

**DOCKET NO. 595319**

IN RE NEGUSSE INVESTMENT INC.	§	BEFORE THE
D/B/A HENDERSON CONVENIENCE STORE	§	
PERMIT NO. Q-482652	§	
LICENSE NO. BF482653	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0951)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 15<sup>th</sup> day of February 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned on January 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 25, 2002. 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 # Q-482652 and License No. BF482653 are hereby **SUSPENDED** for two (2) days.

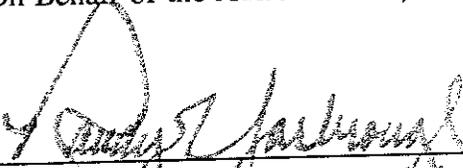
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$300.00 on or before the 17<sup>th</sup> day of April 2002, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of two (2) days, beginning at 12:01 A.M. on the 24<sup>th</sup> day of April 2002.

This Order will become final and enforceable on March 8, 2002, 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 15<sup>th</sup> day of February 2002.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 377-3706**

Negusse Investment Inc.  
d/b/a Henderson Convenience Store  
**RESPONDENT**  
2831 N. Henderson  
Dallas, Texas 75206-6470  
**CERTIFIED MAIL/RRR NO. 7001 0320 0003 0147 5308**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595319

REGISTER NUMBER:

NAME: NEGUSSE INVESTMENT INC.

TRADENAME: HENDERSON CONVENIENCE STORE

ADDRESS: 2831 N Henderson, Dallas, Texas 75206-6470

DATE DUE: April 17, 2002

PERMITS OR LICENSES: Q-482652, BF482653

AMOUNT OF PENALTY: \$300.00

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 17TH, DAY OF APRIL, 2002, 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.

DOCKET NO. 458-02-0951

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

NUGUSSE INVESTMENT INC.  
D/B/A HENDERSON CONVENIENCE STORE  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 595319)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of Nugusse Investment Inc. d/b/a Henderson Convenience Store's (Respondent) permit and license, or in the alternative payment of a penalty. The Staff alleged Respondent had paid for beer with checks which were dishonored. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends Respondent's permits be suspended for two days, or in the alternative that Respondent pay of a penalty of \$300.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of notice or jurisdiction in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion here.

On January 11, 2002, a hearing convened before ALJ Robert F. Jones Jr., State Office of Administrative Hearings (SOAH). The Texas Alcoholic Beverage Commission (TABC) was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared through Tombossa Nugusse, its owner. Evidence was received and the record was closed on January 11, 2002.

Staff alleged that (1) Respondent had been issued a permit and a license, (2) gave checks as payment for beer, and (3) those checks were dishonored when presented for payment.

**II. EVIDENCE**

**A. Staff's Evidence**

Respondent's licensed premise is located at 2831 North Henderson, Dallas, Dallas County, Texas. TABC issued wine only package store permit Q 482652 and beer retailer's off premise license BF482653 to Respondent.

On November 28, 2001, Staff served Respondent with Requests for Admissions (the Requests), a copy of which (along with proof of service) was admitted in evidence. Respondent failed to either admit or deny the Requests. The Requests are deemed admitted, and are conclusively

established against Respondent. 1 TEX. ADMIN. CODE §§ 155.31(d)(2). Those matters admitted are set out in the findings of fact and conclusions of law without further discussion here.

**B. Respondent's Evidence**

Mr. Nugusse testified that although Respondent's two checks given in payment to Miller of Dallas Inc. in payment for beer were dishonored, they were dishonored through no fault of Respondent. Mr. Nugusse explained that Respondent's store leased an ATM from Credit Card Central (CCC). The terms of the lease provided that all of Respondent's cash receipts were placed into the ATM, to be drawn on by Respondent's customers. CCC in turn kept an accounting of the deposits made into the ATM by Respondent, and would periodically deposit funds into Respondent's bank account. Respondent wrote checks to vendor's such as Miller on the account into which CCC made deposits. Mr. Nugusse testified that CCC filed bankruptcy and did not make the deposits to which Respondent was due. As a result, Respondent's checks to Miller were dishonored. Mr. Nugusse testified the two checks were satisfied by paying cash.

**III. DISCUSSION**

TABC is authorized to suspend a permit for not more than 60 days for any violation of the Code. TEX. ALCO. BEV. CODE § 11.61(b)(2)(Vernon 2000) (the Code). A permittee violates the code if it gives checks as payment for beer and the checks are dishonored when presented for payment. §61.73(b) of the Code. The facts deemed admitted establish Respondent's violation of §61.73(b).

The Staff recommended a suspension of Respondent's permits for five days, or in the alternative that Respondent pay a penalty of \$750. Mr. Nugusse responded that he had demonstrated the dishonor was not Respondent's fault and that a penalty of \$750 was excessive. The Staff noted that §61.73(b) of the Code is a "strict liability" statute, and that Respondent's excuse for the checks being dishonored was no defense to its liability. Respondent's violation history was admitted into evidence. The record shows that Respondent has no other violations of any kind.

Under the TABC's "standard penalty chart" a violation of §61.73(b) of the Code calls for a maximum of a three-day suspension for a first violation and a five to ten day suspension for a second violation. See 16 TEX. ADMIN. CODE § 37.60. These violations are "major regulatory violations" under the penalty chart. Generally, A "repeat violation" "justifies the penalty for a second or third violation if . . . it is a major regulatory violation within 24 months of the first violation." *Id.* § 37.60(c). A penalty for a repeat violation is not "assessed unless the alleged violation occurs after the permittee . . . has been notified, in writing, of the first alleged violation." *Id.* § 37.60(d). The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. § 11.64(a) of the Code. The standard penalty chart is not binding. The facts developed in the record are the determining factors "as to the sufficiency of the penalty assessed." 16 TEX. ADMIN. CODE § 37.60(g).

Respondent issued the two checks which were dishonored on May 9 and May 31, 2001. A penalty for the May 9 check is justified because of the violation of §61.73(b) of the Code. A penalty for the May 31 check is justified because it occurred within 24 months of the first check. There is

no evidence, however, that Respondent was notified in writing prior to May 31 by the Staff of the first violation. Further, the intervening bankruptcy of CCC was the cause of the checks bouncing. Mr. Nugusse testified that the checks were redeemed.

The ALJ recommends Respondent's permits be suspended for two days, or in the alternative that Respondent pay a penalty of \$300.

#### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued wine only package store permit Q482652 and beer retailer's off premise license BF482653 to Nugusse Investment Inc. d/b/a Henderson Convenience Store (Respondent).
2. Respondent's licensed premise is located at 2831 North Henderson, Dallas, Dallas County, Texas.
3. On May 9, 2001, Respondent gave Miller of Dallas Inc. a check as payment for beer and the check was dishonored when presented for payment.
4. On May 31, 2001, Respondent gave Miller of Dallas Inc. a check as payment for beer and the check was dishonored when presented for payment.
5. On November 28, 2001, the Staff served its Notice of Hearing (the NOH) on Respondent by certified mail.
6. The NOH alleged Respondent had violated the Code in several specified instances. It informed the Respondent the hearing would be held on January 11, 2002, at 11:30 a.m. at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
7. On January 11, 2002, a hearing convened before Administrative Law Judge Robert F. Jones Jr., State Office of Administrative Hearings SOAH. TABC was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared through Tombossa Nugusse, its owner. Evidence was received, and the record was closed on January 11, 2002.

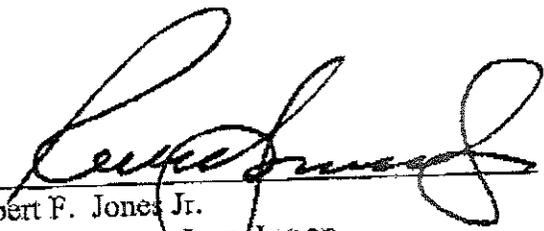
#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 2000)(the Code).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision

with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 2000).

3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 3 - 4, Respondent has violated §61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for two days, or in the alternative Respondent should pay a penalty of \$300.

SIGNED January 25, 2002.



Robert F. Jones Jr.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS