

DOCKET NO. 577327

IN RE JUAN CARVAJAL	§	BEFORE THE
D/B/A CARVAJAL'S DRIVE INN	§	
GROCERY	§	
PERMIT NO. BQ-312883	§	
	§	TEXAS ALCOHOLIC
	§	
SAN PATRICIO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-2321)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 24th day of May, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Edel P. Ruiseco. The hearing convened on January 27, 2000, and the record was held open until February 20, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 18, 2000. 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.

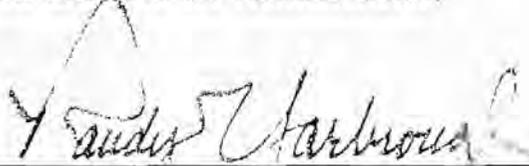
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ-312883 is herein **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 26th day of July, 2000, or pay a civil penalty in the amount of \$750.00 on or before the 19th day of July, 2000.

This Order will become final and enforceable on June 14, 2000, 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 24th day of May, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Edel P. Ruiseco
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (361) 884-5427

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Juan Carvajal
RESPONDENT
P. O. Box 391
Taft, Texas 78390-0391
CERTIFIED MAIL NO. Z 473 037 821

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Corpus Christi District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 577327

REGISTER NUMBER:

NAME: Juan Carvajal

TRADENAME: Carvajal's Drive Inn Grocery

ADDRESS: 520 Davis Road, Taft, San Patricio County, Texas

DATE DUE: July 19, 2000

PERMITS OR LICENSES: BQ-312883

AMOUNT OF PENALTY: \$750.00

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 19TH DAY OF JULY, 2000, 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.



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333
http://www.tabc.state.tx.us Fax: (512) 206-3498

Doyle Bailey, Administrator

May 22, 2000

Mr. Randy Yarbrough
Assistant Administrator
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

Re: Docket No.: 577327
TABC v. Juan Carvajal, d/b/a Carvajal's Drive Inn Grocery

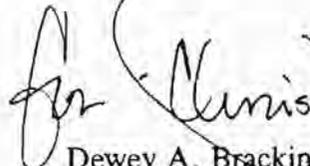
Dear Mr. Yarbrough:

Please find enclosed a Proposal for Decision and exhibits in the above-referenced cause. No exceptions have been filed by either party.

After your review, please inform this office of your decision. We will then draft an Order conforming with your judgment.

Thank you for your attention to this matter.

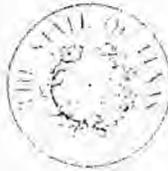
Yours truly,


Dewey A. Brackin
Legal Division

DAB/yt

61.73(b)
Adopt PFD
5 days
\$750.00
7/22/00
Doyle Bailey

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 27, 2000



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

VIA CERTIFIED MAIL
Z 136 743 054

RE: Docket No. 458-99-2321; Texas Alcoholic Beverage Commission vs. Juan Carvajal d/b/a Carvajal's Drive Inn Grocery (Case No. 577327)

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 Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and Juan Carvajal d/b/a Carvajal's Drive Inn Grocery. For reasons discussed in the proposal, I recommend that Respondent's permit be suspended for five (5) days or that a civil penalty \$750.00 be assessed in lieu thereof.

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,

A handwritten signature in cursive script, appearing to read "Edel P. Ruiseco".

Edel P. Ruiseco
Administrative Law Judge

EPR:mar
Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing - **FACSIMILIE 512-475-4994**
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission -
CERTIFIED MAIL NO. Z 136 743 055
Juan Carvajal, P.O. Box 391, Taft, Texas 78390 -0391 **CERTIFIED MAIL NO. Z 136 743 056. RETURN RECEIPT REQUESTED**

**DOCKET NO. 458-99-2321
(TABC CASE NO. 577327)**

TEXAS ALCOHOL BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
VS.	§	OF
JUAN CARVAJAL, D/B/A	§	
CARVAJAL'S DRIVE INN GROCERY	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking suspension or cancellation of the Wine and Beer Retailer's Off-Premise Permit, Number BQ-312883, held by Juan Carvajal (Respondent), d/b/a Carvajal's Drive Inn Grocery, because Respondent is alleged to have had two checks for beer returned due to insufficient funds. This proposal recommends Respondent's permit be suspended for five (5) days or that a civil penalty of \$750.00 be assessed in lieu thereof.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on January 27, 2000, at the offices of the State Office of Administrative Hearings (SOAH), in Corpus Christi, Nueces County, Texas, before Edel P. Ruiseco, Administrative Law Judge (ALJ). The Staff was represented by Gayle Gordon, Staff Attorney, who appeared by telephone. Respondent appeared in person. The record was kept open for Respondent to provide additional evidence, and was closed on February 20, 2000.

The Commission and SOAH 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. DISCUSSION AND RECOMMENDATION

There were two separate allegations in this proceeding, asserting Respondent gave two checks as full payment for beer which were dishonored, which constitutes a violation of Tex. Alco. Bev. Code Ann. §61.73(b).

Respondent did not contest the Staff's allegations and admitted that the checks were returned unpaid by the bank. Respondent insisted that the bank had provided

overcharge protection, which he explained required the bank to pay the checks upon presentment, instead of returning the checks unpaid. Respondent requested time to provide written statements from the bank regarding overcharge arrangements. The record remained open until February 15, 2000, but no documents were received.

Respondent had a previous violation for the sale to a minor in May 1998, for which a civil penalty of \$1050.00 was assessed.

In this case, Staff recommended a five (5) day suspension of the Wine and Beer Retailer's Off-Premise Permit, or a civil penalty of \$750.00 in lieu of suspension, and the ALJ agrees with the recommendation. Pursuant to Tex. Alco. Bev. Code Ann. §61.73(b), "the commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee gave a check . . . as full or partial payment for beer. . . which is dishonored when presented for payment."

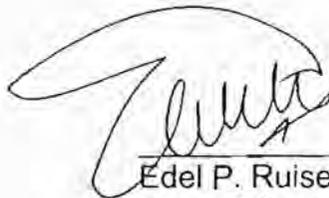
III. FINDINGS OF FACT

1. Juan Carvajal (Respondent), d/b/a Carvajal's Drive Inn Grocery, 520 Davis Road, Taft, San Patricio County, Texas 78390, holds Wine and Beer Retailer's Off-Premise Permit Number BQ-312883.
2. On October 18, 1999, the staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) sent a notice of hearing by certified mail, return receipt requested, to the Respondent at his address of record, regarding an alleged violation of the Texas Alcoholic Beverage Code (Code).
3. The hearing on the merits was held on January 27, 2000, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas. The Staff was represented by counsel, Gayle Gordon, Staff Attorney.
4. The Respondent appeared in person and represented himself at the hearing.
5. On or about the November 28, 1997, Respondent gave a \$442.40 check to Andrews Distributing Company, in payment for beer, which was returned for insufficient funds.
6. On or about December 9, 1997, Respondent gave a \$716.75 check to Williams Wholesale, Inc., in payment for beer, which was returned for insufficient funds.
7. Respondent had a prior violation for sale to a minor, in May, 1998, which resulted in a suspension or civil penalty.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. §61.73 (Vernon 1995 & Supp. 2000).
2. SOAH 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 (Vernon 2000).
3. Proper and timely notice of the hearing was effected on Respondent pursuant to Administrative Procedure Act, Tex. Gov't Code Ann. Ch. 2001 (Vernon 2000), and 1 Tex. Admin. Code §155.55(d) (1998).
4. Respondent violated provision, §61.73(b) of the Code, when on two separate occasions, Respondent's checks were dishonored upon presentment.
5. Respondent is shown on the records of the Commission to have had a prior violation of Commission rules and the Code.
6. Based on the foregoing Findings and Conclusions, a five day suspension or payment of a civil penalty in lieu thereof of \$750.00 is warranted.

SIGNED this 18th day of April, 2000.



Edel P. Ruiseco, ALJ, Corpus Christi
State Office of Administrative Hearings