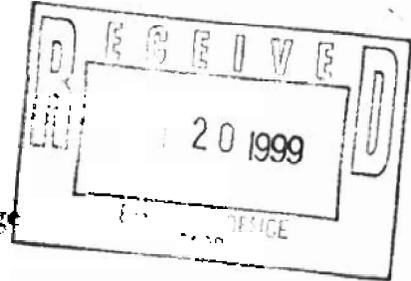


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



October 18, 1999

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

CERTIFIED MAIL,
RETURN RECEIPT
Z 283 051 828

RE: Docket No. 458-99-1575; Texas Alcoholic Beverage Commission vs. Wafa Ghaleb Hamad, d/b/a Pennys One Stop Grocery; TABC Case No. 584379

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to the Respondent. For reasons discussed in the proposal, I recommend that Respondent's permit be suspended for a period of 5 days, or that Respondent be allowed to pay a penalty in lieu of suspension in the amount of \$750.00.

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,

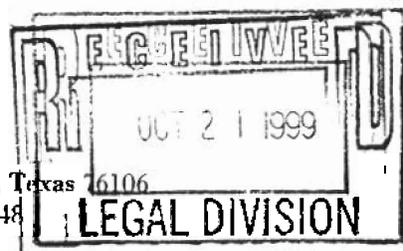
Tanya A. Cooper,
Administrative Law Judge

RJ:ds

Enclosure

xc: Shance Woodbridge, State Office of Administrative Hearing - **Regular Mail**; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **CMRR# Z 283 051 829**; Wafa Ghaleb Hamad, d/b/a Pennys One Stop Grocery, 5801 Rendon New Hop Road, Fort Worth, Texas 76140-1002- **CMRR# Z 283 051 830**

The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448



DOCKET NO. 458-99-1575

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
Wafa Ghaleb Hamad D/B/A	§	
Pennys One Stop Grocery	§	
Permit No. BQ-415368	§	
Tarrant County, Texas	§	
(TABC Case No. 584379)	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this disciplinary action against Wafa Ghaleb Hamad d/b/a Pennys One Stop Grocery (the Permittee) for paying two beer distributors with checks for which funds were insufficient. The Permittee appeared at the hearing and requested leniency, asserting that the violations were a mistake and seeking waiver of any penalty. This Proposal for Decision agrees with Staff's recommendation of a five-day suspension or a \$750 fine in lieu of the suspension.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law sections of this proposal without further discussion here.

A hearing in this matter convened on October 7, 1999, at the offices of the State Office of Administrative Hearings in Fort Worth, Tarrant County, Texas, with Tanya Cooper, Administrative Law Judge, presiding. Staff was represented by its counsel, Timothy E. Griffith. Ghaleb Yousef Hamad appeared on Permittee's behalf and, acting as Permittee's agent, represented her at this hearing. Evidence was received from both parties on that date by testimony provided by witnesses and documentary evidence. The record was closed on October 7, 1999.

ALLEGATIONS AND APPLICABLE LAW

There were two allegations in this proceeding, each asserting that the Permittee or her agent or employee paid beer distributors for beer with checks that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. (Code) §61.73(b) for a permittee to give 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.

CHECKS FOR INSUFFICIENT FUNDS

Staff's documentary evidence (Ex. 3) proved the Permittee committed two violations of the Code §61.73(b) by writing checks for beer in January and April, 1999, which were subsequently returned for insufficient funds. Permittee's agent, Ghaleb Yousef Hamad, did not dispute Staff's evidence that these checks had been returned due to insufficient funds; however he testified that the situations occurred as a result of a mistake. Mr. Hamad stated that on occasions Permittee's bank deposits were made after 3:00 p.m., which resulted in those funds not being available when Ben E. Keith's checks were presented to the bank for payment. He also testified that if checks the business received from customers were not paid due to being returned for insufficient funds, this resulted in less money being available in Permittee's bank account for payment of checks being issued, for example in payment for beer.

Mr. Hamad requested that any penalty for this violation be waived. It was his opinion that the penalty requested by Staff was excessive due to Permittee's inability to afford permit suspension or payment of any fine in lieu of suspension.

Staff's evidence contained in Permittee's violation history (Ex. 2) indicates that Permittee has engaged in prior cash law violations and has had her permit previously suspended or paid a penalty in lieu of suspension for other violations of the Code associated with sales of alcoholic beverages to minors. These previous suspension periods were of greater duration than the period sought by Staff in this instance.

SANCTIONS AND RECOMMENDATION

As described in the Findings of Fact section, the Permittee committed two violation of Code §61.73(b) by writing checks for beer which were subsequently returned for insufficient funds. The Permittee or her agent were responsible for issuance of these checks.

In this case, the Administrative Law Judge agrees with Staff's recommendation. Pursuant to 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 nor more than \$25,000 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty. In light of testimony about the economic impact a suspension might have on the Permittee, the ALJ agrees with Staff's recommended civil penalty.

FINDINGS OF FACT

1. Wafa Ghaleb Hamad, d/b/a Pennys One Stop Grocery (The Permittee) holds a Wine and Beer Retailer's Off-Premises Permit No. BQ-415368 for the premises located at FM 1074 and FM 1063, Fort Worth, Tarrant County, Texas.
2. On August 18, 1999, Respondent was provided with notice of hearing. A hearing was convened before the State Office of Administrative Hearing on October 7, 1999. Both

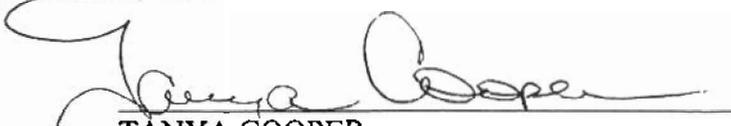
parties appeared by representatives and presented evidence. No challenges to the sufficiency of notice or jurisdiction were made by either party.

3. The Permittee issued checks as follows:
 - a. On or about January 7, 1999, in the amount of \$369.35 to Ben E. Keith Beers; and
 - b. On or about April 12, 1999, in the amount of \$375.68 to Ben E. Keith Beers.
4. Both checks described in Finding of Fact 3 were written in payment for beer.
5. Both checks described in Finding of Fact 3 were returned by the Drawee, Norwest Banks, of Fort Worth, Texas, for insufficient funds.
6. Permittee's violation history reveals prior cash law violations and other Code violations.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. Ch 5, §6.01 and §61.71 (Vernon 1999).
2. The State Office of Administrative Hearings had jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch 2003 (Vernon 1999).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1999).
4. The Permittee gave two checks in payment for beer, which checks were dishonored for insufficient funds when they were presented for payment, in violation of the Code §61.73(b).
5. Based on the foregoing Findings and Conclusions, a five-day suspension of the permit is warranted as provided for by 16 TEX. ADMIN. CODE §37.60.
6. Pursuant to the Code §11.64, the Permittee should be allowed to pay a \$750 civil penalty in lieu of suspension of her permit.

SIGNED this 18th day of October, 1999.


TANYA COOPER
Administrative Law Judge
STATE OFFICE OF ADMINISTRATIVE HEARINGS