

SOAH DOCKET NO. 458-98-0622
TABC DOCKET NO. 577326

TEXAS ALCOHOLIC BEVERAGE	§	
COMMISSION	§	BEFORE THE STATE OFFICE
v.	§	
FAISAL HUSSEIN d/b/a ESCANDALO	§	OF
NITE CLUB; PERMIT/LICENSE NO.	§	
MB-407892 & LM-407893;	§	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 Mixed Beverage Permit and Mixed Beverage Late Hours Permit of Faisal Hussein d/b/a Escandalo Nite Club (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 a check that was dishonored for insufficient funds when it was 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. 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 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. Respondent testified that a former manager had submitted the check in question and that the manager's action in doing so was directly against Respondent's instructions to the manager. The manager was subsequently fired by Respondent.

The Staff recommended a penalty of five days suspension of Respondent's licenses or a \$750.00 fine. After hearing the evidence presented by the parties, the Administrative Law Judge recommends a lesser penalty be imposed due to the action taken by Respondent once he became aware of the dishonored check. Based on the following findings of fact and conclusions of law, this proposal recommends that Respondent's permits be suspended for one day or that a \$150.00 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

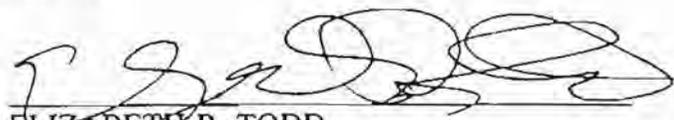
1. On January 27, 1998, Texas Alcoholic Beverage Commission (Commission) issued a letter of complaint to Faisal Hussein d/b/a Escandalo Nite Club (Respondent) advising Respondent that the Commission had filed reports with its Legal Division alleging that Respondent had made payment for beer in its original containers and packages, with a dishonored check 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 28, 1998, as evidenced by the receipt for certified mail attached to the Commission's letter.
3. Respondent received the Commission's letter of complaint on February 3, 1998, 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 419 583 796, 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 16, 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 Mixed Beverage Permit No. MB-407892 and Mixed Beverage Late Hours Permit No. LB-407893, issued on May 29, 1997, for the premises known as Escandalo Nite Club, located at 2053 Wirt Road, Houston, Harris County, Texas.

10. On or about December 5, 1997, Respondent's manager gave a check for \$1,197.65 to Silver Eagle Distributors, Inc., (Silver Eagle) of Houston, Texas, in payment for beer.
11. On or about December 19 1997, the check referenced in Finding of Fact No. 10 was returned by Drawee, First Interstate of Houston, Texas for insufficient funds.
12. The insufficient funds check had been tendered to Silver Eagle by an employee who served as manager for Respondent. The manager had been specifically instructed by Respondent to pay for the beer in cash.
13. The manager referred to in Finding of Fact No. 12 was subsequently fired and no longer works for Respondent.

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 a check that was dishonored for insufficient funds in violation of §61.73(b) of the Code, which warrants suspension of the permits referenced in Finding of Fact No. 9 for one day or payment of a civil penalty in the amount of \$150.00.

SIGNED this 26th day of February, 1999.


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