

DOCKET NO. 599207

IN RE DZN FOOD MART, INC.
D/B/A DZN FOOD MART
PERMIT NO. Q-507935
LICENSE NO. BF507936

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-3449)

§ BEFORE THE
§
§ TEXAS ALCOHOLIC
§
§
§ BEVERAGE COMMISSION
§

ORDER

CAME ON FOR CONSIDERATION this 15th day of August 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 July 24, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 25, 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.

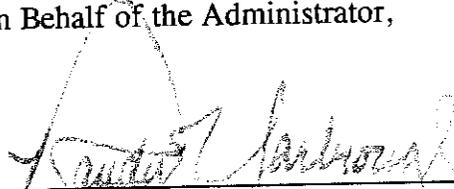
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. Q-507935 and License No. BF507936 are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on September 5, 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 15th day of August, 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 FAX (817) 377-3706

DZN FOOD MART, INC.
D/B/A DZN FOOD MART
RESPONDENT
3624 Smoke Tree Trail
Euless, TX 76040-1794
CERTIFIED MAIL NO. 7001 2510 0000 7276 5825

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-02-3449

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

DZN FOOD MART, INC.
D/B/A DZN FOOD MART
TARRANT COUNTY, TEXAS
(TABC CASE NO. 599207)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought cancellation of Respondent DZN Food Mart, Inc. d/b/a DZN Food Mart's permit and license. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit and license.

I. PROCEDURAL HISTORY

On July 24, 2002, a hearing convened before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record closed on July 24, 2002.

II. DISCUSSION

A. Notice

The Staff served its Notice of Hearing (the NOH) on Respondent on July 1, 2002, by certified mail, return receipt requested, to Respondent's mailing address. It was filed with SOAH by facsimile transmission on the same day. The NOH contains a "disclosure, in 12-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." I TEX. ADMIN. CODE § 155.55(c).

The NOH alleged Respondent had violated the Code in several specified instances. It warned that the Staff would seek cancellation of Respondent's permit and license. It informed the Respondent of the time, place, and nature of the hearing on the allegations. 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. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2001).



B. Jurisdictional Facts

Respondent's licensed premises are located at 12301 Highway 80 West, Space A, Fort Worth, Tarrant County, Texas. Respondent's mailing address is 3624 Smoke Tree Trail, Euless, Texas 76040-1794. The TABC has issued wine-only-package-store permit Q507935 and beer-retailer's-off-premise license BF507936 to Respondent.

C. Recommendation

The ALJ recommends Respondent's permit and license be canceled.

III. PROPOSED FINDINGS OF FACT

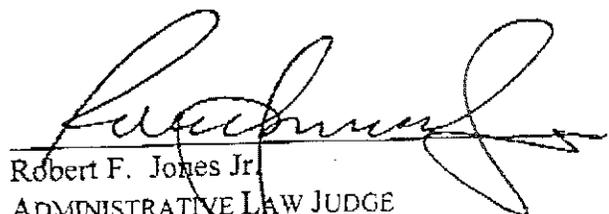
1. Respondent's licensed premises are located at 12301 Highway 80 West, Space A, Fort Worth, Tarrant County, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) has issued wine-only-package-store permit Q507935 and beer-retailer's-off-premise license BF507936 to Respondent.
3. Respondent possessed 56 videotapes and their covers on the licensed premises.
4. The 56 videotapes and their covers depicted sexual acts and sexual intercourse.
5. The 56 videotapes and their covers were pornographic.
6. On July 1, 2002, the Staff of the TABC (Staff) served its Notice of Hearing (the NOH) on Respondent by certified mail, return receipt requested, to Respondent's mailing address, 3624 Smoke Tree Trail, Euless, Texas 76040-1794. The mailing was unclaimed by Respondent.
7. Section 11.63 of the Texas Alcoholic Beverage Code authorizes service of the NOH by sending it to Respondent's last known address as shown by the TABC's records.
8. The NOH contained a disclosure, in 12-point, bold-faced type, of the fact that upon failure of the Respondent to appear at the hearing, "the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
9. The NOH alleged Respondent had violated the Code in several specified instances. It warned that the Staff would seek forfeiture of Respondent's conduct surety bond. It informed the Respondent the hearing would be held on July 24, 2002, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant 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.

10. On July 24, 2002, a public hearing convened before Administrative Law Judge (ALJ) Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC's Legal Division. Respondent failed to appear. The record closed on July 24, 2002.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of 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. ch. 2003 (Vernon 2002).
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 2002), and § 11.63 of the Code.
4. The factual allegations in the NOH are deemed true. 1 TEX. ADMIN. CODE § 155.55(c).
5. Based on the foregoing findings and conclusions, Respondent possessed and promoted pornographic material, or material that was immoral, indecent, lewd, or profane. § 101.64 of the Code.
6. Based on the foregoing findings and conclusions, Respondent conducted its business in a place or manner which warrants the cancellation its permit and license based on the general welfare, health, peace, morals, safety, and sense of decency of the people. §§ 61.71(a)(17), 24.06 of the Code.
7. Based on the foregoing findings and conclusions, Respondent's permit and license should be canceled. §§ 61.71(a)(1) & (17), 24.06 of the Code.

SIGNED July 25, 2002.


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