

DOCKET NO. 458-03-3842

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
vs	§	OF
	§	
BILAL MOHAMMAD KHWAJA	§	
D/B/A ALL AMERICAN BEVERAGE CENTER	§	
T.A.B.C. CASE NO. 604434	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this disciplinary action against Bilal Mohammad Khwaja d/b/a All American Beverage Center (Respondent), alleging that on or about August 23, 2002, Respondent, or its agent, employee, or servant, with criminal negligence, sold alcoholic beverages to a minor. The Administrative Law Judge (ALJ) finds Staff has proven the allegations and recommends that Respondent's permit be canceled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On September 5, 2003, a hearing was held before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent Bilal Mohammad Khwaja appeared *pro se*. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.03(a), a person commits an offense if, with criminal negligence, that person sells an alcoholic beverage to a minor.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13(a), the Texas Alcoholic Beverage Commission (Commission) or administrator may cancel or suspend for not more than 60 days a



retail license or permit if it is found, on notice and hearing, that the permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2), the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee violated a provision of this code or a rule of the Commission.

III. EVIDENCE

1. Staff's Evidence and Contentions

Officer Richard Glen of the Plano Police Department testified that on August 23, 2002, he and Brandon Jones, an 18-year old minor, conducted a "Minor Sting" operation at Respondent's establishment. On that date Mr. Jones had a youthful appearance, appeared younger than 21 years of age, and was wearing clothing typical of a teenager. Mr. Jones entered Respondent's establishment, presented his driver's license to Respondent's employee Naheed Khwaja, and purchased a six pack of Old Milwaukee's Best Beer for \$4.32. The minor's driver's license showed he was 18 years old at the time of the sale. Officer Glen observed the sale through the front windows of Respondent's establishment. He then entered and made contact with Ms. Khwaja. Ms. Khwaja explained to him that she made the sale because she had confused the legal age for purchasing cigarettes, which is 18 years of age, with the legal age for purchasing alcohol.

Staff also presented evidence that Respondent has been disciplined twice before for selling alcoholic beverages to minors. By Order dated July 18, 2001, the Commission found Respondent sold alcoholic beverages to a minor and ordered that Respondent's permit be suspended for seven days or that Respondent pay a civil penalty of \$1,050; and by Order dated March 14, 2002, just five months before the instant matter, the Commission again found Respondent sold alcoholic beverages to a minor and again ordered that Respondent's permit be suspended for seven days or that Respondent pay a civil penalty of \$1,050.

2. Respondent's Evidence and Contentions

Mr. Bilal Mohammad Khwaja testified that his employee, Naheed Khwaja, sold the beer to the minor, despite being shown the minor's driver's license indicating he was 18 years old, because she had vision problems and could not see the driver's license clearly. In fact, she had been given a new prescription for her eyeglasses just three days earlier, on August 20, 2002. (Resp's Ex. No. 1). He further denied that she told Officer Glen she made the sale because she had confused the legal age for purchasing cigarettes with the legal age for purchasing alcohol.

IV. ANALYSIS

The parties agree Respondent's employee sold alcoholic beverages to a minor. They

disagree, however, concerning the reason. Officer Glen testified the employee stated she confused the legal age for purchasing cigarettes with that for purchasing alcohol. Mr. Khwaja testified it was caused by the employee's poor eyesight. Whatever the reason, however, Respondent is nonetheless liable for the inappropriate sale to a minor.

Respondent has an affirmative obligation to ensure his employees are able to make the requisite observations and judgments necessary to prevent the sale of alcohol to minors. Whether that entails ensuring his employees know the legal age for purchasing alcohol, or ensuring they can see clearly enough to read a driver's license to determine the purchaser's age, the responsibility nonetheless rests with Respondent.

In the instant case, Respondent failed to exercise the appropriate standard of care required in this matter, which resulted in the sale, with criminal negligence, of an alcoholic beverage to a minor. Criminal negligence, as defined in § 6.03 of the Penal Code, is a "gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint."¹ The "actor's standpoint" in this case is Respondent's. Respondent knows, or certainly should know, that minors attempt to purchase alcoholic beverages from premises such as his. Respondent also knows, or should know, that as a permit holder in a highly regulated industry Respondent has an on-going obligation to not sell alcoholic beverages to minors. It is therefore incumbent upon Respondent, as the holder of such a permit, to take the necessary steps, and ensure that his employees take the necessary steps, to prevent the sale of alcoholic beverages to minors. In this instance, Respondent failed to meet that obligation.

V. RECOMMENDATION

This is the third time since July, 2001, Respondent has been found to have sold alcoholic

¹TEX. PEN. CODE ANN. § 6.03(d) states as follows:

A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

In addition, pursuant to Tex. Pen. Code Ann. § 6.02(d), "criminal negligence" constitutes the lowest degree of culpable mental state of those listed in this section (i.e. intentional, knowing, reckless, and criminal negligence.)

beverages to a minor. Given Respondent's past history, Staff requested that Respondent's permit be canceled. That sanction is consistent with the Commission's "Penalty Chart" set forth in 16 TEX. ADMIN. CODE § 37.60(a). The ALJ therefore recommends that Staff's request be granted, and Respondent's permit be canceled.

FINDINGS OF FACT

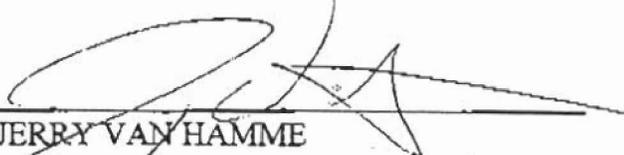
1. All parties received notice of the hearing, all parties appeared at the hearing, and no objection was made to jurisdiction, venue, or notice.
2. Respondent, Bilal Mohammad Khwaja d/b/a All American Beverage Center, 1905 W. 15th Street, Plano, Collin County, Texas, holds a Wine and Beer Retailer's Off-Premise Permit, BQ-447585, issued by the Texas Alcoholic Beverage Commission (Commission) on March 12, 1999.
3. By Order dated July 18, 2001, the Commission found Respondent sold alcoholic beverages to a minor and ordered that Respondent's permit be suspended for seven days or that Respondent pay a civil penalty of \$1,050.
4. By Order dated March 14, 2002, the Commission found Respondent sold alcoholic beverages to a minor and ordered that Respondent's permit be suspended for seven days or that Respondent pay a civil penalty of \$1,050.
5. On August 23, 2002, Officer Richard Glen, an officer with the Plano Police Department, and 18-year old Brandon Jones participated in a "Minor Sting" operation at Respondent's establishment.
6. Mr. Jones entered Respondent's establishment wearing clothing typical of a teenager and appearing younger than 21 years of age.
7. Mr. Jones purchased a six pack of Old Milwaukee's Best Beer for \$4.32 from Naheed Khwaja, an employee of Respondent's establishment. Mr. Jones presented a driver's license to the employee at the time of the sale showing he was 18 years old.
8. Officer Glen observed the sale from outside Respondent's establishment through the establishment's front windows.
9. Petitioner instituted disciplinary action against Respondent alleging Respondent or Respondent's employee, with criminal negligence, sold alcoholic beverages to a minor.
10. A hearing was held on September 5, 2003, before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County,

Texas. Staff was represented by its attorney, Timothy Griffith. Respondent appeared *pro se*. The record was closed on that date.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of ch. 5, §§ 6.01 and 11.61. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. §2003.021.
2. Respondent received adequate notice of the proceedings and hearing.
3. Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor. TEX. ALCO. BEV. CODE ANN. § 106.03(a).
4. Respondent's permit is subject to discipline by the Commission pursuant to TEX. ALCO. BEV. CODE ANN. §§ 106.13(a) and 11.61(b)(2).
5. Based on the foregoing Findings and Conclusions, Respondent's permit should be canceled. 16 TEX. ADMIN. CODE § 37.60(a).

SIGNED this 3 day of November, 2003.


JERRY VAN HAMME
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 604434

IN RE BILAL MOHAMMAD KHWAJA	§	BEFORE THE
D/B/A ALL AMERICAN BEVERAGE	§	
CENTER	§	
PERMIT NO. BQ447585	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-3842)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of December 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on September 5, 2003, and adjourned on September 5, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 3, 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. 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.

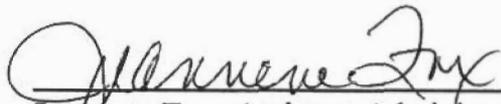
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ447585 is hereby **CANCELED**.

This Order will become final and enforceable on December 24, 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 3rd day of December, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

**The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611**

**BILAL MOHAMMAD KHWAJA
D/B/A ALL AMERICAN BEVERAGE CENTER
RESPONDENT
1905 W 15th St.
Plano, TX 75075
CERTIFIED MAIL/RRR NO. 7001 2510 0007 0098 6837**

**Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section**

Licensing Division

Dallas District Office