

**DOCKET NO. 594579**

IN RE KENNETH OSITA ANAGBOR	§	BEFORE THE
D/B/A HOMEBOY STORE	§	
PERMIT NO. Q-488763	§	
LICENSE NO. BF440767	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0261)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 13<sup>TH</sup> day of December 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned November 2, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 16, 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. Q-488763 and License No. BF440767 are herein **SUSPENDED for five (5) days**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 13th day of March 2002, all rights and privileges under the above described permits and licenses will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 20th day of March 2002**.

**This Order will become final and enforceable on January 3, 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 13<sup>th</sup> day of December 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 377-3706**

Kenneth Osita Anagbor  
d/b/a Homeboy Store  
**RESPONDENT**  
5038 E. Rosedale  
Fort Worth, Texas 76105  
**CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 0804**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 594579**

**REGISTER NUMBER:**

**NAME: KENNETH OSITA ANAGBOR**

**TRADENAME: HOMEBOY STORE**

**ADDRESS: 5038 E. Rosedale, Fort Worth, Texas 76105**

**DATE DUE: March 13, 2002**

**PERMITS OR LICENSES: Q-488763, BF440767**

**AMOUNT OF PENALTY: \$750.00**

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 13TH DAY OF MARCH 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below.  
**MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711**

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

DOCKET NO. 458-02-0261

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
KENNETH OSITA ANAGBOR D/B/A HOMEBOY STORE TARRANT COUNTY, TEXAS (TABC CASE NO. 594400)	§	
594579	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought to suspend Kenneth Orita Anagbor's d/b/a Homeboy Store (Respondent) permit and license, or in the alternative to impose payment of an administrative penalty. The Staff alleged Respondent paid for beer with checks that were dishonored. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends Respondent's permit and license be suspended, or in the alternative, Respondent be ordered to pay a penalty.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of notice or jurisdiction in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion.

On November 2, 2001, a hearing convened before ALJ Robert F. Jones Jr., State Office of Administrative Hearings (SOAH). The Texas Alcoholic Beverage Commission (TABC) was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared and represented himself. Evidence was received and the record was closed on November 2, 2001.

Staff alleged that (1) Respondent was issued a permit and a license, (2) gave checks as payment for beer, and (3) those checks were dishonored when presented for payment.

**II. EVIDENCE**

Respondent's licensed premise is located at 5038 East Rosedale, Fort Worth, Tarrant County, Texas. TABC issued wine only package store permit Q488763 and beer retailer's off premise license BF440767 to Respondent.

On October 4, 2001, Staff served Respondent with Requests for Admissions (the Requests). Respondent failed to either admit or deny the Requests. The Requests were deemed admitted, and are conclusively established against Respondent. 1 TEX. ADMIN. CODE §§ 155.31(d)(2). Those matters admitted are set out in the findings of fact and conclusions of law without further discussion.

### III. DISCUSSION

TABC is authorized to suspend a permit or license for not more than 60 days for any violation of the Code. TEX. ALCO. BEV. CODE § 11.61(b)(2)(Vernon 2001) (the Code). A permittee violates the Code if he gives checks as payment for beer and the checks are dishonored when presented for payment. §61.73(b) of the Code. The Requests establish Respondent's violation of §61.73(b).

The Staff recommended Respondent's permit and license be suspended for five days, or in the alternative, that Respondent be required to pay a penalty of \$750. In support of its recommendation, the Staff offered Respondent's violation history. Respondent has no history of dishonored checks. Under the TABC's "standard penalty chart" a violation of §61.73(b) calls for a maximum three-day suspension for a first violation, a five-to-ten day suspension for a second violation, and a ten-to-fifteen day suspension for a third violation. *See* 16 TEX. ADMIN. CODE § 27.50. If a penalty in lieu of suspension is assessed, the amount may not be less than \$150 or more than \$25,000 for each day of suspension. § 11.64(a) of the Code. The recommended suspension of five days is appropriate. Respondent did not object to the proposed suspension. Since three violations call for a ten-day suspension and two for five-to-ten days, a five-day suspension for three violations is within the intent of the penalty chart. Given the Respondent's history, a higher suspension would be inappropriate. There was no evidence admitted concerning the appropriate amount to be assessed each day. The ALJ recommends an amount of \$150 per day.

The ALJ recommends Respondent's permit and license be suspended for five days, or in the alternative that Respondent pay a penalty of \$750.

### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Kenneth Osita Anagbor d/b/a Homeboy Store (Respondent) wine only package store permit Q488763 and beer retailer's off premise license BF440767.
2. Respondent's licensed premise is located at 5038 East Rosedale, Fort Worth, Tarrant County, Texas.
3. On April 3, 2001, Respondent gave a check for \$118.45 to Miller Distributing of Fort Worth Inc. as payment for beer, and the check was dishonored when presented for payment.
4. On April 10, 2001, Respondent gave a check for \$509.55 to Coors Distributing Company as payment for beer, and the check was dishonored when presented for payment.
5. On April 11, 2001, Respondent a check for \$327.50 to Miller Distributing of Fort Worth Inc. as payment for beer, and the check were dishonored when presented for payment.
6. Respondent has given no other checks as payment for beer that were dishonored when presented for payment.

