

DOCKET NO. 606014

IN RE KIRIT BHAILAL PATEL	§	BEFORE THE
D/B/A FAST TIME #237	§	
PERMIT NO. BQ248642	§	
	§	TEXAS ALCOHOLIC
	§	
MCLENNAN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2858)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 15th day of June, 2004, 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 April 26, 2004, and adjourned April 26, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 28, 2004. 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 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. BQ248642 is herein **SUSPENDED**.

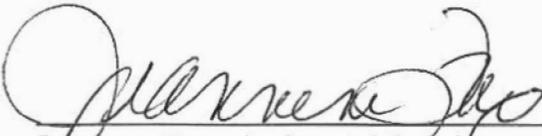
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$450.00** on or before the **11th day of August, 2004**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of three (3) days, beginning at **12:01 A.M. on the 18th day of August, 2004**.

This Order will become final and enforceable on **JULY 6, 2004**, 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 15th day of June, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

Kirit Bhailal Patel
d/b/a Fast Time #237
RESPONDENT
110 E Crest Drive
Waco, Texas 767051153
CERTIFIED MAIL/RRR 7000 1530 0003 1902 0647

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Compliance Division
Licensing Division
Waco District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 606014

REGISTER NUMBER:

NAME: Kirit Bhailal Patel

TRADENAME: Fast Time #237

ADDRESS: 110 E. Crest Dr., Waco, Texas, 76705-1153

DATE DUE: AUGUST 11, 2004

PERMITS OR LICENSES: BQ248642

AMOUNT OF PENALTY: \$450.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 11TH DAY OF AUGUST, 2004, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

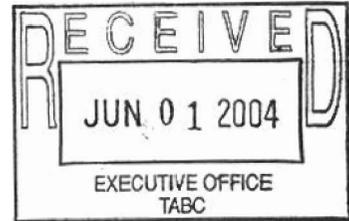
Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



May 28, 2004

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

REGULAR MAIL

RE: Docket No. 458-04-2858, Kirit Bhallal Patel, TABC Case No. 606014

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,

A handwritten signature in black ink, appearing to read "Suzan Moon Shinder".

Suzan Moon Shinder
Administrative Law Judge

sms/me
Enclosure

xc: Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - REGULAR MAIL
Kirit Bhailal Patel, 110 E. Crest Dr, Waco, Texas 76705-1153 - REGULAR MAIL

**SOAH DOCKET NO. 458-04-2858
TABC CASE NO. 606014**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
V.	§	OF
	§	
KIRIT BHAILAL PATEL	§	ADMINISTRATIVE HEARINGS
D/B/A FAST TIME #237	§	
PERMIT NO. BQ 248642	§	
Respondent	§	
	§	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (the Commission or Staff) initiated this action against Kirit Bhailal Patel d/b/a Fast Time #237 (the Respondent) alleging that the Respondent, by its permittee, agent, servant, or employee, gave checks or drafts for the purchase of beer that were dishonored when presented for payment on two separate occasions, in violation of Texas Alcoholic Beverage Code (Code) §§61.73(b)¹ and 102.31. The Commission recommended that the Respondent’s permits be suspended for three days, and that the Respondent be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension. The undersigned Administrative Law Judge (ALJ) concludes that the Commission’s allegations are true, and agrees with the Commission’s recommended penalty.

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.

¹ Although this section speaks of licenses, Code §25.04(b) states that the provisions of the Code that are applicable to the cancellation and suspension of a retail dealer’s on-premise license also apply to the cancellation and suspension of a wine and beer retailer’s permit.

On April 26, 2004, a public hearing was held before Suzan Shinder, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, in Waco, Texas. The Commission appeared by its attorney, Gayle Gordon, via video-conference from the Commission's headquarters in Austin, Texas. Respondent appeared *pro se* at the Waco SOAH office, by its officer, Kirit Bhailal Patel. Evidence and argument were heard, and the record closed the same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

Regarding what is commonly called a "cash law violation," the Commission may suspend a license for not more than 60 days, or cancel² a license, if it is found that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.³ A cash payment is required for licensees and permittees, and no person directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may make a sale except for cash on or before delivery to the purchaser. A cash payment is required, and a valid check or draft payable on demand may be accepted as cash; but, if a check or draft is accepted in payment, it must be deposited in the bank for payment or presented for payment within two days after it is received.⁴

The Code authorizes the Commission to give the Respondent an opportunity to pay a civil penalty rather than have its permit or license suspended. According to the Code, the Civil penalty

² The Standard Penalty Chart, which controls the parameters of the penalty when the Commission settles with a person charged with a violation of the Texas Alcoholic Beverage Code (Code), allows a suspension of up to ten days for such "cash law" violations. 16 TEX. ADMIN. CODE §37.60(a).

³ See Code §61.73.

⁴ See Code §102.31.

may not be less than \$150.00 or more than \$25,000.00 for each day the permit or license was to have been suspended.⁵

III. ANALYSIS

The Commission's exhibits were admitted without objection. The Respondent's exhibit was admitted without objection. The Commission called the Respondent's officer, Kirit Bhailal Patel, as the only witness.

Commission's Exhibit No. 1, the Respondent's permit and violation history, reveals that the Respondent was warned for "cash law" violations on February 20, 2003, and June 19, 2000, but no administrative action was taken. Commission's Exhibit No. 2, copies of affidavits filed by Hack Branch Distributing Company and Dudley Haas Distributing Company, Inc., and copies of insufficient checks, show that the Respondent issued checks for the payment of beer, in the amount of \$369.50 on May 29, 2003, and in the amount of \$182.20 on October 15, 2003. The exhibit demonstrates that these checks were dishonored due to insufficient funds.

Respondent's Exhibit No. 1, two bills from Hack Branch Distributing Company, Inc., dated April 21, 2004, and April 14, 2004, both have the phrase, "Balance Due Cash," at the bottom of the page.

Kirit Bhailal Patel asserted that because the phrase, "Balance Due Cash," appeared on the Hack Branch Distributing Company invoices, the beer distributor should not have required a check in lieu of cash to pay for beer. Mr. Patel did not deny the Commission's allegations, but argued that because the beer distributors required a check, and would not take cash in lieu of a check, the Respondent did not have any choice but to issue a check on insufficient funds.

⁵ See Code §11.64.

Based on the foregoing, this proposal recommends that the Respondent's permit be suspended for a period of three days, or that the Respondent be allowed to pay a civil penalty in the amount of \$150.00 per day, in lieu of suspension. Notwithstanding Mr. Patel's argument, the Respondent did not have to purchase beer at all, if the only option was to pay for the beer with a check that the Respondent could not cover with sufficient funds.

IV. FINDINGS OF FACT

1. The Respondent is the holder of the Wine and Beer Retailer's Off Premise Permit BQ-248642, issued by the Commission to Kirit Bhailal Patel, d/b/a Fast Time #237, 110 East Crest Drive, Lacy Lakeview, McLennan County, Texas, by the Commission on October 6, 1989.
2. The Respondent, by its permittee, or his agent, servant, or employee, on May 29, 2003, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
3. The Respondent, by its permittee, or his agent, servant, or employee, on October 15, 2003, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
4. On February 5, 2004, the Commission sent a Notice of Hearing by certified mail, return receipt requested,⁶ to the Respondent's mailing address as listed in the Commission's records,⁷ informing the Respondent that the Respondent had violated the Code by giving checks or drafts for the purchase of beer that were dishonored when presented for payment on May 29, 2003, and October 15, 2003.⁸
5. This Notice of Hearing also informed the Respondent of the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing was to be held.
6. The hearing on the merits convened on April 26, 2004, in the SOAH offices at 801 Austin Avenue, Suite 750, in Waco, Texas. The Commission appeared by its attorney, Gayle

⁶ Commission's Exhibit No. 3 includes a copy of the domestic return receipt.

⁷ Commission's Exhibit No. 1 includes a copy of the Respondent's permit, which contains the Respondent's mailing address.

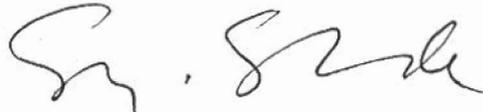
⁸ Official Notice was taken of the Commission's Notice of Hearing.

Gordon, via video-conference from the Commission's headquarters in Austin, Texas. The Respondent appeared *pro se* at the Waco SOAH offices. Evidence and argument were heard and the record closed on the same date.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter under Code Subchapter B of Chapter 5.
2. SOAH 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. Notice of the hearing was provided as required under the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Based on the foregoing findings and conclusions, the Respondent violated Code §§61.73(b) and 102.31.
5. Based on the foregoing findings and conclusions, the Respondent's permit should be suspended for three days and the Respondent should be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension.

SIGNED May 28, 2004.



**SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**