

DOCKET NO. 593526

IN RE LIEU THI VU	§	BEFORE THE
D/B/A QUEEN N GROCERY STORE	§	
	§	
PERMIT NO. BQ457672	§	TEXAS ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0080)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of January, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on November 28, 2001, and adjourned November 28, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 30, 2001. 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 **Permit No. BQ457672** is herein **SUSPENDED**.

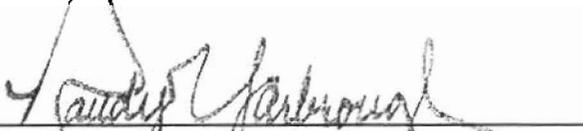
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **27th day of February, 2002**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 6th day of March, 2002**.

This Order will become final and enforceable on JANUARY 28, 2002, unless a Motion for Rehearing is filed **before** that date.

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

WITNESS MY HAND AND SEAL OF OFFICE on this the 7th day of January, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Don Smith
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE (713) 812-1001

Lieu Thi Vu
RESPONDENT
d/b/a Queen N Grocery Store
7215 Scott
Houston, Tx. 77021
CERTIFIED MAIL NO. 7000 1530 0003 1929 0996

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Compliance Division
Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 30, 2001



VIA REGULAR MAIL

Mr. Rolando Garza, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

**RE: Docket No. 458-02-0080; TABC vs. Lieu Thi Vu d/b/a Queen N Grocery Store;
Permit No. BQ457672**

Dear Mr. Garza:

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 to Lieu Thi Vu d/b/a Queen N Grocery Store, (Respondent). For reasons discussed in the Proposal for Decision, this proposal recommends that Respondent's license be suspended for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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 reply 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 black ink that reads "Don Smith".

Don Smith
Administrative Law Judge

DS:mc

Enclosure

xc: **Gayle Gordon, Staff Attorney, TABC - VIA FACSIMILE**

Lieu Thi Vu d/b/a Queen N Grocery Store, 7216 Scott, Houston, Texas 77021 - **VIA REGULAR MAIL**

DOCKET NO. 458-02-0080

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.S.

LIEU THI VU
D/B/A QUEEN N GROCERY STORE
PERMIT NO. BQ457672
HARRIS COUNTY, TEXAS
(TABC CASE NO. 593526)

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BEFORE THE STATE

OFFICE OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Lieu Thi Vu d/b/a Queen N Grocery Store (the Permittee) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31. TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and §102.31 of the code. The violations occurred on or about December 15, 2000, December 18, 2000, and August 13, 2001, when Permittee, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31.

The Permittee did not make an appearance at the hearing on November 28, 2001. 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 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on November 28, 2001, 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 and Wendy To. 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 two exhibits into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenthner, Licensing Department Director, that the Permit No. BQ457672 was issued to Lieu Thi Vu, doing business as Queen N Grocery Store, by the Texas Alcoholic Beverage Commission. The mailing address of Lieu Thi Vu is 7215 Scott, Houston, Texas 77021. Attached to the affidavit is the permit and violation history.

Exhibit TABC 2 is the Notice of Hearing to Lieu Thi Vu with attached green card showing Permittee received notice.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled for November 28, 2001. Notice was properly served on October 21, 2001, and received by Permittee on October 25, 2001. The Hearing convened on November 28, 2001, and Permittee did not appear.

III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "**if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**" Because the Respondent failed to attend the hearing, the allegation that the Permittee made payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and Section 102.31 of the code is deemed admitted as true. Therefore, the license should be suspended for a period of ten days, or in lieu of suspension, Permittee should pay a fine of \$1,500.00.

IV. FINDINGS OF FACT

1. Permit No. BQ457672 was issued to Lieu Thi Vu, doing business as Queen N Grocery Store, by the Texas Alcoholic Beverage Commission. The mailing address of Lieu Thi Vu is 7216 Scott, Houston, Texas 77021.
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 on the merits was held on November 28, 2001, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon and Wendy To. The Permittee did not appear and was not represented at the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) and §102.31 of the code. The violations occurred on or about December 15, 2000, December 18, 2000, and August 13, 2001, when Permittee, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when

presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b) and §102.31.

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. 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) and §102.31 by making payment for beer in its original containers and packages with a dishonored check in violation of Section 61.73(b) and Section 102.31.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten 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 \$1,500.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 30th day of November, 2001.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS