

DOCKET NO. 458-03-2287

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	
	§	
	§	OF
JOE HENRY CASTILLO	§	
D/B/A GULF SEAFOODS & MINI MART	§	
PERMIT NO. BG-401296	§	
CAMERON COUNTY, TEXAS	§	
TABC CASE NO. 602721	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) seeks the revocation of the permit and denial of the renewal application of Joe Henry Castillo, because Mr. Castillo pled no contest to a charge of theft, a crime of moral turpitude. Mr. Castillo argues that his permit should not be revoked because in the 20 years he has held a permit, he has never violated a Commission rule. He further argues that he is on deferred adjudication, and has not been convicted of a crime. The Administrative Law Judge finds that the Staff failed to prove that Mr. Castillo's license should be revoked. Rather, Mr. Castillo demonstrated that he is of good moral character, and that the crime to which he pled no contest was the result of an error in judgment, and is unlikely to occur again.

I. Procedural History, Notice, and Jurisdiction

There were no contested issues of notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here. The hearing convened on April 9, 2003, at the Commission's offices in Austin, Texas. The hearing was conducted by video conferencing, with Mr. Castillo, his attorney, and witnesses participating in Commission offices in McAllen, Texas. The Staff was represented by its counsel, Dewey Brackin. Mr. Castillo was represented by his counsel, Mr. Magallanes. The hearing concluded and the record closed the same day.

II. Deferred Adjudication

A. Background. Mr. Castillo holds wine and beer retailer's permit number BG-401296, for a premises known as Gulf Seafoods in Port Isabel, Cameron County, Texas. On February 18, 2002, the Cameron County District Court issued an order of deferred adjudication, placing Mr. Castillo on community supervision for the second degree felony of theft of more than \$100,000 but less than

\$200,000.¹ The period of deferred adjudication is to last ten years, but Mr. Castillo may petition the court as early as February 2005 to be released from the deferred adjudication.

The deferred adjudication for theft arises from the purchasing of shrimp. Mr. Castillo owns a seafood retail business and restaurant. Mr. Castillo testified that several years ago, Diana Estes, a life-long friend, approached him about buying shrimp. Mr. Castillo testified that Ms. Estes worked for a shrimp wholesaler and that she wanted to sell Mr. Castillo shrimp. He testified that she asked him for cash for the shrimp, and he should have realized that the transaction was unusual because she would not take a check. He testified that he did not know she was stealing shrimp from her employer. When Ms. Estes received an order, she would order 600 pounds of shrimp from the warehouse, but then invoice 300 pounds. She would take a cash kickback from Mr. Castillo, which she kept and did not remit to her employer. Over the course of several years, Mr. Castillo and Ms. Estes stole shrimp valued at approximately \$170,000.00.

As part of Mr. Castillo's deferred adjudication, he is required to repay 75 percent of the value of the shrimp, plus interest to the shrimp owner. Since February 2002, the date of the deferred adjudication order, he has paid \$15,000.00. He has also mortgaged his house to make the remaining payments due for the shrimp. He is current with all of his court-ordered payments.

B. The Allegations and Parties' Positions. Staff asserts that Mr. Castillo's permit should be revoked and his renewal application denied because he has a deferred adjudication for a felony. The Commission may deny a permit renewal if the permit holder has received deferred adjudication for a felony and fewer than three years have elapsed since the termination of the probation.²

Mr. Castillo asserts that his permit should not be revoked because the Commission has discretion to revoke following a felony conviction, he has had no previous violations of the Texas Alcoholic Beverage Code, has had a permit from the Commission for 20 years, and does not have a final conviction. He also contends he is a good citizen in the community of Port Isabel and surrounding communities. Thus, he argues, the Commission should exercise its discretion not to revoke his permit and issue a renewal.

C. Discussion. The Commission's Rules provide that either a final conviction or deferred adjudication may indicate that an applicant is not qualified or suitable to hold a permit. Thus, the fact that Mr. Castillo is currently under a deferred adjudication order, rather than a final conviction does not prevent the Commission from alleging that he is unsuitable to maintain his permit. The ALJ finds, however, that the Commission failed to prove by a preponderance of the evidence that Mr. Castillo is not suitable to hold a permit.

¹ State's Ex. 1.

² TEX. ALCO. BEV. CODE § 109.532(B); 16 TEX. ADMIN. CODE § 33.1.

Mr. Castillo testified that at his criminal sentencing, the district judge gave him deferred adjudication to enable Mr. Castillo to clear his record. He testified that he has completed all the required restitution required by the district court at this time. He further testified that he wants to continue to retain his permit so that he may continue to run his business. He testified that he will continue to conduct himself in the same manner he has in the past as evidenced by having had no violations of Commission rules.

Mr. Castillo called Denny Ochoa III as a witness. Mr. Ochoa has known Mr. Castillo for 51 years. For 22 years, Mr. Ochoa has been the Justice of the Peace for Laguna Madre, a small community outside of Port Isabel where Mr. Castillo lives. He testified that Mr. Castillo is a good citizen who helps the community through volunteer work. He testified that Mr. Castillo volunteers for nonprofit organizations, and is respected in the community. He stated that Mr. Castillo made a mistake, and he has learned from it. He believes Mr. Castillo will be a law-abiding citizen.

Eduardo Hernandez also testified on behalf of Mr. Castillo. He has known Mr. Castillo for 20 years. Mr. Hernandez served on the water district board with Mr. Castillo and testified that while on the water board, Mr. Castillo was professional, supportive of the employees, and helped the district to attain a high rating on its bonds. He testified that he believes Mr. Castillo has learned from his mistakes. He testified that Mr. Castillo has a high degree of integrity.

Rick Cruz, the local Commission supervisor, testified that the main reason Staff is protesting Mr. Castillo's renewal and recommending revocation is that the crime of theft is a crime of moral turpitude. He believes that because Mr. Castillo is on deferred adjudication for theft, he is unable to follow Commission rules. During cross-examination, Mr. Cruz admitted that before Mr. Castillo's deferred adjudication for theft, there was no indication that the Commission could not trust Mr. Castillo.

The Commission may, but is not required to revoke a permit when a permittee is placed on deferred adjudication for a felony.³ The ALJ finds that this case warrants the Commission's discretion and recommends that the Commission not revoke Mr. Castillo's permit, and approve any pending renewals.

Mr. Castillo admitted that he made a mistake in trusting a life-long friend. He was placed on deferred adjudication for his actions, and he is required under the deferred adjudication order to make restitution to the victim. The witnesses who testified on Mr. Castillo's behalf indicated that he is active in the community, a good businessman, and well-respected. While his deferred adjudication has certainly had an effect on his standing in the community, he continues to be active in the community and to spend a great deal of time running his business. The ALJ finds that there is no indication that Mr. Castillo is not qualified to hold a permit from the Commission. To the contrary, Mr. Castillo is highly qualified. He runs a business that sells alcoholic beverages. He has held a permit for 20 years, and has a clean record of no violations during that time. He is well-

³ 16 TEX. ADMIN. CODE §33.1.

respected in the community, has served on the local water district, and works hard to support his family. Any indication that the deferred adjudication shows Mr. Castillo is not qualified to hold a permit is outweighed by the indications that he is qualified.

D. Conclusion and Recommendation. It was the Staff's burden to prove, by a preponderance of the evidence, that Mr. Castillo is unsuitable to hold a permit based on his deferred adjudication for theft. Staff failed to carry that burden. Although Mr. Castillo is currently under a deferred adjudication order, he is respected in his community, has had no violations of Commission Rules in the past 20 years, and shows no indication that he will commit another crime or behave in a manner inconsistent with holding a permit. Therefore, the ALJ recommends that the Staff's request to revoke Mr. Castillo's permit be denied and that any pending renewal applications be granted.

III. Findings of Fact

1. Joe Henry Castillo holds a wine and beer retailer's permit, No. BG-401296, for a premises known as Gulf Seafoods in Port Isabel.
2. On February 18, 2002, the district court in Cameron County issued an Order of Deferred Adjudication, placing Mr. Castillo on community supervision for ten years following a no contest plea to theft of more than \$100,000 but less than \$200,000, a second degree felony.
3. Mr. Castillo is in compliance with the deferred adjudication order.
4. From 1999 through 2001, Mr. Castillo placed orders for shrimp with Diana Estes, a life-long friend.
5. Ms. Estes worked for a shrimp wholesaler. Ms. Estes would invoice 300 pounds of shrimp, but would place an order for 600 pounds of shrimp from the warehouse.
6. Over the three-year period, Mr. Castillo and Ms. Estes stole approximately \$170,000 worth of shrimp.
7. Mr. Castillo accepted responsibility for his actions, and admits that he made a mistake, but asserts it will not happen again.
8. Mr. Castillo has held a permit from the Texas Alcoholic Beverage Commission (Commission) for 20 years. During those 20 years, Mr. Castillo has had no violations of the Texas Alcoholic Beverage Code or Commission Rules.
9. On March 4, 2003, the staff of the Commission issued a notice of hearing notifying Mr. Castillo of a hearing to revoke his permit and deny any pending renewal applications.

10. A hearing on the allegations against Mr. Castillo was held on April 9, 2003. Both parties appeared and participated in the hearing.
11. Mr. Castillo is a valued, respected member of his community. He volunteers for numerous non-profit organizations.
12. There is no indication that Mr. Castillo will commit other crimes.

IV. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Subchapter B of Chapter 5, and TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over all matters pertaining to the contested case hearing, including the issuance of 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 timely and adequate, as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Joe Henry Castillo is under a deferred adjudication order, as contemplated by 16 TEX. ADMIN. CODE §33.1.
5. Although under a deferred adjudication order, Mr. Castillo is qualified and suitable to hold a permit under the Texas Alcoholic Beverage Code.

SIGNED April 23, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE

DOCKET NO. 602721

IN RE JOE HENRY CASTILLO	§	BEFORE THE
D/B/A GULF SEAFOODS	§	
& MINI MART	§	
PERMIT NO. BG-401296	§	TEXAS ALCOHOLIC
	§	
CAMERON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2287)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 2nd day of June, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Wendy K. L. Harvel. The hearing convened on April 9, 2003, and adjourned the same day.. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 23, 2003. This Proposal For Decision 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 Exceptions were filed by Petitioner and Replies to the Exceptions were filed by the Respondent.

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.

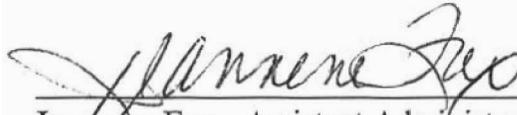
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that BG-401296 be **REISSUED**.

This Order will become final and enforceable on June 23, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 2nd day of June, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Wendy K. L. Harvel
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE: (512) 475-4994

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