

DOCKET No. 458-98-2137

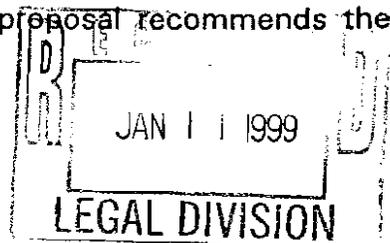
TEXAS ALCOHOLIC § BEFORE THE STATE OFFICE  
BEVERAGE COMMISSION §  
§  
VS. §  
§  
WACO RENEGADE, INC. § OF  
D/B/A CADILLAC JACK'S TEXAS §  
BAR & GRILL, PERMIT NO. BG-415100 §  
LICENSE NO. BL-415101 §  
CERTIFICATE NO. FB-415102 §  
MCLENNAN COUNTY, TEXAS §  
(TABC CASE NO. 580192) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. Statement of the Case

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking to cancel or suspend the Wine and Beer Retailer's Permit, the Retail Dealer's On Premise Late Hours License, and the Food and Beverage Certificate for the premises known as Waco Renegade, Inc. d/b/a Cadillac Jack's Texas Bar & Grill (Respondent). The Commission seeks this relief based on its allegation that Respondent violated Texas Alcoholic Beverage Code §61.73(b) (Vernon 1995) when Respondent's agent, servant, or employee purchased beer with checks which were dishonored for insufficient funds when presented for payment by: Dudley Haas Distributing Company, Inc.; Brazos Valley Coors, Inc.; Hack Branch Distributing Company, Inc.; and Mid-State Beverage, Inc.

A hearing on Staff's allegations commenced on December 2, 1998, in the State Office of Administrative Hearing's (SOAH) office at 4201 Lake Shore Drive, Waco, Texas, and concluded the same day. Andrew del Cueto, an attorney with the Commission's legal section, represented the Commission. Respondent did not appear and was not represented at the hearing to contest the allegations. After the taking of evidence, the Commission moved for a default judgement pursuant to 1 TEX. ADMIN. CODE §155.55 (1998). Because the hearing proceeded on a default basis, the Commission's factual allegations are deemed admitted as true and are incorporated into the findings of fact; however, at the hearing the Commission tendered into evidence, evidence pertaining to notice to Respondent and evidence by affidavit in support of the allegations in the Commission's notice of hearing. Based on the following findings of fact and conclusions of law, this proposal recommends the sanction proposed by the Commission.



The Commission and the State Office of Administrative Hearings have jurisdiction over this matter, as reflected in the conclusions of law. Notice to Respondent of the Commission's intent and notice to Respondent of the hearing met the notice requirements imposed by statute and by rule. The details of such notice are set forth in the findings of fact and conclusions of law without further discussion here.

## II. Findings of Fact

1. On September 14, 1998, Texas Alcoholic Beverage Commission (Commission) issued a letter of complaint to Waco Renegade, Inc. d/b/a Cadillac Jack's Texas Bar & Grill (Respondent) advising Respondent that the Commission had filed reports with its Legal Division alleging that Respondent had made payment for beer in its original containers and packages with dishonored checks in violation of Texas Alcoholic Beverage Code §61.73(b) (Vernon 1995) (Code).
2. The Commission sent the above letter to Respondent at its last known address of record by certified mail, return receipt requested on September 14, 1998, as evidenced by the white receipt for certified mail attached to the Commission's letter.
3. Respondent received Commission's letter of complaint on September 18, 1998, as evidenced by the green return receipt attached to the letter.
4. On November 13, 1998, the Commission issued a notice of hearing to Respondent advising it of a hearing on allegations that Respondent's agent, servant, or employee had violated §61.73(b) of the Code by making purchases with checks which were dishonored for insufficient funds when presented for payment by: Dudley Haas Distributing Company, Inc.; Brazos Valley Coors, Inc.; Hack Branch Distributing Company, Inc.; and Mid-State Beverage, Inc.
5. The Commission sent the notice of hearing to Respondent at its last known address of record by certified mail, return receipt requested, number P 419 580 287 on November 13, 1998, as evidenced by the declaration of the Commission's Notice of Hearing and by the white receipt for certified mail attached to the Commission's Notice of Hearing.
6. The letter of complaint and notice of hearing included the information and language required by TEX. GOV'T CODE ANN. §§2001.052 and 2001.054 (Vernon 1998), and 1 TEX. ADMIN. CODE §155.55 (1998).
7. Despite the passage of almost three weeks since the notice of hearing was sent, the green return receipt card had still not been returned.
8. On November 23, 1998, The State Office of Administrative Hearings (SOAH) sent an *Order Setting Hearing Location* to Respondent's last known address of

record by certified mail, return receipt requested, number Z 525 993 101, confirming the December 2, 1998, date of the hearing and informing Respondent of the location of the hearing, 4201 Lake Shore Drive, Suite F, Waco, Texas.

9. On December 2, 1998, the hearing, scheduled for 9:00 a.m. was convened in the offices of the State Office of Administrative Hearings at 4201 Lake Shore Drive, Suite F, Waco, Texas at 9:27 a.m. to allow the Respondent additional time to appear. Respondent did not appear in person or by counsel.
10. Respondent holds Wine and Beer Retailer's Permit Number BG-415100, Retail Dealer's On Premise Late Hours License Number BL-415101, and Food and Beverage Certificate Number FB-415102, all issued August 11, 1997, and continuously renewed, for the premises known as Waco Renegade, Inc. d/b/a Cadillac Jack's Texas Bar & Grill, located at 216B, 4th Street, Waco, McLennan County, Texas.
11. On or about May 15, 1998, Respondent's agent, servant, or employee gave a check for \$75.80 to Dudley Haas Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco, of Waco, Texas, for insufficient funds.
12. On or about May 19, 1998, Respondent's agent, servant, or employee gave a check for \$119.50 to Dudley Haas Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco, of Waco, Texas, for insufficient funds.
13. On or about May 29, 1998, Respondent's agent, servant, or employee gave a check for \$205.40 to Brazos Valley Coors, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
14. On or about May 29, 1998, Respondent's agent, servant, or employee gave a check for \$260.00 to Hack Branch Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
15. On or about May 29, 1998, Respondent's agent, servant, or employee gave a check for \$605.00 to Dudley Haas Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained.

This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.

16. On or about May 29, 1998, Respondent's agent, servant, or employee gave a check for \$383.90 to Dudley Haas Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
17. On or about May 30, 1998, Respondent's agent, servant, or employee gave a check for \$288.40 to Hack Branch Distribution Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
18. On or about May 30, 1998, Respondent's agent, servant, or employee gave a check for \$264.00 to Dudley Haas Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
19. On or about May 30, 1998, Respondent's agent, servant, or employee gave a check for \$373.80 to Mid-State Beverage, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
20. On or about June 1, 1998, Respondent's agent, servant, or employee gave a check for \$963.80 to Hack Branch Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
21. On or about June 12, 1998, Respondent's agent, servant, or employee gave a check for \$205.40 to Hack Branch Distributing Company, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.
22. On or about June 12, 1998, Respondent's agent, servant, or employee gave a check for \$85.40 to Brazos Valley Coors, Inc., in payment for beer and the containers and original packages in which said beer was contained. This check was dishonored by the drawee, First Waco National Bank, of Waco, Texas, for insufficient funds.

23. At the December 2, 1998 hearing the Commission moved for a default judgement.

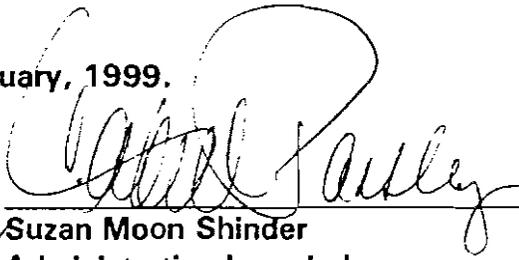
### **III. Conclusions of Law**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN. §§11.61(b), 32.17(a), 32.23(f), (Vernon Supp. 1998), §61.71 (Vernon 1995 & Supp. 1998), and §6.01(b) (Vernon 1995).
2. The State Office of Administrative Hearings 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, pursuant to TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1998).
3. Based on Findings of Fact Numbers 1 through 8, proper and timely notice of the hearing was effected on Respondent pursuant to TEX. GOV'T CODE ANN. §§2001.051, 2001.052 (Vernon 1998), §11.63 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Vernon 1995), and 1 TEX. ADMIN. CODE §155.55 (1998).
4. Section 61.73(b) of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Vernon 1995) prohibits the giving of a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.
5. Based on Findings of Fact Numbers 10 through 22, the Respondent violated §61.73(b) of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Vernon 1995).
6. Based on Finding of Fact Numbers 9 and 23, the hearing proceeded on a default basis and, as authorized by applicable law, the Administrative Law Judge hereby enters a default judgment against Respondent pursuant to 1 TEX. ADMIN. CODE §155.55 (1998).
7. The Commission is authorized to cancel or suspend for not more than 60 days the Respondent's license, permit, and certificate pursuant to §11.61(b)(2)(permit), §32.17(a)(8) (private club), §32.23(f) (food and beverage certificate), and §61.71(a)(1) (license) of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Vernon Supp. 1998), and TEX. ALCO. BEV. CODE ANN. §6.01 (Vernon 1995) (permit).
8. The penalties in the Standard Penalty Chart as set forth in the Texas Alcoholic Beverage Commission Rules, 16 TEX. ADMIN. CODE §37.60 (1998), suggest

a minimum penalty of a warning to a suspension of the permits or licenses of 3 days. It suggests a maximum penalty of a suspension of 15 days.

9. Based on the above findings and conclusions, the Respondent's license, permit, and certificate should be suspended for 15 days. In the alternative, Respondent should pay a civil fine of \$150.00 per day for 15 days, pursuant to TEX. ALCO. BEV. CODE ANN. 11.64 (Vernon 1995 & Supp. 1998) and 16 TEX. ADMIN. CODE §37.60 (1998).

SIGNED this 14<sup>th</sup> day of January, 1999.

  
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for Suzan Moon Shinder  
Administrative Law Judge

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