

The Commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if the permit holder or applicant:

- (1) is placed on a delinquent tax roll prepared under Section 33.03 Tax Code;
- (2) has received a notice of delinquency under Section 33.04 Tax Code; and
- (3) has not made payment required under Section 42.08, Tax Code.

EVIDENCE AND PARTIES' CONTENTION

Petitioner alleged that Respondent is the holder of a Wine and Beer Retailer's Off Premises permit issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit Three establish that a Wine and Beer Retailer's Off Premises Permit, BQ-447585, was issued to Bilal Mohammad Khwaja d/b/a All American Beverage Center, 1905 W. 15th Street, Plano, Collin County, Texas by the TABC on March 12, 1999.

Petitioner alleged that Respondent failed to pay ad valorem taxes to the City of Plano, in violation of §11.38 of the Texas Alcoholic Beverage Code. In support of its allegations, several exhibits were admitted into evidence on behalf of Petitioner. In addition, TABC presented the testimony of Kenneth L. Maun, Tax Assessor Collector for Collin County and the Custodian of Records. Mr. Maun testified that the Respondent has not paid delinquent ad valorem taxes (nearly \$10,000) to the City of Plano, Collin County, Texas since 1996. These taxes are owed for the permitted premises located at 1905 W. 15th Street, Plano, Collin County, Texas. Respondent was provided with notice of said delinquency by first class mail on approximately 20 occasions.

Respondent does not deny that ad valorem taxes are delinquent to the City of Plano. However, Respondent believed that the ad valorem taxes owed to the City of Plano would be paid through the bankruptcy court, as he has filed for bankruptcy protection.

ANALYSIS

The relevant facts are clear and undisputed. Respondent holds a Wine and Beer Retailer's Off Premises Permit, BQ-447585, and Respondent failed to pay delinquent ad valorem taxes for the permitted premises to the City of Plano, Collin County, Texas, in violation of §11.38 of the Texas Alcoholic Beverage Code. The fact that Respondent filed for bankruptcy protection is irrelevant, as the ad valorem taxes remain delinquent.

RECOMMENDATION

The ALJ recommends that Respondent's Wine and Beer Retailer's Off Premises Permit, BQ-447585, be cancelled.

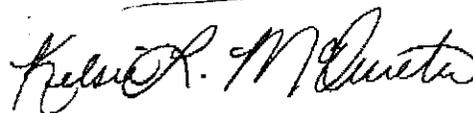
PROPOSED FINDINGS OF FACT

1. Respondent, Bilal Mohammad Khwaja d/b/a All American Beverage Center, holds Wine and Beer Retailer's Off Premises Permit, BQ-447585, issued on March 12, 1999, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permit was issued for the premises located at 1905 W. 15th Street, Plano, Collin County, Texas.
3. Petitioner sent Respondent written notice of its intent to seek cancellation of Respondent's permit by a letter dated May 10, 2002.
4. On September 18, 2002, Petitioner issued its Notice of Hearing to Respondent, Bilal Mohammad Khwaja d/b/a All American Beverage Center, at Respondent's address of record, 1905 West 15th Street, Plano, Texas 75075.
5. On October 25, 2002, a hearing convened before ALJ Kelsie McQuieter at 6333 Forest Park Road, Suite 150 A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared pro se.
6. Respondent did not contest notice or jurisdiction.
7. Respondent failed to pay delinquent ad valorem taxes to the City of Plano, Collin County, Texas.
8. Respondent has committed other violations of the Texas Alcoholic and Beverage Code.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.38 (e).
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing.
4. Based upon Proposed Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.38 (e) and based upon the Proposed Findings of Fact No. 8, Respondent has had several other violations since February 1999. This warrants the cancellation of Respondent's
5. Based upon Conclusion of Law No. 4 and Finding of Fact No. 8, Respondent's Wine and Beer Retailer's Off Premises Permit, BQ-447585, referenced in Proposed Finding of Fact No. 1, should be cancelled.

SIGNED this 7th day of November, 2002.



Kelsie L. McQuieter

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599516

IN RE BILAL MOHAMMAD KHWAJA	§	BEFORE THE
D/B/A ALL AMERICAN BEVERAGE CENTER	§	
PERMIT NO. BQ447585	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0038)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of December 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kelsie McQuieter. The hearing convened on October 25, 2002, and adjourned on October 25, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 7, 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. BQ447585 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on December 26, 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 5th day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

BILAL MOHAMMAD KHWAJA
D/B/A ALL AMERICAN BEVERAGE CENTER
RESPONDENT
1905 W 15th St.
Plano, Texas 75075
CERTIFIED MAIL NO. 7001 2510 0003 8686 7772

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office