

SOAH DOCKET NO. 458-09-2197

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**TIPPLERS, INC.
d/b/a TIPPLERS
PERMIT NO. MB199465, LB,
DALLAS COUNTY, TEXAS
(TABC CASE NO. 581869)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Tipplers, Inc. d/b/a Tipplers (Respondent) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§ 11.61(b)(2), 61.73 and 102.31. The alleged violations occurred on or about May 15, 22, and 26, 2008, when Respondent, its agent, servant, or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment, in violation of Code §§ 11.61(b)(2), 61.73, and 102.31.

This Proposal for Decision finds the allegations by TABC to be proven and adopts the recommendation of the Staff that the license be cancelled.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on April 27, 2009, at the J. Eric Jonson Central Library in Dallas, Dallas County, Texas. The staff of the Commission (Staff) was represented by its counsel, Emily Helm and Judith Kennison. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE §§ 11.61(b)(2), 61.73, and 102.31 authorize the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Respondent gave a distributor a check for payment which is dishonored when presented for payment. As described in the findings of fact, Respondent violated CODE §§ 11.61(b)(2), 61.73, and 102.31 by writing three checks to a distributor that were subsequently returned for insufficient funds.

The Staff offered ten exhibits that were received into evidence as follows:

Exhibit 1 – Notice of Hearing.

Exhibit 2 – The license establishing jurisdiction and prior violations.

Exhibit 3 – Copies of dishonored checks.

Exhibits 4 and 5 – Photographs of location.

Exhibits 6 through 10 – returned notices including notices of violation and hearing.

III. RECOMMENDATION

The notice of hearing, in bold lettering, states “**If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.**” Because Respondent failed to attend the hearing, the allegations that on or about May 15, 22, and 26, 2009, Respondent gave a checks or drafts for the purchase of beer that was dishonored when presented for payment is deemed admitted as true. The permit should be cancelled.

IV. FINDINGS OF FACT

1. Permit No. MB199465 was issued to Tipplers, Inc., doing business as Tipplers (Respondent), by the Texas Alcoholic Beverage Commission (TABC).
2. The mailing address of Respondent is 2900 W. Walnut Hill Lane, Ste 314, Dallas, Texas 75229-5736.
3. TABC staff sent a notice of hearing regarding the violation of the Texas Alcoholic Beverage Code to the Respondent on February 5, 2009. The notice of hearing was returned to sender on February 13, 2009 because it was not claimed. Subsequent procedural notices including notice of the time and place for the hearing on April 27, 2009, were also returned as non-deliverable.
4. The notice of hearing also contained the following language in capital letters in 12 point or larger boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegation (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.

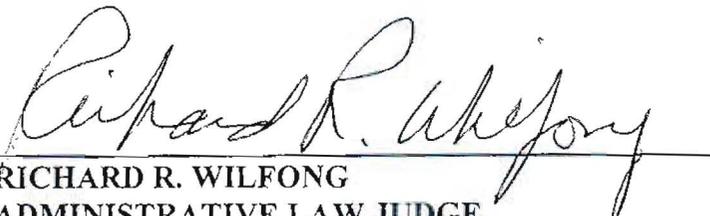
5. The hearing on the merits was held on April 27, 2009, at the J. Eric Jonson Central Library, 1515 Young Street, Dallas, Dallas County, Texas. Staff was represented by its counsel, Emily Helm and Judith Kennison. Respondent did not appear and was not represented at the hearing.
6. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.
7. On May 15, 22, and 26, 2009, Respondent, or Respondent's employees gave a checks or drafts for the purchase of beer that were dishonored when presented for payment.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE § 155.501.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.73, and 102.31 by giving a check or draft for the purchase of beer that was dishonored when presented for payment.
6. Based on the foregoing Findings of Fact and Conclusions of Law, cancellation of the beverage permit is warranted.

SIGNED June 15, 2009.


RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS