

DOCKET NO. 458-02-3885

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	§	
AMAZU HOLDINGS L.L.C., et. al.	§	
D/B/A ACROSS THE BORDERS MARKET	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 600191)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff; Commission) sought to suspend the permit of Amazu Holdings L.L.C., et. al. d/b/a Across the Borders Market (Respondent). The Staff alleged Respondent had paid for beer with a check which was dishonored when presented for payment. This proposal finds that the allegation against Respondent is true. The Administrative Law Judge (ALJ) recommends Respondent's permit be suspended for five days, or in the alternative, Respondent pay a penalty of \$750.

I. NOTICE, JURISDICTION AND PROCEDURAL HISTORY

On August 9, 2002, Staff issued its notice of hearing, directed to Respondent at Respondent's mailing address, as listed in Commission records, at 7318 Harry Hines Boulevard, Suite A, Dallas, Texas, 75235-4014, via certified mail, return receipt requested. This notice was stamped "Return to Sender" and received by the Commission on August 19, 2002. On or about August 22, 2002, the Commission received correspondence from Respondent indicating a new address as follows: 2829 West Northwest Highway, No. 212, Dallas, Texas, 75220. On August 22, 2002, Staff issued a copy of its notice of hearing to Respondent at Respondent's new address, via certified mail, return receipt requested. The Commission received no green card evidencing actual receipt by Respondent. The ALJ presumes that the notice issued on August 22, 2002, was received by Respondent.

The notice contained a statement of the time, place, and 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 matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also included a disclosure, in at least 12-point, bold-face type, that upon failure of 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.

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. Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on

September 19, 2002.

II. THE ALLEGATION AND APPLICABLE LAW

Staff alleged that (1) Respondent had been issued a permit, (2) gave a check as payment for beer, and (3) the check was dishonored when presented for payment. The Commission is authorized to suspend or cancel a permit 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.

III. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. The facts deemed admitted establish Respondent's violation of § 61.73(b) of the Code.

The ALJ recommends Respondent's permit be suspended for five days, or in the alternative, that Respondent pay a penalty of \$750.

IV. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Staff; Commission) issued wine only package store permit, Q 498218, and beer retailer's off-premise license, BF 498219, to Amazu Holdings L.L.C. et.al. d/b/a Across the Borders Market (Respondent) on August 9, 2001.
2. On October 26, 2001, Respondent gave Ben E. Keith Co. a check as payment for beer, and the check was dishonored when presented for payment.
3. Until approximately August 22, 2002, Commission records showed Respondent's licensed premises to be located at 7318 Harry Hines Boulevard, Suite A, Dallas, Dallas County, Texas.
4. On August 9, 2002, Staff issued its notice of hearing, directed to Respondent at Respondent's mailing address, as listed in Commission records, at 7318 Harry Hines Boulevard, Suite A, Dallas, Texas, 75235-4014, via certified mail, return receipt requested. This notice was stamped "Return to Sender" and received by the Commission on August 19, 2002.
5. On or about August 22, 2002, the Commission received correspondence from Respondent indicating Respondent's licensed premise is currently located at 2829 West Northwest Highway, No. 212, Dallas, Dallas County, Texas.
6. On August 22, 2002, Staff served a copy of its notice of hearing on Respondent by certified

mail, return receipt requested, at 2829 West Northwest Highway, No. 212, Dallas, Dallas County, Texas. The Commission received no return receipt. The notice informed the Respondent the hearing would be held on September 19, 2002, at 10:00 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas.

7. The notice alleged Respondent had violated the Code on October 26, 2001. 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.
8. The notice of hearing also included a disclosure, in at least 12-point, bold-faced type, that upon failure of 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. 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, Staff Attorney. Respondent did not appear and was not represented at the hearing. 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. § 11.61(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. ch. 2003.
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. 2, Respondent violated § 61.73(b) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for five days, or in the alternative, Respondent should pay a penalty of \$750.

ISSUED this 10th day of October, 2002.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600191

IN RE AMAZU HOLDINGS LLC ET AL	§	BEFORE THE
D/B/A ACROSS THE BORDERS MARKET	§	
PERMIT NO. Q-498218	§	
LICENSE NO. BF498219	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3885)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1st day of November 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge The Honorable 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 October 10, 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-498218 and License No. BF498219 are hereby **SUSPENDED** for five (5) days.

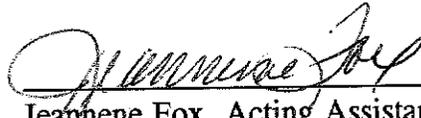
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 16th day of December, 2002, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the 23rd day of December, 2002.

This Order will become final and enforceable on November 22, 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 1st day of November, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

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

AMAZU HOLDINGS LLC ET AL
D/B/A ACROSS THE BORDERS MARKET
RESPONDENT
2829 West Northwest Highway #212
Dallas, TX 75220
CERTIFIED MAIL NO. 7001 2510 0000 7278 5564

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 600191

REGISTER NUMBER:

NAME: AMAZU HOLDINGS LLC ET AL

TRADENAME: ACROSS THE BORDERS MARKET

ADDRESS: 7318 Harry Hines Boulevard, Suite A, Dallas, Texas 75235-4014

DATE DUE: December 16, 2002

PERMITS OR LICENSES: Q-498218, BF498219

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 16 TH DAY OF DECEMBER 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.