

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

v.

AL HUSSEINI CORPORATION
d/b/a S & S FOOD MART
Tarrant County, Texas
(TABC CASE NO. 601521)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Al Hussein d/b/a S & S Food Mart (Respondent). Petitioner sought cancellation of Respondent's permit, alleging Respondent failed to pay delinquent ad valorem taxes. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.11(b)(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. There were no contested issues of notice or jurisdiction in this proceeding.

On October 31, 2002, Petitioner issued its Notice of Hearing to Respondent at its address of record, 101 South Ector, Euless, Texas 76040-4422. On December 6, 2002, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Salin Alani appeared for Respondent. Evidence was received by both parties on that date. The record closed at 5:00 p.m. on December 20, 2002.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under TEX. ALCO. BEV. CODE ANN. §11.38 (e) to cancel Respondent's permit for the retail sale or service of alcoholic beverages if Respondent has not paid delinquent ad valorem taxes due on the permitted premises to any taxing authority in the county of the premises.



Pursuant to §11.38 (e) of the Texas Alcoholic Beverage Code:

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 the 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 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 Beer Retailer's Off Premises Permit, BF-465004, was issued to Al Husseini d/b/a S & S Food Mart, 101 South Ector, Euless, Tarrant County, Texas by the TABC on January 7, 2002.

In support of its allegations that Respondent failed to pay delinquent ad valorem taxes, Petitioner presented the testimony of Morris Booth, Delinquent Collections Officer for Tarrant County. Mr. Booth testified that the Respondent has not paid approximately \$49,897.51 in delinquent ad valorem taxes owed to the following Tarrant County, Texas taxing authorities for the years 2000 and 2001: the City of Euless, Hurst-Euless-Bedford Independent School District, Tarrant County College District, Tarrant County Hospital District, and Tarrant County. These taxes are owed for the permitted premises located at 101 South Ector, Euless, Tarrant County, Texas. Respondent was provided with notice of said delinquency by first class mail.

Respondent did not dispute the existence of the delinquent ad valorem taxes.

ANALYSIS

The relevant facts are clear and undisputed. Respondent holds a Beer Retailer's Off Premises Permit, BF-465004 for its premises located in Tarrant County, Texas. Respondent failed to pay delinquent ad valorem taxes owed to Tarrant County, Texas taxing authorities for the permitted premises, in violation of §11.38 of the Texas Alcoholic Beverage Code.

RECOMMENDATION

The ALJ recommends that Respondent's Beer Retailer's Off Premises Permit, BF-465004,

be cancelled.

PROPOSED FINDINGS OF FACT

1. Respondent, Al Hussein d/b/a S & S Food Mart, holds a Beer Retailer's Off Premises Permit, BF-465004, issued on January 7, 2002, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permit was issued for the premises located at 101 South Ector, Euless, Tarrant County, Texas.
3. Respondent failed to pay delinquent ad valorem taxes owed to the following Tarrant County, Texas taxing authorities: the City of Euless, Hurst-Euless-Bedford Independent School District, Tarrant County College District, Tarrant County Hospital District, and Tarrant County.
4. Respondent was provided with notice of said delinquent by first class mail.
5. Petitioner sent Respondent written notice of its intent to seek cancellation of Respondent's permit by a letter dated October 4, 2002.
6. On October 31, 2002, Petitioner issued its Notice of Hearing to Respondent at its address of record, 101 South Ector, Euless, Texas 76040-4422.
7. On October 25, 2002, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Salin Alani appeared for the Respondent
8. Respondent did not contest notice or jurisdiction.

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 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 Findings of Fact Nos.1 - 4, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.38 (e).
5. Based upon Conclusion of Law No. 4, Respondent's Beer Retailer's Off Premises Permit, BF-465004, should be cancelled.

SIGNED this 2nd day of January, 2003.



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

DOCKET NO. 601521

IN RE AL HUSSEINI CORPORATION	§	BEFORE THE
D/B/A S & S FOOD MART	§	
LICENSE NO. BF465004	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0871)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of January 2003, 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 December 6, 2002, and adjourned on December 6, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 2, 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.

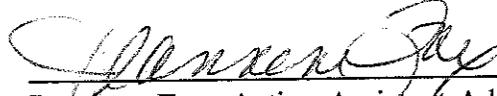
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that License No. BF465004 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on February 19, 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 29th day of January, 2003.

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

AL HUSSEINI CORPORATION
D/B/A S & S FOOD MART
RESPONDENT
101 S Ector
Euless, Texas 76040-4422
CERTIFIED MAIL NO. 7001 2510 0003 8688 6643

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

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