

DOCKET NO. 458-02-3886

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
BRITISH BREWING CO. L.L.C., et.al. D/B/A THE LONDONER DALLAS COUNTY, TEXAS (TABC CASE NO. 600020)	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought to suspend the permits of British Brewing Company L.L.C. et. al. d/b/a The Londoner (Respondent), or in the alternative, to invoke payment of a civil penalty. The Staff alleged Respondent had paid for beer and malt liquor with checks which were dishonored when presented for payment. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends Respondent's permits be suspended for ten days, or in the alternative, Respondent pay a civil penalty of \$1,500.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or venue in this proceeding. Those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On September 19, 2002, a hearing convened before ALJ Brenda Coleman, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent appeared pro se through its designated representative, Barry Roan Tate. Evidence was received and the record closed on September 19, 2002.

Staff alleged that (1) Respondent had been issued permits, (2) gave checks as payment for beer and malt liquor, and (3) those checks, in four instances, were dishonored when presented for payment.

II. EVIDENCE**A. Staff's Evidence**

Respondent's licensed premises are located at 14930 Midway Road, Addison, Dallas County, Texas. The Texas Alcoholic Beverage Commission (TABC) issued Mixed Beverage Permit, MB 485525, and Mixed Beverage Late Hours Permit, LB 485526, to Respondent on January 19, 2001.



In support of its allegation that Respondent paid for beer and malt liquor with checks which were dishonored when presented for payment, Staff presented affidavits signed by the chief financial officer of Willow Distributors and the assistant controller of Miller of Dallas. These affidavits demonstrated that on April 22, 2002, Respondent gave Willow Distributors a check as payment for beer, and the check was dishonored when presented for payment; that on April 27, 2002, Respondent gave Miller of Dallas, Inc. a check as payment for beer, and the check was dishonored when presented for payment; that on April 27, 2002, Respondent gave Willow Distributors a check as payment for beer, and the check was dishonored when presented for payment; and that on April 27, 2002, Respondent gave Willow Distributors a check as payment for malt liquor, and the check was dishonored when presented for payment.

Additionally, Staff offered evidence of matters deemed admitted by Respondent. On August 9, 2002, Staff served Respondent with Requests for Admissions (Requests). The Respondent failed to deny the four allegations contained in the Requests. The Respondent, instead, indicated that the four checks were "stopped" when the account was closed due to burglary. The Requests are deemed admitted, and are conclusively established against Respondent. 1 TEX. ADMIN. CODE § 155.31(d)(2). The matters deemed admitted support the evidence referenced in the previous paragraph.

B. Respondent's Evidence

Barry Roan Tate testified at the hearing. Mr. Tate stated that the violations occurred because his business was burglarized some time between the dates of Saturday, April 27, 2002, at 10:30 p.m., and Sunday, April 28, 2002, at 3:00 a.m. According to Mr. Tate, as a result of the burglary, the Respondent's checkbook, some signed checks, and cash were stolen from a safe. Therefore, early Monday morning, April 29, 2002, Mr. Tate went to Respondent's banking institution, Community Credit Union, signed a stop payment order on checks numbered 4923 through 8000, and later closed the account. Mr. Tate also testified that he contacted the vendors, explained what had happened, and told them that if they would come in, he would pay them cash because he had to open a new account. Respondent also presented a copy of Respondent's banking statement showing that Respondent had large balances on the two dates on which the four dishonored checks were issued (April 22, 2002 and April 27, 2002).

Finally, Staff presented evidence of Respondent's violation history. TABC records show that Respondent has four prior cash law violations between January 19, 2001 and February 15, 2001.

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). 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 evidence establishes that Respondent gave checks as payment for beer and malt liquor which were dishonored when presented for payment.

The Respondent argues that, under the circumstances, its actions were reasonable and not deceitful. Respondent's excuse for the checks being dishonored was no defense to its liability. Almost a week had elapsed from the time of the burglary to the time that the four checks were dishonored (May 3, 2002, and May 6, 2002), during which time the Respondent did not attempt sufficient alternative measures to prevent the checks from being dishonored.

Staff recommended a suspension of Respondent's permits for ten days, or in the alternative, that Respondent pay a civil penalty of \$1,500, due to previous cash law violations by Respondent. Under the TABC "standard penalty chart," a violation of § 61.73(b) of the Code calls for a maximum suspension period of 3 days for a first violation, 5 to 10 days for a second violation, and 10 to 15 days for a third violation. 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 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).

Based on Respondent's cash law violation history, 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 civil penalty of \$1,500.

IV. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission issued Mixed Beverage Permit, MB 485525, and Mixed Beverage Late Hours Permit, LB 485526, to British Brewing Co. L.L.C., et.al. d/b/a The Londoner (Respondent).
2. Respondent's licensed premises are located at 14930 Midway Road, Addison, Dallas County, Texas.
3. On April 22, 2002, Respondent gave Willow Distributors a check as payment for beer, and the check was dishonored when presented for payment.
4. On April 27, 2002, Respondent gave Miller of Dallas, Inc. a check as payment for beer, and the check was dishonored when presented for payment.
5. On April 27, 2002, Respondent gave Willow Distributors a check as payment for beer, and the check was dishonored when presented for payment.
6. On April 27, 2002, Respondent gave Willow Distributors a check as payment for malt liquor, and the check was dishonored when presented for payment.
7. Respondent has four prior cash law violations between January 19, 2001 and February 15, 2001.

8. On August 9, 2002, the Staff served its notice of hearing on Respondent by certified mail, alleging Respondent had violated the Code in four specified instances. 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.
9. On September 19, 2002, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings. 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 September 19, 2002.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission 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 proper notice of the 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 Nos. 3 through 6, 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 civil penalty of \$1,500.

ISSUED this 15th day of November, 2002.

Brenda Coleman by Monica Garza
BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600020

IN RE BRITISH BREWING COMPANY LLC	§	BEFORE THE
D/B/A THE LONDONER	§	
PERMIT NOS. MB485525, LB485526	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3886)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of December 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 September 19, 2002, and adjourned on September 19, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 15, 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. MB485525, LB485526 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 **5th day of March, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at **12:01 A.M. on the 12th day of March, 2003**.

This Order will become final and enforceable on January 1, 2003, 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 13th day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

BRITISH BREWING COMPANY LLC
D/B/A THE LONDONER
RESPONDENT
14930 Midway Rd.
Addison, Texas 75244-2607
CERTIFIED MAIL NO. 7001 2510 0003 8688 8067

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 600020

REGISTER NUMBER:

NAME: BRITISH BREWING COMPANY LLC

TRADENAME: THE LONDONER

ADDRESS: 14930 Midway Road, Addison, Texas 75244-2607

DATE DUE: January 5, 2003

PERMITS OR LICENSES: MB485525, LB485526

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 5TH DAY OF MARCH 2003, 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.