

DOCKET NO. 595886

IN RE AVI INVESTMENTS L.L.C. ET AL	§	BEFORE THE
D/B/A A-1 CONVENIENCE	§	
PERMIT NO. Q-483500	§	
LICENSE NO. BF483501	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2482)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22<sup>nd</sup> day of July 2002, 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 and adjourned on June 12, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 27, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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. Q-483500 and License No. BF483501 are hereby **SUSPENDED for five (5)**.

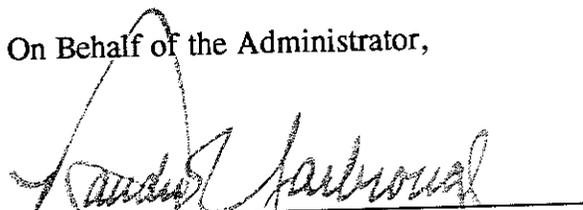
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **18th** day of **September, 2002**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 25th day of September, 2002.**

This Order will become final and enforceable on August 12, 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 or through the U.S. Mail, as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 22<sup>nd</sup> day of July, 2002.

On Behalf of the Administrator,

  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

AVI INVESTMENTS L.L.C. ET AL  
D/B/A A-1 CONVENIENCE  
RESPONDENT  
1116 Janell Dr.  
Irving, Texas 75062-6975  
CERTIFIED MAIL NO. 7001 2510 0000 7278 8459

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 595886**

**REGISTER NUMBER:**

**NAME: AVI INVESTMENTS L.L.C. ET AL    TRADENAME: A-1 CONVENIENCE**

**ADDRESS: 1116 Janell Dr., Irving, Texas 75062-6975**

**DATE DUE: September 18, 2002**

**PERMITS OR LICENSES: Q-483500, BF483501**

**AMOUNT OF PENALTY: \$750.00**

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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 18TH, DAY OF SEPTEMBER, 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.

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Signature of Responsible Party

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Street Address

P.O. Box No.

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City

State

Zip Code

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Area Code/Telephone No.

DOCKET NO. 458-02-2482

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE  
 COMMISSION, Petitioner § OF  
 V. § ADMINISTRATIVE HEARINGS  
 AVI INVESTMENTS L.L.C. ET AL  
 d/b/a A-1 Convenience, Respondent  
 Tarrant County, Texas  
 (TABC No. 595886)

### PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action against its licensee, AVI INVESTMENTS L.L.C. d/b/a A-1 Convenience (Respondent) because it allegedly paid for beer by checks that were dishonored for insufficient funds when presented for payment. The Administrative Law Judge (ALJ) finds that the allegations are true and recommends that Respondent's licenses be suspended for five days or, in the alternative, that it pay a civil penalty of \$750.00.

### I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

On June 12, 2002, a hearing was convened before ALJ Tanya Cooper at the State Office of Administrative Hearings, 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Commission Staff was represented by its attorney, Timothy E. Griffith. Respondent was present though its representative, Satish Patel. The hearing was concluded and the record closed on the same day. Because there were no contested issues relating to jurisdiction or notice, those matters will be addressed only in the Proposed Findings of Facts and Proposed Conclusions of Laws sections.

### II. EVIDENCE RECEIVED

Commission Staff presented several exhibits which were admitted into evidence. These exhibits included affidavits from Ben E. Keith Beers of Fort Worth, Texas. The affidavits state that Respondent issued checks to Ben E. Keith Beers on June 26, 2001 and July 10, 2001, in payment for beer. Both checks were dishonored by Respondent's bank, Bank One, when presented for payment. Bank One indicated to Ben E. Keith Beers that Respondent's checks were dishonored for "NSF" (insufficient funds available for payment of the checks when presented).

Respondent's representative, Satish Patel, testified concerning the checks. According to Mr. Patel, deposits were made to Respondent's account at Bank One. However, on one instance because Ben E. Keith and Respondent both banked at Bank One, funds were not available at midnight when the check was submitted for payment. On the other instance, a large deposit had been placed into Respondent's account. Unknown to Respondent, Bank One's policy was to place a hold on those



deposited funds for a period of time. During the time that the hold was in place by Bank One, a check issued to Ben E. Keith was presented. This check was returned because the remainder of funds in Respondent's account that were not subject to Bank One's hold were insufficient to pay the check.

Respondent's licensing records maintain by Commission's Staff show that another cash law violation was made by Respondent in 2000. Mr. Patel testified that on that occasion, he had returned to India and entrusted his brother-in-law with operation of Respondent's business. Respondent's licensing history reveals it received a warning for that violation.

### III. APPLICABLE LAW AND ALJ'S ANALYSIS

An authorized beer distributor may not make a sale of beer to a retail dealer holding an on- or off-premises license except for cash on or before delivery of the beer to the purchaser. A valid check payable on demand may be accepted as cash. If a check is accepted for payment, it must be deposited in the bank for payment within two days after it is received. If the check is dishonored, this event must be reported to the Commission. TEX. ALCO. BEV. CODE ANN. § 102.31.

Commission rules provide that the Commission may suspend for not more than 60 days a retail dealer's on- or off- premises license if it is found that the licensee gave a check, as maker or endorser, in full or partial payment for beer, which is dishonored when presented for payment. TEX. ALCO. BEV. CODE ANN. § 61.73(b).

In this instance, it is undisputed that beer was purchased from Ben E. Keith on June 26, 2001, and July 10, 2001. Respondent purchased this beer by issuing checks to Ben E. Keith in the amount of \$1,037.45 and \$1,419.70, respectively. Ben E. Keith presented these checks for payment and both were dishonored by Respondent's bank, Bank One. The reasons provided for returning these checks were noted as "NSF," a common term used in banking transactions meaning that insufficient funds were available in Respondent's account to fully pay each check at the times they were presented. No affirmative defenses or mitigating factors are provided for within applicable statutes or rules relating to this type of violation.

Based upon these facts, Commission's Staff has met its burden of proof establishing that Respondent violated Commission's rules requiring cash payments for beer purchases. Respondent had received one prior warning for this same type of violation in 2000; and a subsequent violation occurred after June 26, 2001, when Respondent issued the July 10 check. Based upon these factors, the ALJ recommends that Respondent's license be suspended for five days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty of \$750.00.

### IV. PROPOSED FINDINGS OF FACT

1. AVI INVESTMENTS L.L.C. d/b/a A-1 Convenience (Respondent), holds a Beer Retailer's Off Premises License, BF483501, and Wine Only Package Store Permit, O483500, issued

by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 3251 N. Freeway 'A', Fort Worth, Tarrant County, Texas.

2. On April 15, 2002, the Commission's Staff sent, by certified mail, 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.
3. The Notice of Hearing was sent to Respondent at its mailing address of record, 1116 Janell Drive, Irving, Texas 75062-6975 by certified mail (7001 2510 0000 7278 9708), return receipt requested, and it was received at that address on April 18, 2002.
4. A hearing convened June 12, 2002, at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas, before Tanya Cooper, Administrative Law Judge (ALJ). Commission Staff was represented by Timothy E. Griffith. Respondent appeared and was represented by Satish Patel.
5. On June 26, 2001, Respondent gave a check for \$1,037.45 to Ben E. Keith Beers of Fort Worth, Texas, which was dishonored when presented to Bank One for payment because of insufficient funds available in Respondent's account.
6. On July 10, 2001, Respondent gave a check for \$1,419.70 to Ben E. Keith Beers of Fort Worth, Texas, which was dishonored when presented to Bank One for payment because of insufficient funds available in Respondent's account.

#### V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing proposed findings of facts and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. As referenced in Proposed Finding of Fact Nos. 2 and 3, proper and timely notice of the conduct alleged, statutes and rules governing the proceeding, and the hearing was provided to Respondent, pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71(a), TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE §§ 155.27 and 155.55.
4. Based on Proposed Findings of Fact Nos. 5 and 6, Respondent paid for beer by checks which were dishonored for insufficient funds in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b), which warrants suspension of Respondent's license and permit referenced in

Proposed Finding of Fact No. 1 for five days, or payment of a civil penalty in lieu of suspension in the amount of \$750.00.

SIGNED on this the 27<sup>th</sup> day of June 2002.



FANYA COOPER, Administrative Law Judge  
STATE OFFICE OF ADMINISTRATIVE HEARINGS