

DOCKET NO. 584608

IN RE LMI VIN, Inc.
D/B/A LA MADELEINE
PERMIT NOS. MB-247685, PE-445316
CB-445315

§
§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-2430)

ORDER

CAME ON FOR CONSIDERATION this 22nd day of February 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on December 10, 1999 and adjourned December 10, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 5, 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 the application for the original Permit Nos. MB-247685, PE-445316 and CB-445315 are herein **DENIED**.

This Order will become final and enforceable on March 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 22nd day of February, 2000.

On Behalf of the Administrator,



A handwritten signature in dark ink, appearing to read 'Randy Yarbrough', written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 626-7448

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

Rebecca Manuel
ATTORNEY FOR RESPONDENT
VIA FACSIMILE (214) 891-7072

LMI VIN, Inc.
d/b/a La Madeleine
RESPONDENT
5340 Alpha Road
Dallas, Texas 75240-4318
CERTIFIED MAIL/RRR NO. Z 473 040 601

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

February 16, 2000

TO: Gayle Gordon, Director of Legal
FROM: Randy Yarbrough, Assistant Administrator
SUBJECT: Docket No. 458-98-2430
TABC Case No. 584608
LMI VIN, Inc. d/b/a La Madeleine
Mixed Beverage Permit MB-237685
Tarrant County, Texas

I have read the attached Proposal for Decision in the above styled case and find the recommendations of the Hearings Examiner should be adopted, and that the application for the original permits applied should be **DENIED**.

Please prepare an ORDER adopting the Proposal for Decision, adopting all Findings of Fact and Conclusions of Law and show that the permit should be **DENIED**. Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, appearing to read "Randy Yarbrough", written over a horizontal line.

RY

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

V.

LMI VIN, Inc.,
D/B/A La Madeleine
MB-237685
(TABC CASE NO. 584608)

§ BEFORE THE STATE OFFICE
§
§
§
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking denial of the application submitted by LMI VIN, Inc., d/b/a La Madeleine (Respondent), for permit renewal because more than fifty percent of the legal or beneficial ownership of the stock of Respondent has changed since the original permit had been issued to Respondent by the Commission. A hearing was conducted; however, Respondent did not attend. The Administrative Law Judge (ALJ) recommends that Respondent's application for permit renewal be denied.

I. PROCEDURAL HISTORY

On December 10, 1999, a hearing was convened before Tanya Cooper, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings, 6300 Forest Park Road, Suite B-230, Dallas, Texas. TABC Staff was represented by Timothy E. Griffith. Respondent failed to appear. The hearing was concluded and the record closed on the same day.

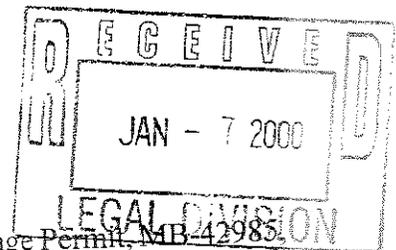
TABC Staff presented exhibits which were admitted into evidence. These exhibits included the Notice of Hearing issued by TABC staff to Respondent, along with certified mail return receipts showing delivery of the notice to Respondent, Respondent's permit and violation history maintained by TABC staff, and Respondent's permit renewal application.

II. REASONS FOR PROPOSED DECISION

Because Respondent failed to appear at the hearing, and TABC Staff proved that Respondent had received appropriate notice of the hearing, all matters relating to jurisdiction, notice, the issues for determination, and recommended relief are addressed in the Findings of Fact and Conclusions of Law sections of this proposal without discussion.

III. FINDINGS OF FACT

1. LMI VIN, Inc., d/b/a La Madeleine (Permittee), holds a Mixed Beverage Permit, MB-42985 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 4201 S. Cooper Street, Suite 731, Arlington, Tarrant County, Texas.



2. On October 26, 1999, the Commission's Staff sent, by certified mail, return receipt requested, a Notice of Hearing to Respondent, which contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the statutes and rules involved; and a statement of the matters asserted.
 - a. The Notice of Hearing was sent to Respondent at its mailing address of record, 5340 Alpha Road, Dallas, Texas 75240-4318 by certified mail (No. Z 473 039 058), return receipt requested, and it was received at that address on October 27, 1999.
 - b. The Notice disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing the factual allegations in the Notice would be deemed as true, and the relief sought could be granted.
3. The hearing convened December 10, 1999, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas, before Tanya Cooper, Administrative Law Judge (ALJ). Commission Staff was represented by Timothy E. Griffith, but Respondent failed to appear at the hearing.
4. On or about May 6, 1999, Respondent made an application for renewal of its permit previously issued by the Commission and listed in Finding of Fact No. 1.
5. On or about May 6, 1999, more than fifty percent (50%) of the legal or beneficial ownership of the stock of LMI VIN, Inc., d/b/a La Madeleine, had changed since Respondent's original permit was issued.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5, §§ 6.01, 28.04, and 61.71 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2000) and 1 TEX. ADMIN. CODE §§155.27 and 155.55.
4. Based upon the foregoing, Respondent's application for renewal of the permit previously issued by the Commission, and referenced in Finding of Fact No. 1, should be denied pursuant to TEX. ALCO. BEV CODE ANN. § 28.04 (Vernon 2000).

SIGNED this 5th day of January, 2000.


TANYA COOPER
Administrative Law Judge
State Office of Administrative Hearing

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

January 5, 2000

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

VIA CERTIFIED MAIL Z 283 051 878
Return Receipt Requested

RE: Docket No. 458-98-2430; Texas Alcoholic Beverage Commission vs. LMI VIN, Inc. d/b/a La Madeleine, (TABC Case No. 584608)

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to LMI VIN, Inc, d/b/a La Madeleine. For reasons discussed in the proposal, I recommend Respondent's application for renewal of permits previously issued by the Commission, should be denied pursuant to Tex. Alco. Bev. Code Ann. §28.04 (Vernon 2000).

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,

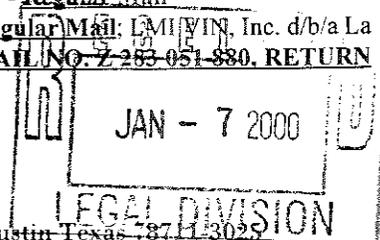
A handwritten signature in black ink, appearing to read "Tanya A. Cooper".

Tanya A. Cooper
Administrative Law Judge

TC:ds

Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - Regular Mail
Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - Regular Mail; LMI VIN, Inc. d/b/a La Madeleine 5340 Alpha Road, Dallas, Texas 75240-4318 - CERTIFIED MAIL NO. Z 283 051 880. RETURN RECEIPT REQUESTED



TEXAS ALCOHOLIC
BEVERAGE COMMISSION

V.

LMI VIN, Inc.,
D/B/A La Madeleine
MB-237685
(TABC CASE NO. 584608)

§ BEFORE THE STATE OFFICE
§
§
§
§ OF
§
§
§ ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking denial of the application submitted by LMI VIN, Inc., d/b/a La Madeleine (Respondent), for permit renewal because more than fifty percent of the legal or beneficial ownership of the stock of Respondent has changed since the original permit had been issued to Respondent by the Commission. A hearing was conducted; however, Respondent did not attend. The Administrative Law Judge (ALJ) recommends that Respondent's application for permit renewal be denied.

I. PROCEDURAL HISTORY

On December 10, 1999, a hearing was convened before Tanya Cooper, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings, 6300 Forest Park Road, Suite B-230, Dallas, Texas. TABC Staff was represented by Timothy E. Griffith. Respondent failed to appear. The hearing was concluded and the record closed on the same day.

TABC Staff presented exhibits which were admitted into evidence. These exhibits included the Notice of Hearing issued by TABC staff to Respondent, along with certified mail return receipts showing delivery of the notice to Respondent, Respondent's permit and violation history maintained by TABC staff, and Respondent's permit renewal application.

II. REASONS FOR PROPOSED DECISION

Because Respondent failed to appear at the hearing, and TABC Staff proved that Respondent had received appropriate notice of the hearing, all matters relating to jurisdiction, notice, the issues for determination, and recommended relief are addressed in the Findings of Fact and Conclusions of Law sections of this proposal without discussion.

III. FINDINGS OF FACT

1. LMI VIN, Inc., d/b/a La Madeleine (Permittee), holds a Mixed Beverage Permit, MB-42985, issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 4201 S. Cooper Street, Suite 731, Arlington, Tarrant County, Texas.

