

**DOCKET NO. 458-03-0398**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

**V.**

**MICHEL HANNA TOMAS, ET AL  
D/B/A EVOMAS CONVENIENCE, Respondent  
TARRANT COUNTY, TEXAS  
(TABC No. 600854)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Michel Hanna Tomas, et al. d/b/a Evomas Convenience (Respondent), alleging that Respondent, or her agent, servant, or employee, Donald Ray Smith, with criminal negligence, sold an alcoholic beverage to a minor, in violation of the Texas Alcoholic Beverage Code (Code). A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that Staff's allegations are true and recommends that Respondent's license be suspended for 10 days or, in the alternative, that Respondent pay a civil penalty of \$1500.00.

**I. PROCEDURAL HISTORY**

On October 10, 2002, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record, 1002 Brook Canyon Drive, Arlington, Texas 76018-5315. The Notice was sent by certified mail (7001 2510 0000 8686 5983), return receipt requested. The Notice was delivered to Respondent on October 15, 2002 at 12:36 p.m., as evidenced by the United States Postal Service's electronic delivery confirmation. The Notice of Hearing 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 statement of the matters asserted. The Notice of Hearing also properly disclosed that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.

On November 7, 2002, a hearing was convened before ALJ Kelsie McQuieter at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing was concluded and the record closed on the same day.



## II. REASONS FOR PROPOSED DECISION

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 Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and § 11.63 of the Code. 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 Proposed Findings of Fact below.

Staff further requested that the ALJ recommend a 10-day suspension of Respondent's license, or in lieu of the suspension, that Respondent be permitted to pay a civil penalty in the amount of \$1500.00.

## III. PROPOSED FINDINGS OF FACT

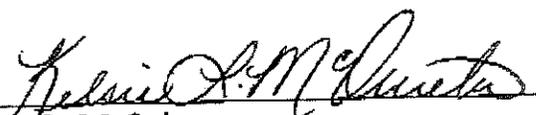
1. Respondent, Michel Hanna Tomas, et al. d/b/a Evomas Convenience, 633 W. Division, Arlington, Tarrant County, Texas, holds a Beer Retailer's Off-Premise License, BF-463012, issued by the Texas Alcoholic Beverage Commission (TABC).
2. On October 10, 2002, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record, 1002 Brook Canyon Drive, Arlington, Texas 76018-5315. The Notice was sent by certified mail (7001 2510 0000 8686 5983), return receipt requested. The Notice was delivered to Respondent on October 15, 2002 at 12:36 p.m., as evidenced by the United States Postal Service's electronic delivery confirmation.
3. The Notice of Hearing 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 statement of the matters asserted.
4. The Notice of Hearing also properly disclosed that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On November 7, 2002, a hearing was convened before ALJ Kelsie McQuieter at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or about July 12, 2001, Respondent, or her agent, servant, or employee, Donald

Ray Smith, with criminal negligence, sold an alcoholic beverage to a minor.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 26.03, 61.71, and 106.13 (a).
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §106.13 (a).
6. Based upon Proposed Conclusion of Law No. 5, Respondent's license should be suspended for 10 days, or in lieu of the suspension, Respondent should be permitted to pay a civil penalty in the amount of \$1500.00.

SIGNED on this the 18<sup>th</sup> day of November, 2002.

  
Kelsie L. McQuieter  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 600854**

IN RE MICHEL HANNA TOMAS ET AL	§	BEFORE THE
D/B/A EVOMAS CONVENIENCE	§	
LICENSE NO. BF463012	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0398)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 11th day of December 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kelsie L. McQuieter. The hearing convened on November 7, 2002, and adjourned on November 7, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 18, 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 License No. BF463012 is 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 license 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 11th day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

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

MICHEL HANNA TOMAS ET AL  
D/B/A EVOMAS CONVENIENCE  
**RESPONDENT**  
1002 Brook Canyon Dr.  
Arlington, Texas 76018-5315  
**CERTIFIED MAIL NO. 7001 2510 0003 8688 8074**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division  
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 600854**

**REGISTER NUMBER:**

**NAME: MICHEL HANNA TOMAS ET AL**

**TRADENAME: EVOMAS CONVENIENCE**

**ADDRESS: 633 W. Division, Arlington, Texas 76011-7480**

**DATE DUE: January 5, 2003**

**PERMITS OR LICENSES: BF463012**

**AMOUNT OF PENALTY: \$1,500.00**

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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.