

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

§ BEFORE THE STATE OFFICE

§

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V.

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IQBAL MOHAMMAD KHWAJA
D/B/A SAVE MORE GROCERY
PERMIT NO. Q-226934
LICENSE NO. BF-271474
DALLAS COUNTY, TEXAS
(TABC CASE NO. 578240)

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OF

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action against Iqbal Mohammad Khwaja d/b/a Save More Grocery (the Permittee) for paying for beer with checks for which funds were insufficient. The Permittee did not appear at the hearing. The Administrative Law Judge (ALJ) finds the allegation proven and recommends cancellation of the permit.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on December 29, 1998, at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. The staff of the Commission (Staff) was represented by its counsel, Dewey Brackin. 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. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

There were twenty-six allegations in this proceeding, asserting the Permittee or its agent or employee paid beer distributors for beer with checks that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) for a permittee to give a beer distributor a check for payment of beer which is dishonored when presented for payment. Such a violation may be punished by cancellation or a maximum 60-day suspension of a permit.

III. CHECKS FOR INSUFFICIENT FUNDS

As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. § 61.73(b) by writing checks for beer that were subsequently returned for insufficient funds. The Permittee, its agent, servant, or employee wrote the checks. The Permittee is responsible for its own acts and the acts of its agents.

IV. RECOMMENDATION

Penalties for the violations of TEX. ALCO. BEV. CODE ANN. § 61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

In this case, Staff recommended cancellation of the permit and the Administrative Law Judge agrees with the recommendation.

V. FINDINGS OF FACT

1. Iqbal Mohammad Khwaja d/b/a Save More Grocery (the Permittee), located at 5230 S. Lamar, Dallas, Texas 75215, holds Wine Only Package Store Permit No. Q-226934 and Beer Retailer's Off-Premise License No. BF-271474.
2. On November 17, 1998, the staff of the Texas Alcoholic Beverage Commission sent a notice of hearing by certified mail, return receipt requested, to the Permittee regarding an alleged violation of the Texas Alcoholic Beverage Code.
3. The notice was sent to the Permittee's address of record.
4. The hearing on the merits was held on December 29, 1998, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. The Staff of the Commission was represented by its counsel, Dewey Brackin. The Permittee did not appear and was not represented at the hearing.
5. On the following dates, the Permittee, its agent, servant, or employee gave written checks to Texas beer distributors in payment for beer:
 - a. On August 29, 1997, a check for \$995.70 was given to Willow Distributors, Inc., of Dallas, Texas. On or about September 9, 1997, the check was returned for insufficient funds.
 - b. On August 29, 1997, a check for \$995.70 was given to Willow Distributors, Inc., of Dallas, Texas. On or about September 9, 1997, the check was returned for insufficient funds.
 - c. On September 1, 1997, a check for \$481.90 was given to Miller of Dallas, Inc., of Dallas, Texas. On or about September 9, 1997, the check was returned for insufficient funds.
 - d. On October 2, 1997, a check for \$2,102.80 was given to Ben E. Keith, Co.,

- of Dallas, Texas. On or about October 14, 1997, the check was returned for insufficient funds.
- e. On November 17, 1997, a check for \$173.10 was given to Miller of Dallas, Inc., of Dallas, Texas. On or about November 28, 1997, the check was returned for insufficient funds.
 - f. On December 5, 1997, a check for \$1,097.60 was given to Ben E. Keith, Co., of Dallas, Texas. On or about December 17, 1997, the check was returned for insufficient funds.
 - g. On December 12, 1997, a check for \$385.35 was given to Willow Distributors, Inc., of Dallas, Texas. On or about December 29, 1997, the check was returned for insufficient funds.
 - h. On December 17, 1997, a check for \$122.80 was given to Miller of Dallas, Inc., of Dallas, Texas. On or about December 30, 1997, the check was returned for insufficient funds.
 - i. On December 18, 1997, a check for \$736.50 was given to Miller of Dallas, Inc., of Dallas, Texas. On or about December 30, 1997, the check was returned for insufficient funds.
 - j. On December 18, 1997, a check for \$1,361.05 was given to Ben E. Keith, Co., of Dallas, Texas. On or about January 9, 1998, the check was returned for insufficient funds.
 - k. On December 19, 1997, a check for \$1,097.60 was given to Ben E. Keith, Co., of Dallas, Texas. On or about January 9, 1998, the check was returned for insufficient funds.
 - l. On December 24, 1997, a check for \$1,079.35 was given to Willow Distributors Inc., of Dallas, Texas. On or about January 16, 1998, the check was returned for insufficient funds.
 - m. On December 31, 1997, a check for \$1,022.95 was given to Willow Distributors Inc., of Dallas, Texas. On or about January 21, 1998, the check was returned for insufficient funds.
 - n. On December 31, 1997, a check for \$3,382.75 was given to Ben E. Keith, Co., of Dallas, Texas. On or about January 5, 1998, the check was returned for insufficient funds.
 - o. On December __ [sic], 1997, a check for \$1,010.85 was given to Miller of Dallas, Inc., of Dallas, Texas. On or about January 13, 1998, the check was returned for insufficient funds.
 - p. On December 11, 1997, a check for \$1,783.84 was given to Glazens Wholesale, of Dallas, Texas. On or about December 24, 1997, the check was returned for insufficient funds.
 - q. On December 12, 1997, a check for \$385.35 was given to Willow Distributors, Inc., of Dallas, Texas. On or about December 29, 1997, the check was returned for insufficient funds.
 - r. On December 18, 1997, a check for \$739.58 was given to The Julius Schepps Co., of Dallas, Texas. On or about January 12, 1998, the check was returned for insufficient funds.
 - s. On December 24, 1997, a check for \$1,675.08 was given to Glazens Wholesale, of Dallas, Texas. On or about January 15, 1998, the check was returned for insufficient funds.

- t. On December 24, 1997, a check for \$1,079.35 was given to Willow Distributors, Inc., of Dallas, Texas. On or about January 16, 1998, the check was returned for insufficient funds.
 - u. On December 18, 1997, a check for \$1,844.17 was given to Glazens Wholesale, of Dallas, Texas. On or about January 15, 1998, the check was returned for insufficient funds.
 - v. On December 26, 1997, a check for \$346.60 was given to The Julius Schepps Co., of Dallas, Texas. On or about January 16, 1998, the check was returned for insufficient funds.
 - w. On December 31, 1997, a check for \$1,022.95 was given to Willow Distributors, Inc., of Dallas, Texas. On or about January 21, 1998, the check was returned for insufficient funds.
 - x. On December 31, 1997, a check for \$716.00 was given to Glazens Wholesale, of Dallas, Texas. On or about January 23, 1998, the check was returned for insufficient funds.
 - y. On December 31, 1997, a check for \$853.29 was given to Glazens Wholesale, of Dallas, Texas. On or about January 23, 1998, the check was returned for insufficient funds.
 - z. On January 5, 1998, a check for \$426.63 was given to Glazens Wholesale, of Dallas, Texas. On or about January 23, 1998, the check was returned for insufficient funds.
6. The checks described in Finding of Fact No. 5, a through z, were returned by the drawee, Comerica Bank, of Dallas, Texas.

VI. CONCLUSIONS OF LAW

- 1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 61.71, and 61.73 (Vernon 1995 & Supp. 1999).
- 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 (Vernon 1999).
- 3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE § 155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
- 4. The Permittee, its agent, servant, or employee gave checks in payment for beer, which were dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) (Vernon 1995).

5. Based on the foregoing Findings and Conclusions, cancellation of the permit is warranted. 16 TEX. ADMIN. CODE § 37.60 (1998).

SIGNED this 8th day of March 1999.

for 
MARK S. RICHARDS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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