

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
V.	§	
	§	
ACT ASSOCIATES, INC.	§	OF
D/B/A JACK'S PUB &	§	
VOLLEYBALL CLUB	§	
PERMIT NOs. MB-258663, LB258664	§	
& CB-269063	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 578626)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Act Associates, Inc. d/b/a Jack's Pub & Volleyball Club (the Permittee) for paying for beer with a check for which funds were insufficient. The Permittee did not appear at the hearing. The Administrative Law Judge (ALJ) finds the allegation proven and recommends a five-day suspension of the permit or a fine of \$750 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on November 17, 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, Timothy E. Griffith. 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 was one allegation 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 a check for beer that was subsequently returned for insufficient funds. The Permittee, its agent, servant, or employee wrote the check. 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 a five-day suspension; the Administrative Law Judge agrees with the recommendation. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150 nor more than \$25,000 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty. The ALJ agrees with Staff's recommendation.

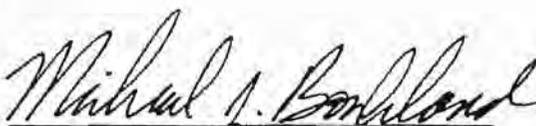
V. FINDINGS OF FACT

1. Act Associates, Inc. d/b/a Jack's Pub and Volleyball Club (the Permittee), located at 5550 Yale, Dallas, Texas 75206, holds Permit Nos. MB-258663, LB-258664, and CB-269063.
2. On October 20, 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 November 17, 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, Timothy E. Griffith. The Permittee did not appear and was not represented at the hearing.
5. On or about October 27, 1997, Permittee, its agent, servant, or employee gave a check written in the amount of \$372.90 to a Texas beer distributor, Ben E. Keith, Co., of Dallas, Texas, in payment for beer.
6. The check described in Finding 5 was returned by the drawee, Mercantile Bank & Trust, of Dallas, Texas for insufficient funds.

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 a check in payment for beer, which was 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, a five-day suspension of the permit and license is warranted. 16 TEX. ADMIN. CODE § 37.60 (1998).
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64 (Vernon 1995 & Supp. 1999), the Permittee should be allowed to pay a \$750 civil penalty in lieu of suspension of its permit and license.

SIGNED this 8th day of March 1999.

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