

DOCKET NO. 458-03-4318

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
	§	
	§	
AMIRALI ZAKIRALI D/B/A HALF MOON SPORTS BAR PERMIT NO. BE-525579 MCLENNAN COUNTY, TEXAS (TABC CASE NO. 605895)	§	ADMINISTRATIVE HEARINGS
	§	
	§	
	§	
	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) requested that the license renewal application of Amirali Zakirali d/b/a Half Moon Sports Bar (the Respondent) be denied, alleging that three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction or deferred adjudication of a felony, in violation of TEX. ALCO. BEV. CODE ANN. (Code) §§11.46(a)(2) and 109.532, and 16 TEX. ADMIN. CODE (Rules) §33.1. This Proposal for Decision agrees with the Commission and recommends that the Respondent's renewal application be denied.

I. The Hearing

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits was convened on September 15, 2003, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by staff attorney Dewey Brackin. The Respondent appeared by attorney William F. Brown and by its party representative, Amirali Zakirali (the Licensee). Evidence and argument were heard, and the record closed the same day

II. The Statutes

The Commission relied on: Code §§11.46(a)(2) and 109.532; 16 TEX. ADMIN. CODE (Rules) §33.1; and TEX. PENAL CODE (Penal Code) §31.03(e)(4), as follows:

1. Code §11.46(a)(2) states in pertinent part that the Commission may refuse to issue an original or renewal permit if it finds that three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony.
2. Code §109.532 states in pertinent part that the Commission may deny a license or permit, or the renewal of a license or permit for an applicant if the Commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit.
3. Rule §33.1 states in pertinent part that a final conviction or deferred adjudication for any felony offense may indicate that the applicant is not qualified or suitable to hold a permit or license and may be grounds for denial unless three years have elapsed since the termination of a sentence, parole, or probation served by the applicant.
4. Penal Code §31.03(e)(4) states in pertinent part that theft of property valued at \$1,500 or more but less than \$20,000, is a state jail felony.

III. The Evidence

A Beer Retailer's On Premises License, BE-525579, was issued to Amirali Zakirali, doing business as Half Moon Sports Bar, 4018 Sames, Bellmead, McLennan County, Texas, by the Commission on November 5, 2002.¹

The Commission called two witnesses: Agent Brian Bond; and Amirali Zakirali (the Licensee). The Respondent did not call any witnesses. The Commission's two exhibits were admitted.² The Respondent's one exhibit was admitted.³ At the request of the Commission, official notice was taken of TEX. PENAL CODE §31.03(e)(4).

¹Commission's Exhibit No. 1.

²Commission's Exhibit No. 1, Respondent's license and violation history; Commission's Exhibit No. 2, Order Deferring Adjudication in Docket No. 2002-742-C, in the 54th District Court of McLennan County, Texas, signed July 1, 2003, by the presiding judge.

³Respondent's Exhibit No. 1, an undated letter from Glazer's beer distributor.

A. Testimony of TABC Agent Brian Bond:

According to Agent Brian Bond,⁴ the Licensee is unsuitable to hold the license in this case for the following reasons: The Licensee is currently on deferred adjudication for a felony, Theft Over \$1,500 Under \$20,000, for writing checks that were dishonored; and the Licensee was not responsible enough to operate a business within the limits of the law, as evidenced by the fact that one of the dishonored checks was to a beer distributor.

B. Testimony of Amirali Zakirali (the Licensee):

The Licensee admitted that as of July, 2003, he is on deferred adjudication probation for Theft Over \$1,500 Under \$20,000, for writing checks with insufficient funds, at least one of which was to a beer distributor. He admitted that, although one of the terms and conditions of his probation prohibits him from having a checking account, he still has a checking account. He acknowledged that another term and condition of his probation requires him to avoid taverns and bars, but he owns at least one bar and has the responsibility of a Licensee for more than one bar.

The Licensee inferred that the bulk of the dishonored checks were not his fault, but were the result of a disagreement between the Licensee and subcontractors in the construction of the Licensee's house, and the result of fees imposed by the bank. The Licensee stated that his dishonored check to the Glazer's beer distributor was for an establishment that no longer exists. At this time, the Licensee has done business with Glazer's for more than one year, and Glazer's is satisfied that the Licensee does his business in an ethical manner.⁵ After he wrote these checks, three beer licenses have been issued to the Licensee, even though the Commission was aware of the dishonored checks. His probation officer is aware that the Licensee owns a bar and has a checking account, and she "does not have any concerns" about this. No action has been taken against him as a result of his involvement with a bar or as a result of his checking account.

C. The Exhibits:

1. Commission's Exhibit No. 1, Respondent's license and violation history, indicates that the Respondent's license was issued on November 5, 2002, and expires one year from the date of issue. The violation history reveals that on March 26, 2003, the Licensee waived his right to a hearing and accepted a suspension or a civil penalty, when he was accused of Acquiring Alcoholic Beverages for the Purpose of Resale from Another Retailer, in violation of Code §61.71(a)(20).
2. Commission's Exhibit No. 2, an Order Deferring Adjudication in Docket No. 2002-742-C, in the 54th District Court of McLennan County, Texas, entered and signed by the presiding judge on July 1, 2003, states, in pertinent part that the Licensee plead guilty to Theft Over \$1,500 Under \$20,000, and he was placed on five years deferred adjudication probation. According

⁴Agent Brian Bond has been a police officer for the Commission for more than ten years and a sergeant in the Commission's Waco District office for almost three years.

⁵Respondent's Exhibit No. 1, is an undated letter under the letterhead of the Glazer's beer distributor.

to this document, among the many terms and conditions of his probation are the directives that the Licensee shall avoid taverns and bars; that the Licensee shall be prohibited from having a checking account at any financial institution during the period of probation; that the Licensee shall work faithfully at suitable employment as far as possible; and that the Licensee make full restitution in the amount of \$12,717.60 plus \$885.00 in "hot check fees." This document also states that the terms and conditions of probation may be modified or terminated by the Court, and orders that in the event the Court finds that the Licensee has failed to comply with the terms and conditions of probation, an adjudication of guilt shall be entered and the matter shall proceed as if no deferred adjudication had been made.

3. Respondent's Exhibit No. 1 is an undated letter under the letterhead of Glazer's beer distributor, stating that they have been doing business with the Respondent for more than one year, and that the Respondent's business has been "handled in a satisfactory and an ethical manner."

IV. Discussion

The Licensee, who was placed on five years deferred adjudication probation July 1, 2003, for a state jail felony based on his dishonored checks in an amount exceeding \$12,000, one of which was to a beer distributor, is not a suitable candidate to have his license renewed.

The dishonoring of checks in excess of \$12,000, is an example of fiscal irresponsibility in the extreme. The Licensee implied that subcontractors and the bank were partially responsible for the checks that were dishonored. Because the Licensee still tries to avoid some of the responsibility for the dishonored checks by blaming others, it appears that the Licensee still lacks a full understanding of his own fiscal responsibilities. The fact that at least one of these checks was to a beer distributor makes it more directly relevant to the Licensee's unsuitability as a candidate to have his license renewed.

Based on the Licensee's testimony, the Licensee does not intend to comply with all of the terms and conditions of his probation. The terms and conditions of the Licensee's probation require him to avoid taverns and bars, yet he has the responsibility of a Licensee for more than one bar, and hopes to maintain this status. He did not express any plan to provide adequate but alternative supervision while he maintains a physical distance from these bars. The terms and conditions also prohibit him from having a checking account; yet he still has a checking account and apparently intends to continue to have a checking account. The fact that he has not yet suffered any consequences for failing to comply with the terms and conditions of his probation is not a defense. According to the Order Deferring Adjudication, the terms and conditions of the Licensee's probation can only be modified or terminated by the court. There is no indication that the court has even been petitioned to modify the terms of the court's July 1, 2003 order.

Although Code §11.46(a)(2) is not directly applicable in this case because it speaks only of a "conviction," and the Licensee's criminal case adjudication has been deferred, it is still relevant to the Licensee's qualifications or *suitability* for a license. The Licensee's deferred adjudication is for a state jail felony; the Licensee admitted that he was not in compliance with the terms and conditions of his probation in the instant proceeding; the Licensee has shown no intent to comply with all of the terms and conditions of his probation; and the Order Deferring Adjudication states that in the event the Court finds that the Licensee has failed to comply with the terms and conditions of probation, an

adjudication of guilt shall be entered and the matter shall proceed as if no deferred adjudication had been made.

Finally, the Respondent argued that the Commission should not have taken this action now, when they took no action at the time the dishonored check was written to the beer distributor. The difference between then and now is the Licensee's deferred adjudication for felony theft. Based on all of the foregoing, the Licensee is an unsuitable applicant for renewal of his license, and his license renewal should be denied.

Findings of Fact

1. A Beer Retailer's On Premise License, BE-525579, was issued to Amirali Zakirali (the Licensee), doing business as Half Moon Sports Bar, 4018 Sames, Bellmead, McLennan County, Texas, by the Commission on November 5, 2002.
2. The Licensee was placed on five years deferred adjudication probation July 1, 2003, for a state jail felony based on his dishonored checks in an amount exceeding \$12,000, one of which was to a beer distributor.
3. The Licensee's dishonoring of checks in excess of \$12,000, indicates fiscal irresponsibility.
4. Although the terms and conditions of the Licensee's deferred adjudication probation include a requirement that he avoid taverns and bars, the Licensee had the responsibility of a Licensee for more than one bar, and he expressed no intent to change his status or to provide adequate but alternative supervision while he maintains a physical distance from these bars.
5. Although the terms and conditions of the Licensee's deferred adjudication probation prohibit him from having a checking account, he still has a checking account, and has shown no intent to close his checking account.
6. On August 26, 2003, the Commission sent its Notice of Hearing to the Respondent's last known mailing address. This Notice of Hearing informed the Respondent that the hearing on the merits was set for September 15, 2003, at 10:00 a.m., and it contained: a statement of the location and the 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 allegations and the relief sought by the Commission.
7. The hearing on the merits was convened on September 15, 2003, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by staff attorney Dewey Brackin. The Respondent appeared by attorney William F. Brown and by Amirali Zakirali (the Licensee). Evidence and argument were heard, and the record closed the same day.

Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Subchapter B of Chapter 5.

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.
3. Based on Findings of Fact Nos. 6 and 7, proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052, Code §11.63, and 1 TEX. ADMIN. CODE §155.55.
4. Based on Findings of Fact Nos. 2-5, the Commission should deny the renewal of Respondent's license, in that the Licensee is not qualified or suitable to hold a license, pursuant to Code §109.532, 16 TEX. ADMIN. CODE §33.1, and TEX. PENAL CODE §31.03(e)(4).

Signed this 30th day of September, 2003.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 605895

IN RE AMIRALI ZAKIRALI	§	BEFORE THE
D/B/A HALF MOON SPORTS BAR	§	
RENEWAL APPLICATION	§	
PERMIT NO. BE-525579	§	TEXAS ALCOHOLIC
	§	
MCLENNAN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-4318)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of October, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on September 15, 2003 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 30, 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. Exceptions to the Proposal have been filed by the Respondent.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision 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.

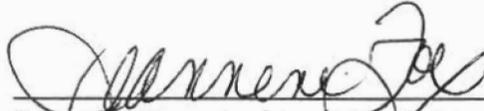
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Renewal Application of Amirali Zakirali d/b/a Half Moon Sports Bar, for Beer Retailer's On-Premise License No. BE-525579 be **DENIED**.

This Order will become final and enforceable on NOVEMBER 13, 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.

SIGNED on this the 23rd day of October, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Fred Brown
ATTORNEY FOR RESPONDENT
210 N. 6th Street
Waco, Texas 76701
VIA FACSIMILE: (254) 756-2193

Amirali Zakirali
d/b/a Half Moon Sports Bar
RESPONDENT
4018 Sames
Bellmead, Texas 76705
CERTIFIED MAIL NO. 7001 2510 0003 8687 1939

Administrative Law Judge Suzan Moon Shinder
State Office of Administrative Hearings
Waco, Texas
VIA FACSIMILE: (254) 750-9380

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

Waco District Office
Licensing Division