

SOAH DOCKET NO. 458-98-0625
TABC DOCKET NO. 577325

TEXAS ALCOHOLIC BEVERAGE	§	
COMMISSION	§	BEFORE THE STATE OFFICE
v.	§	
HUNG VAN HUYEN d/b/a AN-	§	OF
THONY'S FAST STOP;	§	
PERMIT NO. BQ-412911;	§	ADMINISTRATIVE HEARINGS
HARRIS COUNTY, TEXAS	§	

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 Wine and Beer Retailer's Off-Premise Permit of Hung Van Huyen d/b/a Anthony's Fast Stop (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. 1997) (the Code) by paying for beer with checks that were dishonored for insufficient funds when presented for payment.

A hearing on Staff's allegations commenced on May 13, 1998, in the State Office of Administrative Hearing's (SOAH) office at 4101 N. Freeway, Suite 100, Houston, Texas, and concluded the same day. At the hearing the Staff tendered into evidence, evidence pertaining to notice to Respondent and evidence by affidavit in support of the allegations in the Commission's notice of hearing. Supplements to two exhibits were submitted by the Staff and admitted into the record on February 25, 1999, to clarify facts related to notice of the TABC allegations and notice of hearing.

The Staff recommended a penalty of five days suspension of Respondent's licenses or payment of a \$150.00 fine for each day of the recommended suspension. After hearing the evidence presented and based on the following findings of fact and conclusions of law, the Administrative Law Judge recommends that the Staff's recommendation be accepted.

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 26, 1998, Texas Alcoholic Beverage Commission (Commission) issued a letter of complaint to Hung Van Hguyen d/b/a Anthony's Fast Stop (Respondent) advising Respondent that the Commission had filed reports with its Legal Division alleging that Respondent had made payment 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 its last known address of record by certified mail, return receipt requested on January 27, 1998, 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 the green return receipt attached to the letter.
4. On April 6, 1998, the Commission issued a notice of hearing to Respondent advising it of a hearing on allegations that Respondent had violated §61.73(b) of the Code by paying for beer with dishonored checks.
5. The Commission sent the notice of hearing to Respondent at its last known address of record by certified mail, return receipt requested, number P 419 583 798, on April 6, 1998, as evidenced by the declaration of the Commission's Notice of Hearing and by the receipt for certified mail attached to the Commission's Notice of Hearing.
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 1998).
7. Respondent received Commission's Notice of Hearing on April 8, 1998, as evidenced by the green return receipt attached to the letter.
8. On May 13, 1998, the hearing was convened in the offices of the State Office of Administrative Hearings at 4101 N. Freeway, Suite 100, Houston, Texas. The Commission was represented by Gayle Gordon, an attorney with the Commission's Legal Division; Respondent appeared in person and represented himself.
9. Respondent holds Wine and Beer Retailer's Off-Premise Permit, BQ-412911, issued on May 27, 1997, for the premises known as Anthony's Fast Stop, located at 5742 Darling Suite A, Houston, Harris County, Texas.
10. On or about November 3, 1997, Respondent gave a check for \$588.40 to Houston Distributing Company, of Houston, Texas in payment for beer. On or about November 10, 1997, that check was returned by the Drawee, NationsBank of Houston, Texas, for insufficient funds.

11. On or about December 2, 1997, Respondent gave a check for \$440.70 to Silver Eagle Distributing Company, of Houston, Texas in payment for beer. On or about December 15, 1997, that check was returned by Drawee, NationsBank of Houston, Texas, for insufficient funds.
12. On or about December 16, 1997, Respondent gave a check for \$803.25 to Silver Eagle Distributing Company, of Houston, Texas in payment for beer. On or about December 31, 1997, that check was returned by Drawee, NationsBank of Houston, Texas, for 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 by checks that were dishonored for insufficient funds in violation of §61.73(b) of the Code, which warrants suspension of the permit referenced in Finding of Fact No. 9 for five days or payment of a civil penalty in the amount of \$150.00 for each day of the suspension.

SIGNED this 26th day of February, 1999.



ELIZABETH R. TODD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS