

DOCKET NO. 458-03-0872

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

PATRICK TRUONG, INC.
D/B/A ABC MARKET PLACE
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Patrick Truong, Inc. d/b/a ABC Market Place (Respondent), alleging that Respondent failed to pay delinquent ad valorem taxes to Tarrant County, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's license be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 61.36. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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.

On October 30, 2002, Petitioner issued its notice of hearing, directed to Respondent at its address of record, 2206 South Collins Street, Arlington, Texas, 76010-6403, via certified mail, return receipt requested. 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. Respondent received this notice on November 1, 2002, as documented on the return receipt.

On December 6, 2002, a hearing convened before SOAH ALJ Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared *pro se*. Following presentation of evidence, the record closed on December 6, 2002.



II. APPLICABLE LAW

In reference to a licensee's responsibilities regarding ad valorem taxes, TEX. ALCO. BEV. CODE ANN. § 61.36 provides as follows:

(d) The commission or administrator may cancel or deny a license for the retail sale of alcoholic beverages, including a license held by the holder of a food and beverage certificate, if it finds that the license holder or applicant has not paid delinquent ad valorem taxes due on that licensed premises or due from a business operated on that premises to any taxing authority in the county of the premises. . . .

III. EVIDENCE

Petitioner offered the following evidence regarding Respondent's license and its ad valorem tax obligations to Tarrant County. Respondent holds Beer Retailer's Off-Premise License, BF-444055, issued by TABC, for its premises located at 2206 South Collins Street, Arlington, Tarrant County, Texas. On September 17, 2002, Betsy Price, Tarrant County Tax Assessor-Collector, notified both TABC and Respondent that it was requesting administrative cancellation of Respondent's license based on Respondent's delinquent ad valorem tax debt of \$22,803.34 for 2000-2001. Ms. Price attested to the existence of this ad valorem tax debt by sworn affidavit. At the hearing, Morris Booth, Delinquent Collections Officer, testified that Respondent's current balance on the debt was \$6,167.16. Respondent did not dispute the existence of the delinquent ad valorem tax debt.

IV. ANALYSIS

The evidence clearly establishes that Respondent failed to pay delinquent ad valorem taxes to Tarrant County. As such, Respondent's license should be canceled in accordance with TEX. ALCO. BEV. CODE ANN. § 61.36.

V. PROPOSED FINDINGS OF FACT

1. Patrick Truong, Inc. d/b/a ABC Market Place (Respondent) holds Beer Retailer's Off-Premise License, BF-444055, issued by the Texas Alcoholic Beverage Commission (TABC), for its premises located at 2206 South Collins Street, Arlington, Tarrant County, Texas.
2. As of December 6, 2002, Respondent owed \$6,167.16 in delinquent ad valorem taxes to Tarrant County for 2000-2001.
3. On October 30, 2002, TABC staff (Petitioner) issued its notice of hearing, directed to

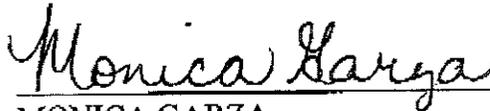
Respondent at its address of record, 2206 South Collins Street, Arlington, Texas, 76010-6403, via certified mail, return receipt requested.

4. 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.
5. Respondent received this notice on November 1, 2002, as documented on the return receipt.
6. On December 6, 2002, a hearing convened before SOAH ALJ Monica Garza at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared *pro se*. Following presentation of evidence, the record closed on December 6, 2002.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and § 61.36.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued proper and timely notice of the hearing. TEX. GOV'T CODE ANN. ch. 2001.
4. Respondent failed to comply with TEX. ALCO. BEV. CODE ANN. § 61.36.
5. Respondent's license should be canceled. TEX. ALCO. BEV. CODE ANN. § 61.36.

SIGNED this 28th day of January, 2003.



MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601574

IN RE PATRICK TRUONG INC.	§	BEFORE THE
D/B/A ABC MARKET PLACE	§	
LICENSE NO. BF444055	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0872)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of February 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. 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 28, 2003. 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. BF444055 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on March 14, 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 21st day of February, 2003.

On Behalf of the Administrator,



Jeanene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

PATRICK TRUONG INC.
D/B/A ABC MARKET PLACE
RESPONDENT
2206 S Collins St.
Arlington, TX 76010-6403
CERTIFIED MAIL NO. 7001 2510 0003 8688 6131

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division/Compliance

Fort Worth District Office

Tarrant County Tax Assessor-Collector's Office