examination whether he knew there was not enough money in his account to cover



the checks, Respondent replied that he had written several checks on the account and they were received at the bank in an order different from what he expected.

Respondent also confirmed that his license been suspended previously for paying for beer with checks which were returned due to insufficient funds.

Staff recommended a penalty of ten days suspension of Respondent's license or a \$1,500.00 fine. After hearing the evidence presented by the parties, the Administrative Law Judge agrees with Staff's recommendation. Based on the following findings of fact and conclusions of law, this proposal recommends that Respondent's permit be suspended for ten day or that a \$1500.00 fine be assessed.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter, as reflected in the conclusions of law. Notice to Respondent of the Commission's intent and notice to Respondent of the hearing met the notice requirements imposed by statute and by rule. The details of such notice are set forth in the findings of fact and conclusions of law without further discussion here.

## **II. Findings of Fact**

1. On January 6, 1999, Texas Alcoholic Beverage Commission (Commission) issued a letter of complaint to Raheem Kola Emiola d/b/a Come & Go (Respondent) advising Respondent that the Commission had filed reports with its Legal Division alleging that Respondent had made payments for beer in its original containers and packages, with dishonored checks in violation of the Texas Alcoholic Beverage Code, § 61.73 (b).
2. The Commission sent the above letter to Respondent at his last known address of record by certified mail, return receipt requested, on January 6, 1999, as evidenced by the receipt for certified mail attached to the Commission's letter.
3. Respondent received the Commission's letter of complaint as evidenced by his agent's signature on the green card attached to the letter.
4. On February 3, 1999, the Commission issued a notice of hearing to Respondent advising him of a hearing on allegations that Respondent had violated § 61.73 (b) of the Code by paying for beer with dishonored checks.
5. Respondent received the notice of hearing on February 5, 1999.
6. The letter of complaint and notice of hearing included the information and language required by TEX. GOV'T CODE ANN. § § 2001.052 and 2001.054 (Vernon 1999).

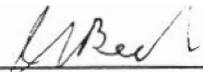
7. On March 10, 1999, the hearing was convened in the offices of the State Office of Administrative Hearings at 2020 North Loop West, Houston, Texas. The Commission was represented by Gayle Gordon, an attorney with the Commission's Legal Division; Respondent appeared in person and represented himself.
8. Respondent holds Beer and Wine Off-Premises Permit No. BQ-315921, issued on March 5, 1996, for the premises known as Come & Go, located at 7140 Scott Street, Houston, Harris County, Texas.
9. On or about September 18, 1998, Respondent gave a check for \$441.82 to Houston Distributing, Ltd., of Houston, Texas, in payment for beer.
10. On or about September 24, 1998, the check referenced in Finding of Fact No. 9 was returned by Drawee, Sterling Bank of Houston, Texas for insufficient funds.
11. On or about October 6, 1998, Respondent gave a check for \$563.12 to Houston Distributing, Ltd., of Houston, Texas, in payment for beer.
12. On or about October 26, 1998, the check referenced in Finding of Fact No. 11 was returned by Drawee, Sterling Bank of Houston, Texas for insufficient funds.
13. Before the dates of the issuance of the checks described above, Respondent's license had been suspended for paying for beer with checks which were returned due to insufficient funds.

### **III. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §11.61 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. As referenced in Findings of Fact Nos. 1-7, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to the Code, § 11.61, TEX. GOV'T CODE ANN., Ch. 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE § § 155.27.

4. Based on the foregoing, Respondent paid for beer with checks that were dishonored for insufficient funds in violation of §61.73 (b) of the Code, which warrants suspension of his permit for ten days or payment of a civil penalty in the amount of \$1500.00.

SIGNED this 5<sup>th</sup> day of May, 1999.

  
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JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS