

DOCKET NO. 597196

IN RE THE ICE HOUSE
D/B/A THE ICE HOUSE
PERMIT NOS. N-250957; PE250958

§
§
§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

HILL COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-2213)

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on May 20, 2002, and adjourned May 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 29, 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 Nos. N-250957 and PE-250958 are herein **SUSPENDED**.

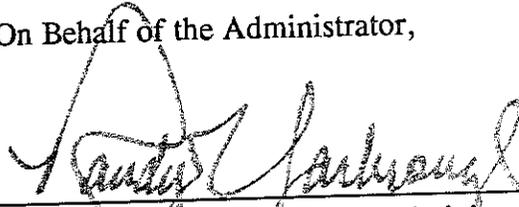
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 7th day of August, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 14th day of August, 2002.

This Order will become final and enforceable on JULY 11, 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 26th day of June, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

Dennis Holliday
OFFICER OF RESPONDENT
d/b/a The Ice House
P. O. Box 1905
Whitney, Tx. 76692
CERTIFIED MAIL NO. 7001 2510 0000 7277 8030

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Compliance Division
Licensing Division
Waco District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 597196

REGISTER NUMBER:

NAME: The Ice House

TRADENAME: The Ice House

ADDRESS: P. O. Box 1905, Whitney, Texas, 76692

DATE DUE: AUGUST 7, 2002

PERMITS OR LICENSES: N-250957 & PE-250958

AMOUNT OF PENALTY: \$750.00

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 7TH DAY OF AUGUST, 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

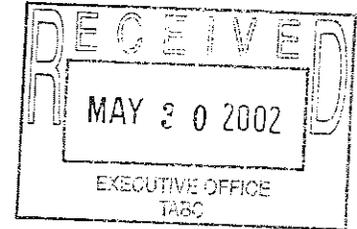
Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 29, 2002



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

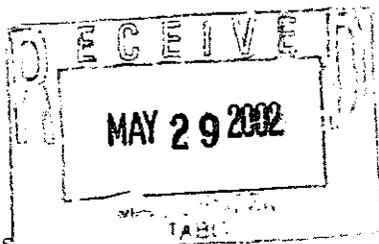
ORIGINAL VIA CERTIFIED MAIL No. Z137716457

RE: Docket No. 458-02-2213; Texas Alcoholic Beverage Commission vs. The Ice House d/b/a The Ice House (TABC Case No. 597196)

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 Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to The Ice House d/b/a The Ice House, Respondent, appearing pro se by its officer, Dennis Holliday. For reasons discussed in the proposal, I recommend that the Respondent's permit should be suspended for five days, or the Respondent should pay a civil penalty of \$150.00 per day for five days, in lieu of suspension.

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.



SMS:sms
Enclosure

Sincerely,

A handwritten signature in black ink, appearing to read "Suzan Moon Shinder".

Suzan Moon Shinder
Administrative Law Judge

xc: Docket Clerk, State Office of Administrative Hearing - **FAX DELIVERY**
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Ste. 160, Austin, Texas 78731 - **CERTIFIED MAIL NO. Z137716458, RETURN RECEIPT REQUESTED**
The Ice House d/b/a The Ice House (Att'n: Dennis Holliday), P.O. Box 1905/ Bonanza Station, Whitney, Texas 76692 - **CERTIFIED MAIL NO. Z137716459 RETURN RECEIPT REQUESTED**
801 Austin Avenue, Suite 750 ♦ Waco, Texas 76701
(254) 750-9300 Fax (254) 750-9380

DOCKET NO. 458-02-2213

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	§	
THE ICE HOUSE	§	
D/B/A THE ICE HOUSE	§	
PERMIT NOS. N-250957;PE-250958	§	ADMINISTRATIVE HEARINGS
HILL COUNTY, TEXAS	§	
(TABC CASE NO. 597196)	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Commission) requested that the permit or license of The Ice House d/b/a The Ice House (the Respondent) be canceled or suspended, alleging that on September 26, 2001, the Respondent gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO.BEV.CODE ANN. (the Code) §§ 61.73(b)¹ and 102.31. Although the Respondent contested the proposed suspension, it did not deny the Commission's allegation. The undersigned Administrative Law Judge (ALJ) recommends that the Respondent's permit should be suspended for five days, or the Respondent should pay a civil penalty of \$150.00 per day, in lieu of suspension.

I. Procedural History, Notice, and Jurisdiction

The Commission and the State Office of Administrative Hearings (SOAH) have jurisdiction over this matter, as reflected in the conclusions of law. Notice to the Respondent of the Commission's allegations and intended sanction, and notice to the Respondent of the hearing, met the notice requirements imposed by statute and rule. The details of such notice are set forth in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was convened on May 20, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before ALJ Suzan Shinder. Both parties appeared by telephone. The Commission appeared by its staff attorney, Gayle Gordon. The Respondent, by its officer Dennis Holliday, appeared pro se. Evidence and argument were heard, and the record closed the same day.

¹Although this section speaks of licenses, Code §25.04(b) states that the provisions of the Code that are applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

II. The Statute

Section 102.31 of the Code requires a cash payment to a retail dealer for beer or its containers, prohibiting credit and postdated checks. Section 61.73(b) of the Code prohibits the giving of a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

A permit is subject to revocation or suspension if the holder is found to have violated a provision of the Code or one of the Commission's Rules. The Commission is authorized to cancel or suspend the Respondent's permit for not more than 60 days pursuant to Code §§6.01(b) and 11.61(b)(2).

When Code §61.73 or Code §102.31 is violated by a permittee, the Standard Penalty Chart as set forth in 16 TEX. ADMIN. CODE (Rules) §37.60, suggests a minimum penalty of a warning to a three day suspension of the permit or license. It suggests a maximum penalty of a fifteen-day suspension. Code §11.64 authorizes the Commission to give the Respondent an opportunity to pay a civil penalty rather than have its permit or license suspended. According to this section, the civil penalty may not be less than \$150.00 or more than \$25,000.00 for each day the permit or license was to have been suspended.

III. Evidence and Argument

The Commission's two exhibits² were admitted without objection; the Commission called Respondent's officer, Dennis Holliday, as its only witness; and Respondent rested without putting on any evidence.

Private Club Registration Permit, N-250957, and Beverage Cartage Permit, PE-250958, were issued to an unincorporated association of persons, doing business as The Ice House, UCRD HIL E/S .4 mile South Int FM 1713 and .8 Mile West Int FM 1713 and FM 933, Whitney, Hill County, Texas, by the Commission, on December 2, 1994, and have been continuously renewed.³

In his testimony, Dennis Holliday admitted that, as an officer of Respondent, he issued a check dated September 26, 2001, in the amount of \$381.53, to Glazer's Wholesale Distributors, in payment for beer and the original packages in which such beer was contained; and he admitted that said check was dishonored by the bank for insufficient funds. This fact was also reflected by a copy of the dishonored check and an affidavit from Glazer's Wholesale Distributors, admitted as the Commission's Exhibit "B."

²The Commission's Exhibit "A" contains certified copies of the Respondent's permits and violation history; the Commission's Exhibit "B" is a copy of the Respondent's dishonored check, dated September 26, 2001, and an attached affidavit from Glazer's Wholesale Distributors, the payee for the check.

³Commission's Exhibit "A."

The Commission requested that a five day suspension, or a civil penalty in the amount of \$150.00 per day, in lieu of suspension, be imposed. The Respondent asked that no suspension or penalty be imposed.

IV. Discussion

Based on the nature of the Respondent's violation, this proposal recommends that the Respondent's permits be suspended for a period of five days, or that the Respondent be allowed to pay a civil penalty in the amount of \$150.00 per day, in lieu of suspension, consistent with Code §§6.01(b) and 11.61(b)(2), and Rules §§11.64 and 37.60.

Findings of Fact

1. Private Club Registration Permit, N-250957, and Beverage Cartage Permit, PE-250958, were issued to an unincorporated association of persons, doing business as The Ice House, UCRD HIL E/S .4 mile South Int FM 1713 and .8 Mile West Int FM 1713 and FM 933, Whitney, Hill County, Texas, by the Texas Alcoholic Beverage Commission, on December 2, 1994, and have been continuously renewed.
2. On September 26, 2001, the Respondent, by its officer, Dennis Holliday, gave a check or draft to Glazer's Wholesale Distributors for the purchase of beer and the containers and original packages in which such beer was contained, that was dishonored when presented for payment.
3. On March 29, 2002, the Commission gave proper and timely notice of the hearing to the Respondent, in that it sent its Notice of Hearing to the Respondent's last known mailing address by certified mail, return receipt requested.
4. This Notice of Hearing contained: a statement of the date, time, location and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the Commission.
5. The hearing on the merits was convened on May 20, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge Suzan Shinder. Both parties appeared by telephone. The Commission appeared by its staff attorney, Gayle Gordon. The Respondent, by its officer Dennis Holliday, appeared pro se. Evidence and argument were heard, and the record closed the same day.

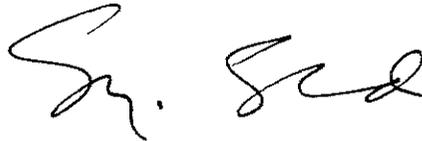
Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Subchapter B of Chapter 5.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with

proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Based on Findings of Fact Nos. 3-5, proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052; and Code §11.63.
4. On September 26, 2001, the Respondent gave a check or draft for the purchase of beer to Glazer's Wholesale Distributors, that was dishonored when presented for payment, violating Code §§61.73(b) and 102.31.
5. The Commission is authorized to cancel or suspend the Respondent's permit for not more than 60 days pursuant to Code §§6.01(b) and 11.61(b)(2).
6. The Standard Penalty Chart as set forth in 16 TEX. ADMIN. CODE (Rules) §37.60, suggests a minimum penalty of a warning to a three day suspension of the permit or license. It suggests a maximum penalty of a fifteen day suspension.
7. Code §11.64 authorizes the Commission to give the Respondent an opportunity to pay a civil penalty rather than have its permit or license suspended. According to this section, the civil penalty may not be less than \$150.00 or more than \$25,000.00 for each day the permit or license was to have been suspended.
8. Based on the above findings and conclusions, the Respondent's permit should be suspended for five days. In the alternative, the Respondent should pay a civil penalty of \$150.00 per day, pursuant to Code §11.64 and Rules §37.60.

Signed this 29th day of May, 2002.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS