

**DOCKET NO. 613067**

JORDAN'S SERVICES INC.  
D/B/A SHAW GAS MARKET #4  
PERMIT/LICENSE NO(s). Q495080, BF495081

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BEFORE THE TEXAS  
  
ALCOHOLIC  
  
BEVERAGE COMMISSION

GALVESTON COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-1455)

**ORDER**

**CAME ON FOR CONSIDERATION** this 28th day of July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on April 21, 2006 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 30, 2006. The Proposal For Decision, attached 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 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 your permit(s) and/or license(s) hereby **SHOULD NOT BE SUSPENDED**.

This Order will become final and enforceable on August 18, 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this the 28th day of July 2006, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

Hon. Roshunda Pringle  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, TX 77018  
*Via Facsimile 713-812-1001*

Jordan's Service Inc.  
**RESPONDENT**  
d/b/a Shaw Gas Market #4  
2901 Hwy 3  
Dickinson, TX 77539  
***CERTIFIED MAIL NO. 7005 3110 0000 6409 1199***

E. Matthew Leeper Jr.  
**ATTORNEY FOR RESPONDENT**  
440 Louisiana Street, Suite 1550  
Houston, Texas 77002  
*Via Facsimile: 713-228-5657*

Ramona Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Galveston Outpost

# State Office of Administrative Hearings *RP -*



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



June 30, 2006

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-06-1455; Texas Alcoholic Beverage Commission v. Jordan's Services Inc. d/b/a Shaw Gas Market #4**

Dear Mr. Steen:

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle  
Administrative Law Judge

RP/mc  
Enclosure

xc: **Ramona Perry**, Staff Attorney, Texas Alcoholic Beverage Commission, 427 West 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL  
E. Matthew Lecer Jr., Attorney at Law, 440 Louisiana Street, Suite 1550, Houston, Texas 77002 - VIA REGULAR MAIL

**DOCKET NO. 458-06-1455**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>JORDAN'S SERVICES INC. D/B/A SHAW GAS MARKET #4 PERMIT NOS. Q-495080 &amp; BF-495081 GALVESTON COUNTY, TEXAS (TABC NO. 613067)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Jordan's Services Inc., d/b/a Shaw Gas Market #4 (Respondent) seeking a suspension of Respondent's Wine Only Package Store Permit, Q-495080 and Beer Retailer's Off-Premise License, BF-495081. TABC alleged Respondent, his agent, servant, or employee, permitted an open container of alcoholic beverage on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. (The Code) §§ 61.71 (a)(1) and 71.01. This Proposal for Decision finds the TABC did not prove that the Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.71 (a)(1) or 71.01.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

The hearing in this matter convened on April 21, 2006. Attorney Ramona Perry represented TABC. The Respondent was represented by Attorney E. Matthew Leeper, Jr. Administrative Law Judge (ALJ) Roshunda Pringle presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

## II. EVIDENCE

### Petitioner's Evidence

TABC staff offered documentary evidence showing:

(a) On June 14, 2001, Respondent was issued Wine Only Package Store Permit, Q-495080 and Beer Retailer's Off-Premise License, BF-495081.

(b) On February 23, 2006, Petitioner sent an Amended Notice of Hearing to Respondent asserting that TABC was seeking a 60 day suspension or in lieu of the suspension a \$9,000.00 fine.

In addition to the documentary evidence, TABC staff presented the testimony of two witnesses.

#### A. William Randolph Chatham

Mr. Chatham is an agent for TABC. He stated that his main duties with TABC consist of enforcing the Texas Alcohol Beverage Code and other applicable rules of the state of Texas. He testified that on November 13, 2004, he observed an individual consuming an alcoholic beverage on a premise that held an off-premise license. The individual was identified as Danny Caldwell. Mr. Caldwell was observed standing outside the store drinking from a bottle in a brown paper bag. He further testified that the individual was standing at an open glass window. Agent Chatham stated that he observed the store's clerk behind the register with an unobstructed view of Mr. Caldwell. In his opinion the clerk was positioned to see directly out of the open window and should have seen Mr. Caldwell consuming the alcoholic beverage on the premise.

On cross-examination, Agent Chatham admitted that he did not know that Mr. Caldwell was consuming an alcoholic beverage until he made contact with him and was able to inspect the bottle.

He further admitted that some of the windows were blocked by signs and merchandise, but still contended that Mr. Caldwell was in front of an unobstructed window in plain view of the clerk.

### **B. Gerald Sherk, Jr.**

Mr. Sherk is an agent for TABC. He testified that on November 13, 2004, he observed an individual consuming an alcoholic beverage on a premise that held an off-premise license. Agent Sherk interviewed Mr. Caldwell. Mr. Caldwell admitted purchasing the alcoholic beverage from the Respondent's store a few minutes before the agents made contact with him. Agent Sherk stated that he stood next to Mr. Caldwell and looked toward the store to view whether the clerk had a clear view of Mr. Caldwell. He also stood behind the counter to confirm his suspicions of whether the clerk had a clear and unobstructed view. It was also Agent Sherk's opinion that the clerk had a clear view of Mr. Caldwell and should have seen him consuming the alcoholic beverage.

On cross-examination, Agent Sherk stated that he had no knowledge of what the clerk was doing in the store at the time Mr. Caldwell was consuming the alcoholic beverage. He further stated that the Respondent had posted state warning signs regarding consumption of an alcoholic beverage on the premise. The words "No Loitering" was also painted on a brick wall of the establishment.

### **Respondent's Evidence**

Respondent offered several photographs depicting several views of the store. In addition to the demonstrative evidence, Respondent presented the of Hussien Alshanawa. Mr. Alshanawa stated that he had been employed by the Respondent for five years as a store clerk. He confirmed that he was the clerk on duty at the time of the alleged violation. Mr. Alshanawa denied seeing Mr. Caldwell outside of the store consuming the alcoholic beverage. He stated that the signs and merchandise next to the window prevented him from seeing out. He further contends that he was very busy in the store with customers. The permittee was not present nor was there any other employee outside of the store at the time Mr. Caldwell was observed consuming alcohol. Mr.

Alshanawa stated that on several occasions when he observed individuals consuming an alcoholic beverage on the premise he immediately called the police.

### III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee...permitted an open container of alcoholic beverage on the licensed premises.

TEX. ALCO. BEV. CODE ANN. § 71.01 states:

The holder of a retail dealer's off-premise license may sell beer in lawful containers to consumer, but not for resale and not to be opened or consumed on or near the premises where sold.

### IV. DISCUSSION

It is undisputed that Danny Caldwell consumed an alcoholic beverage on the Respondent's premises. The issue is whether the Respondent permitted him to do so, thus violating the Code. Webster's Dictionary defines permit as "to consent to, allow, make possible, or authorized. The evidence presented by the Petitioner failed to show that Respondent's actions directly or indirectly "consented to, allowed, made possible, or authorize". Mr. Caldwell to consume an alcoholic beverage on its premises. The store posted several signs warning their customers of the legal consequences of consuming an alcoholic beverage on the premises and also posted a visible "No Loitering" warning. Both parties agreed that several windows of the establishment contained barriers that prevented a clear view to the outside of the store. Even though the parties disputed the exact location of Mr. Caldwell while consuming the alcoholic beverage, the Petitioner's evidence did not prove that the clerk visibly observed and had knowledge of Mr. Caldwell's consumption. Petitioner argued that the Respondent knew or should have known that Mr. Caldwell was consuming an alcoholic beverage on the premises since he had recently purchased the alcoholic

beverage from the store. Petitioner's argument was not convincing nor persuasive because Petitioner failed to present clear and sufficient factual evidence to prove that the store clear actually observed the consumption on the premises. The ALJ denies Respondent's request for a suspension.

#### V. PROPOSED FINDINGS OF FACT

1. Jordan's Services, Inc. d/b/a Shaw Gas Market, # 4 (Respondent) is the holder of Wine Only Package Store Permit, Q-495080 and Beer Retailer's Off-Premise License, BF-495081.
2. Respondent was notified of the factual allegations against Respondent in the Amended Notice of Hearing issued by Petitioner on February 23, 2006.
3. On April 21, 2006, the hearing in this matter convened before ALJ Roshunda Pringle. Attorney Ramona Perry appeared for Petitioner. Respondent was represented by Attorney E. Matthew Leeper, Jr.
4. On November 13, 2004, TABC Agents Gerald Sherk and William Chatham observed an individual, Danny Caldwell, consuming an alcoholic beverage on the Respondent's premises which holds an Off-Premise License.
5. On November 13, 2004, Respondent had several signs posted on the establishment's door and windows warning customers of the criminal consequences of consuming alcoholic beverages on the premises.
6. On November 13, 2004, Respondent's windows were obstructed by several product signs and merchandise.
7. On November 13, 2004, Respondent had the words "No Loitering" largely painted on the store wall.
8. On November 13, 2004, Respondent's clerk was preoccupied attending to other customers and did not observed Danny Caldwell consuming an alcoholic beverage on the premises.
9. On November 13, 2004, Respondent did not permit nor have knowledge of the individual's consumption on the premises.

#### VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.11.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. On November 13, 2004, Respondent did not violated T EX. ALCO. BEV. CODE ANN. § 61.71(a)(1).
5. On November 13, 2004, Respondent did not violated TEX. ALCO. BEV. CODE ANN. § 71.01.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine Only Package Store Permit, Q-495080, and Beer Retailer's Off-Premise License, BF-495081, should not be suspended.

**SIGNED June 30, 2006.**

  
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**ROSHUNDA PRINGLE**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**