

DOCKET NO. 596504

IN RE CAPITOL BEVERAGE CORPORATION	§	BEFORE THE
D/B/A THE HARDER BAR	§	
PERMIT NOS. MB256299, LB256300,	§	
PE467910, CB467911	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2476)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on June 13, 2002 and adjourned on June 13, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 1, 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 Nos. MB256299, LB256300, PE46791 and CB467911 are hereby **SUSPENDED** for ten (10) days.

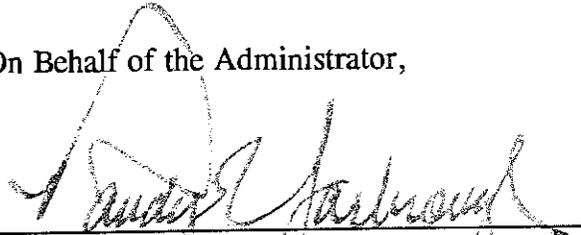
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **16th day of October, 2002**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days days, beginning at **12:01 A.M. on the 23rd day of October, 2002**.

This Order will become final and enforceable on September 16, 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.

SIGNED this the 26th day of August, 2002.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", is written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

**CAPITOL BEVERAGE CORPORATION
D/B/A THE HARDER BAR
RESPONDENT
1909 Greenville Avenue
Dallas, TX 75206
CERTIFIED MAIL NO. 7001 2510 0000 7277 6357**

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 596504

REGISTER NUMBER:

NAME: CAPITOL BEVERAGE CORPORATION TRADENAME: THE HARDER BAR

ADDRESS: 1909 Greenville Avenue, Dallas, Texas 75206

DATE DUE: October 16, 2002

PERMITS OR LICENSES: MB256299, LB256300, PE467910, CB467911

AMOUNT OF PENALTY: \$1,500.00

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 16TH DAY OF OCTOBER 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.

a copy of which (along with proof of service) was admitted into 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. An affidavit, signed by Alvin J. Miller, Senior Vice President of Sigel's Beverages, L.P., was also admitted into evidence.

B. Respondent's Evidence

The permittee, Craig Vaught, testified at the hearing. Mr. Vaught stated that the check issued on August 7, 2001 to Sigel's Beverages, L.P. as payment for beer was not presented to Bank of America for payment until eight days later. According to Mr. Vaught, he had made other purchases during this eight day period; therefore, the other purchases may have had an effect on the check when it was presented to the bank, causing the check to subsequently be returned for insufficient funds. Mr. Vaught further requested some type of leniency due to the circumstances of the eight day time period regarding the check.

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) (the Code). A permittee violates the code if it gives a check as payment for beer and the check is 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 noted that Respondent's excuse for the check being dishonored was no defense to its liability. The Staff recommended a suspension of Respondent's permits for ten days, or in the alternative, that Respondent pay a penalty of \$1,500 due to previous cash law violations by Respondent. Respondent's violation history was admitted into evidence. The record shows that Respondent has four prior cash law violations during the years 1995 to 2000. Mr. Vaught responded that the last cash law violation was over a year ago and that he is a small businessman. Therefore, requests either a waiver or a reduction in the recommended penalty of \$1,500.

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, a five to ten day suspension for a second violation, and 10 to 15 days for a third violation. *See* 16 TEX. ADMIN. CODE § 37.60. 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).

The record shows that Respondent's permits were previously suspended as follows for previous cash law violations:

- Suspended for five days for violation of § 61.73(b) of the Code on May 3, 2000;

- No suspension for violation of § 61.73(b) of the Code on August 23, 1999;
- Suspended for five days for violation of § 61.73(b) of the Code on July 5, 1996; and
- No suspension for violation of § 61.73(b) of the Code on August 18, 1995.

The Sanction recommended by the Staff is reasonable and within the authority of the penalty chart. 16 TEX. ADMIN. CODE § 37.60.

The ALJ recommends Respondent's permits be suspended for ten days, or in the alternative, that Respondent pay a penalty of \$1,500.

IV. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued mixed beverage permit, MB 256299, mixed beverage late hours permit, LB 256300, beverage cartage permit, PE 467910, and caterer's permit, CB 467911, to Capitol Beverage Corporation Inc. d/b/a The Harder Bar (Respondent).
2. Respondent's licensed premise is located at 1909 Greenville Avenue, Dallas, Dallas County, Texas.
3. On August 7, 2001, Respondent gave Sigel's Beverages, L.P. a check as payment for beer, and the check was dishonored when presented for payment.
4. On April 11, 2002, the Staff served its notice of hearing on Respondent by certified mail.
5. The notice alleged Respondent had violated the Code on August 7, 2001. It informed the Respondent the hearing would be held on June 13, 2002, at 10:30 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The notice 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.
6. On June 13, 2002, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received, and the record closed on June 13, 2002.

V. PROPOSED 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) (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.
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 No. 3, Respondent violated § 61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for ten days, or in the alternative, Respondent should pay a penalty of \$1,500.

ISSUED this 1st day of August, 2002.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS