

DOCKET NO. 510832

IN RE STANDARD LEE HODGES	§	BEFORE THE TEXAS
D/B/A OLD BRIDGEPORT BALLROOM	§	
PERMIT NOS. MB-424209	§	
	§	ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0987)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of May, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on February 15, 2006, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 13, 2006. 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. **As of this date 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 **Respondent's permits be canceled, pursuant to §28.09, §28.06 (c), and §28.06(d) of the Code.**

This Order will become final and enforceable on June 12, 2006, 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 22nd day of May, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeanne Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611

Standard Lee Hodges
d/b/a Old Bridgeport Ballroom
RESPONDENT
2611 Anzio Dr.
Dallas, TX 75224
CERTIFIED MAIL NO. _____
RETURN RECEIPT REQUESTED

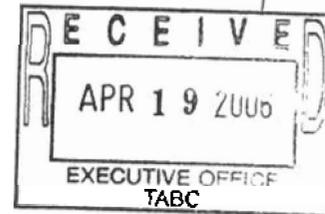
Tim Griffith
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-678-4001

Licensing Division
Dallas District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



April 13, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-0987
TABC VS. STANDARD LEE HODGES
D/B/A OLD BRIDGEPORT BALLROOM

Dear Ms. Fox:

Please find enclosed a PROPOSAL FOR DECISION in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

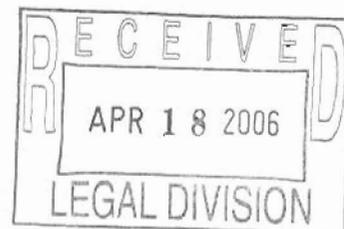
Sincerely,

Brenda Coleman

Brenda Coleman
Administrative Law Judge

BC/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,
Standard Lee Hodges, Respondent, **Via Mail**



SOAH DOCKET NO. 458-06-0987

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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V.

STANDARD LEE HODGES D/B/A
OLD BRIDGEPORT BALLROOM,
 Respondent

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff (Petitioner) sought cancellation of the permits held by Standard Lee Hodges d/b/a Old Bridgeport Ballroom (Respondent), alleging that (1) Respondent knowingly possessed uninvoiced alcoholic beverages on the licensed premises and (2) Respondent failed to immediately mutilate the identification stamp on empty bottles that contained distilled spirits in violation of the Texas Alcoholic Beverage Code. The Administrative Law Judge (ALJ) recommends that Respondent's permits be canceled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5 and §§ 11.61 and 28.09, as well as 16 TEX. ADMIN. CODE (TAC) §§ 41.50 and 41.72 of the TABC Rules (the Rules). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On February 15, 2006, a hearing convened in Dallas, Texas, before SOAH ALJ Brenda Coleman. Petitioner was represented at the hearing by Timothy Griffith, Staff Attorney. Respondent appeared *pro se*. After presentation of evidence and argument, the hearing concluded and the record closed on that date.

II. DISCUSSION AND ANALYSIS

A. Background

Respondent's licensed premises are located at 5610 South Lamar Street, Dallas, Dallas County, Texas. Respondent holds mixed beverage permit MB-424209, mixed beverage late hours permit LB-424210, caterer's permit CB-424211, and beverage cartage permit PE-424212, issued by the TABC on March 24, 1998. The permits have been continuously renewed. Standard Lee Hodges is the owner of the licensed premises.

B. Applicable Law

Pursuant to the Code, Petitioner may suspend or cancel a permit if it is found that the permittee violated a provision of the Code or the Rules.¹ A holder of a mixed beverage permit or any person employed by the holder who empties a bottle containing distilled spirits shall immediately after emptying the bottle invalidate the identification stamp on the bottle.² The invalidation of identification stamps shall be done by mutilating the stamp. "Mutilate" means to scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.³

No permittee may possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.⁴ No permittee may **knowingly** [emphasis added] possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier

1 § 11.61(b)(2) of the Code.

2 § 28.09(a) of the Code.

3 § 41.72 of the Rules.

4 § 28.06(a) of the Code.

from whom the alcoholic beverage was purchased.⁵ “Premises” means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.⁶ The law requires the Commission or administrator to **cancel** [emphasis added], after notice and hearing, the permit of any permittee found by the Commission or administrator to have violated § 28.06 (c) of the Code.⁷

Invoice is defined as an instrument issued by the seller of the alcoholic beverages to a permittee.⁸ An invoice shall be issued in original and one copy in consecutive numbered order, showing the date of the sale or distribution, the purchaser and his address, the quantity, brand and class of alcoholic beverages sold, and the total price of each brand and class shown thereon. Such invoice or a copy thereof shall be delivered to the permittee and a copy of such invoice shall be kept by the seller making the invoice.⁹ Each invoice shall be kept on the licensed premises for a period of two years and shall be made available to a representative of the Commission upon reasonable request.¹⁰

C. **Petitioner’s Evidence and Contentions**

Petitioner contends that Respondent has operated its premises in violation of the Code and the Rules. Petitioner alleges that Respondent failed to mutilate the identification stamps on two bottles of distilled spirits and also knowingly possessed uninvoiced bottles of distilled spirits on the licensed premises. Pursuant to § 28.06(c) of the Code, knowingly possessing uninvoiced alcoholic beverages on the premises, regardless of its intended purpose or use, requires the cancellation of Respondent’s permits. Petitioner presented five exhibits and the testimony of TABC Agent Anthony

5 § 28.06(c) of the Code.

6 § 11.49(a) of the Code.

7 § 28.06(d) of the Code.

8 § 41.50(a)(2) of the Rules.

9 § 41.50(h)(1) of the Rules.

10 § 41.50(h)(2) of the Rules.

Keel. Agent Keel's testimony is summarized below:

Agent Keel conducted an inspection of Respondent's licensed premises on October 22, 2005. Upon entering the premises, he first contacted Respondent's manager, Michael Sims and inspected the bar area. After inspecting the bar area, Agent Keel next conducted an inspection of the upstairs office, where he encountered Respondent's owner, Standard Lee Hodges.

1. Knowing possession of uninvoiced alcoholic beverages

In the bar area, Agent Keel observed two 750 ml bottles of cognac that did not have local distributor's stamps affixed on them. One bottle was opened and appeared to have been used. The other was sealed and stored for use. Both were randomly shelved with other distilled spirits with local distributor's stamps in the bartender's well and on the counter behind the bar.

Agent Keel stated that all bottles of distilled spirits are required to have a local distributor's stamp affixed, otherwise it cannot be shown to have been invoiced to the permittee. If the bottles do not have local distributor's stamps affixed, especially such a quantity as was found on Respondent's premises, then the bottles of liquor were more than likely illegally purchased for the licensed premises and therefore, uninvoiced.

Agent Keel located approximately 35 bottles of distilled spirits in Respondent's upstairs office, including 14 bottles of tequila, rum, cognac, vodka and gin which did not have local distributor's stamps affixed. Some of the uninvoiced bottles were opened and appeared to have been used. The uninvoiced bottles were randomly shelved with other bottles of liquor with local distributor's stamps in a small bar area in the office. A couple of the uninvoiced bottles were on display in a glass entertainment center. Agent Keel prepared an inventory of the liquor seized from Respondent's premises and also photographed the items.¹¹

According to the agent, Mr. Hodges' explanation for the uninvoiced bottles of distilled spirits

¹¹ TABC Exhibits Four and Five.

possessed on the premises was that they were his personal bottles of liquor. Agent Keel then asked Mr. Hodges to provide any invoices that would show where or how the distilled spirits were purchased for Respondent. Mr. Hodges produced a couple of invoices, but none for any of the uninvoiced distilled spirits that had been located by the agent. Agent Keel stated that a permit holder is required by law to keep the invoices on the licensed premises. Based on his observations and conversation with Respondent's owner on October 22, 2005, Agent Keel believed Respondent had knowledge that the bottles of liquor were uninvoiced and Respondent knowingly possessed the uninvoiced alcoholic beverages found on the premises.

2. Failure to mutilate identification stamp

Agent Keel stated that he also found two empty bottles of Crown Royal alongside the uninvoiced distilled spirits in the office. The two bottles had local distributor's stamps affixed which were intact and not mutilated. According to Agent Keel, the purpose of requiring mutilation of the stamp upon immediately emptying a bottle is to prevent the potential for re-filling or utilizing uninvoiced alcoholic beverages on the licensed premises. The agent photographed the empty bottles.¹²

D. Respondent's Evidence and Contentions

Mr. Hodges testified at the hearing on behalf of Respondent. He also presented the testimony of Michael Sims, Respondent's manager. Both offered the fact that a burglary occurred on Respondent's licensed premises some time after 2 a.m. on October 22, 2005, as a possible explanation for the presence of the empty and uninvoiced bottles of liquor found on the licensed premises by Agent Keel. Mr. Hodges requested a more lenient penalty in lieu of cancellation of the permits. The testimony of Mr. Sims and Mr. Hodges is summarized below:

¹² TABC Exhibit Three.

1. Testimony of Standard Lee Hodges

Mr. Hodges stated that he also owns a trucking company and parks the 18-wheelers (rigs) on the parking lot of the licensed premises at 5610 South Lamar Street in Dallas. The distilled spirits found by Agent Keel were originally purchased as gifts to be given away at Thanksgiving and stored inside the cab of one of the rigs. When he was contacted by Mr. Sims regarding the burglary, Mr. Hodges instructed Mr. Sims to secure the distilled spirits inside the licensed premises in the office. Mr. Hodges arrived at the licensed premises shortly before Agent Keel arrived.

Mr. Hodges also stated that his brother, Michael Hodges (Michael), is a driver for the trucking company. Michael purchased the alcohol and left it inside the cab of his rig. Mr. Hodges was aware that the liquor purchased by Michael was uninvoiced to the licensed premises and that it would be located in the cab. He prohibited Michael from bringing the liquor inside the licensed premises. Mr. Hodges stated, finally, that Respondent's cleaning person, Larry, was responsible for placing the two uninvoiced bottles of cognac in the bar area.

According to Mr. Hodges, the two Crown Royal bottles were emptied during the burglary. The burglar entered the licensed premises through the roof, stole money, receipts, equipment, expensive liquor and evidently poured liquor from bottles before exiting through the roof.

2. Testimony of Michael Sims

Mr. Sims said that before the break-in occurred, the 15 bottles of liquor were stored in some of the rigs parked outside on the premises. According to Mr. Sims, they placed the bottles of liquor in five cabs for a Thanksgiving "thang." He later stated that 15 bottles of liquor were placed in the five cabs because five of the 11 truck drivers were to receive three bottles of liquor each as gifts.

Mr. Sims stated that he called police to report the break-in of the licensed premises and the rigs parked on the premises after he arrived at work on October 22, 2005. According to Mr. Sims, the burglar had entered the rigs by breaking out the windows of the cabs. The police advised him

to move the bottles of liquor inside to protect any possible finger prints from the moisture. Mr. Sims locked the liquor inside the upstairs office. Mr. Sims later said the burglar took some of the bottles from the cabs, through the roof and left them inside the licensed premises, but stole the expensive liquor.

Mr. Sims also stated that he had no idea how the two uninvoiced bottles of cognac got behind the bar. He added that the two bottles must have been brought in by the intruder and left there after they opened the bottles and either drank or poured out some of the liquor. The burglar also broke into the cash register, emptied several bottles of liquor located behind the bar and took several of bottles from the bar, along with other items. Mr. Sims said that the burglar also emptied the two bottles of Crown Royal found in the upstairs office after taking a drink, which would explain why the stamps were not mutilated.

E. Analysis

The issues in this case are clear. After considering the evidence, the ALJ concludes that Petitioner has met its burden and proved that Respondent committed the violations of the Code and the Rules as alleged by Petitioner.

Mr. Hodges and Mr. Sims admitted that they knew the uninvoiced bottles of liquor seized on October 22, 2005, were possessed on the licensed premises. Their explanations regarding each of the alleged violations are inconsistent and not very credible. Even if their statements that the distilled spirits were stored inside the cabs of five rigs until the burglary occurred on October 22, 2005, were true, it does not legally excuse or justify the violation of having knowingly possessed uninvoiced alcoholic beverages on the licensed premises. Respondent's premises would include the rigs parked on the grounds. The Code and the Rules require the permittee to purchase alcoholic beverages from the supplier. The permittee is only authorized to have alcoholic beverages on its premises which are specifically purchased by and invoiced to the permittee under the permittee's permit number. The permittee is then required by law to maintain the invoices on the premises.¹³

¹³ § 41.50(h)(2) of the Rules.

Respondent knew that the uninvoiced liquors seized on October 22, 2005, were possessed on Respondent's licensed premises in violation of the Code and the Rules.

III. Recommendation

Petitioner requested that Respondent's permits be canceled. A permittee's knowing possession of uninvoiced alcoholic beverages on the licensed premises in violation of § 28.06(c) of the Code is a major regulatory violation. Pursuant to § 28.06(d) of the Code, cancellation is the remedy or sanction for this violation. The ALJ has no authority to recommend a more lenient sanction and, therefore, recommends that Respondent's permits be canceled.

IV. FINDINGS OF FACT

1. Respondent's licensed premises are located at 5610 South Lamar Street, Dallas, Dallas County, Texas.
2. Respondent holds mixed beverage permit MB-424209, mixed beverage late hours permit LB-424210, caterer's permit CB-424211, and beverage cartage permit PE-424212, issued by the TABC on March 24, 1998.
3. On October 22, 2005, TABC Agent Anthony Keel conducted an inspection of Respondent's licensed premises.
4. The Agent Keel located two bottles of cognac with no local distributor's stamps affixed on the bottles in the bar area. One of the bottles was opened as if being used.
5. In the upstairs office, Agent Keel located 14 bottles of tequila, rum, cognac, vodka and gin which had no local distributor's stamps affixed them. Some of the bottles were opened as if being used.
6. Agent Keel seized, inventoried and photographed the uninvoiced distilled spirits.
7. On that same date, Agent Keel also observed two empty bottles of Crown Royal with intact and unmutilated identification stamps affixed on the bottles.
8. Agent Keel also seized and photographed the empty bottles.
9. Respondent's owner and manager knew that the uninvoiced bottles of distilled spirits were possessed by Respondent on the licensed premises.

10. On January 6, 2006, Petitioner issued a notice of hearing notifying Respondent that a hearing would be held concerning Petitioner's allegations and informing Respondent of the time, place, and nature of the hearing and of the legal authority and jurisdiction under which the hearing was to be held; giving reference to the particular sections of the statutes and rules involved; and including a short, plain statement of the matters asserted.
11. The hearing was held on February 15, 2006, in Dallas, Dallas County, Texas, before Brenda Coleman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Commission Staff appeared and was represented by Timothy Griffith, Staff Attorney. Respondent appeared *pro se*. After presentation of evidence and argument, the hearing concluded and the record closed on that date.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 and §§ 6.01, 11.61, 28.06 and 28.09 of the Code, as well as 16 TEX. ADMIN. CODE (TAC) §§ 41.50 and 41.72 of the TABC Rules (the Rules).
2. SOAH 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, pursuant to TEX. GOV'T CODE ANN. Chapter 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. Respondent failed to mutilate the identification stamps on empty bottles of distilled spirits, in violation of § 28.09 of the Code.
5. Respondent knowingly possessed or permitted to be possessed on the licensed premises alcoholic beverage which was not covered by an invoice from the supplier from whom the alcoholic beverage was purchased, in violation of § 28.06(c) of the Code.
6. Respondent's permits should be canceled pursuant to § 28.06(d) of the Code.

SIGNED April 13, 2006.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Standard Lee Hodges d/b/a Old Bridgeport Ballroom

DOCKET NUMBER: 458-06-0987

AGENCY CASE NO: 510832

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2611 Anzio Dr.
Dallas, TX 75224

RESPONDENT
VIA REGULAR MAIL

as of April 13, 2006