

**DOCKET NO. 589945**

IN RE JUDE UGOEZE NWACHUKWU	§	BEFORE THE
D/B/A BUD'S BEER BARN	§	
LICENSE NO. BF436676	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-0429)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 13th day of March 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened and adjourned on December 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 16, 2001. 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 License No.BF436676 is herein **SUSPENDED**.

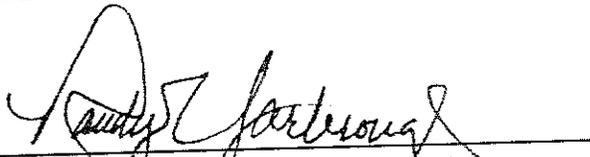
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **6th** day of **June, 2001**, all rights and privileges under the above described license will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 13th day of June, 2001.**

**This Order will become final and enforceable on April 3, 2001**, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 13th day of March, 2001.

On Behalf of the Administrator,

  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

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

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Jude Ugoeze Nwachukwu  
d/b/a Bud's Beer Barn  
**RESPONDENT**  
1622 Market Center Blvd.  
Dallas, Texas 75207-3916  
**CERTIFIED MAIL NO. 7000 0520 0024 8846 9964**

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

Licensing Division  
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 589945

REGISTER NUMBER:

NAME: JUDE UGOEZE NWACHUKWU

TRADENAME: BUD'S BEER BARN

ADDRESS: 1622 Market Center Boulevard, Dallas, Dallas County, Texas 75207-3916

DATE DUE: June 6, 2001

PERMITS OR LICENSES: BF436676

AMOUNT OF PENALTY: \$1,500.00

---

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 6TH DAY OF JUNE, 2001, 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.

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
VS.	§	
	§	
JUDE UGOEZE NWACHUKWU	§	OF
D/B/A BUD'S BEER BARN	§	
LICENSE NO. BF436676	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 589945)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff or TABC) brought this action against Respondent, Jude Ugoeze Nwachukwu d/b/a Bud's Beer Barn, for selling alcoholic beverages to a minor. Staff recommended the license be suspended for a period of fourteen days, or, in lieu of a suspension, Respondent pay an administrative penalty of \$2,100. The Administrative Law Judge (ALJ) recommends the license be suspended for ten days, or, in lieu of suspension, that the Respondent pay an administrative penalty of \$1,500.

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

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion.

On October 11, 2000, the Staff issued its Notice of Hearing. The notice, directed to John M. Gioffredi, attorney of record for Respondent, advised that on December 6, 2000, at 2:00 p.m., a hearing would be held by the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150A, Dallas, Texas, to determine if the allegations against Respondent were true. Mr. Gioffredi's office filed a letter of non-representation on October 18, 2000, stating that it does not represent Respondent. On October 24, 2000, Staff filed a letter acknowledging receipt of the non-representation letter from Respondent's attorney and confirming non-representation to be true as a result of a telephone conversation with Respondent. On November 20, 2000, Staff served a copy of its Notice of Hearing on Respondent, stating that a hearing would be held on December 6, 2000.

On December 1, 2000, a telephone prehearing conference was conducted by Brenda Coleman, an ALJ with the State Office of Administrative Hearings. Both parties appeared by telephone. Staff was represented at the telephone prehearing conference by Timothy E. Griffith, an attorney for Staff. Respondent was not represented by an attorney. The hearing in this matter convened on December 6, 2000, at the offices of the State Offices of Administrative Hearings in Dallas, Dallas County, Texas. Mr. Griffith appeared on behalf of Staff. Respondent appeared pro

se. Evidence was received and the record was closed that day.

## II. DISCUSSION

**A. Background.** Respondent holds a Beer Retailer's Off Premise License, number BF436676, issued by the TABC for the premises known as Bud's Beer Barn, located at 1622 Market Center Boulevard, Dallas, Dallas County, Texas. The TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(5)(Vernon 2000)(the Code) to cancel or suspend a permit or license for not more than sixty days if a licensee or permittee violates the Code. In this case, a violation of Code provision § 106.13 is alleged. That section makes it a violation to, with criminal negligence, sell or deliver an alcoholic beverage to a minor. Criminal negligence is defined in TEX. PENAL CODE ANN. § 6.03(d) as:

conduct, or results of conduct, when an actor 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 viewpoint.

Staff alleges that on January 20, 2000, two employees of Respondent, Lillian Nwachukwu (Respondent's wife) and Crystal Rayl, with criminal negligence, sold alcoholic beverages to Crystal Hollywood, an undercover minor involved a minor sting operation. Staff's documentary evidence consisted of the Notice of Hearing, Permit, a photocopy of Ms. Hollywood's driver's license and picture, taken on January 20, 2000, and a document indicating a previous sale to minor violation by Respondent.

Evidence relative to the merits of this case was the live testimony provided by Detective Enrique Guzman, an officer in the vice division of the Dallas Police Department, who was called by Staff. He testified that on January 20, 2000, Ms. Hollywood drove to the drive-through window of Respondent's premises and purchased a six-pack of Coors Light Beer. He further stated that Ms. Hollywood was 16 years old on that date, was wearing shorts and a blouse, very little make-up, and had a youthful appearance. Detective Guzman did not hear the conversation between Ms. Hollywood and Respondent's employees, but was in a vehicle behind Ms. Hollywood's vehicle and did not see her present any identification. He stated that in his opinion, no one would consider Ms. Hollywood to be anything but under the age of 21 years of age.

Neither Ms. Nwachukwu nor Ms. Rayl was present at the hearing to testify on behalf of Respondent. Respondent testified that he was not at the store on January 20, 2000; however, he did offer testimony regarding his established procedures at the store. Respondent's argument is threefold: (1) entrapment; (2) Detective Guzman is mistaken in his identification of which employee actually sold the six-pack of beer to the minor on January 20, 2000, because, based on Respondent's established store procedures, Ms. Rayl, not Ms. Nwachukwu, made the sale to Ms. Hollywood; and (3) Ms. Rayl was alcohol trained and certified by the TABC at the time of the sale; therefore, her actions should not be attributable to Respondent.

**B. Staff's Case.** Detective Guzman described minor sting operations in which a person under 21 years of age voluntarily cooperates with the police department in actively investigating the sale of alcoholic beverages to minors. The minor enters the premises of a licensed establishment and attempts to make a purchase of an alcoholic beverage. The entire scenario is pre-planned in advance of the attempted purchase. The minor is instructed to answer truthfully in regard to his/her age, if asked, and to present valid identification when requested.

On January 20, 2000, Detective Guzman, along with 16 year old Crystal Hollywood, conducted a minor sting operation at Bud's Beer Barn. Detective Guzman described Ms. Hollywood as being 5'6", weighing 120 pounds with above-shoulder length hair at the time. Ms. Hollywood was dressed in teenage attire, which included shorts and a blouse. She was wearing little makeup. In his opinion, there was nothing mature about her appearance and because of her youthful appearance, a reasonable person would definitely consider her to be under 21 years of age.

On this occasion, Ms. Hollywood pulled into the drive-through window of Bud's Beer Barn. Detective Guzman drove in directly behind her and watched as Ms. Hollywood purchased a six-pack of Coors Light Beer from the driver seat of her vehicle. According to Detective Guzman, the entire transaction lasted only 2 to 3 seconds.

When Ms. Hollywood drove up to the window, Ms. Nwachukwu was working the floor and Ms. Rayl was in the booth behind the cash register. Detective Guzman testified that he observed Ms. Nwachukwu walk up to the window, take Ms. Hollywood's order and a \$10 bill, walk over to the cooler, take out the six-pack of beer and walk up to the register. Ms. Nwachukwu then handed the \$10 bill to Ms. Rayl, walked behind the register, rang up the sale, took the \$10 bill from Ms. Rayl and handed Ms. Rayl the change. Detective Guzman then observed Ms. Rayl take the change and the six-pack of beer to the drive-through window and give both to Ms. Hollywood sitting inside the vehicle. Detective Guzman stated that Ms. Hollywood was specifically instructed to show her identification when requested; however, Ms. Hollywood presented no identification to either Ms. Nwachukwu or Ms. Rayl. According to Detective Guzman, during the very brief period of time in which Ms. Hollywood was in the drive-through window, the only conversation was her request for the six-pack of beer and the only thing that she handed out the window of her vehicle was the money for beer.

**C. Respondent's Case.** Respondent testified that he was not at the store on January 20, 2000; however, he first argues that his employees were entrapped by police when Ms. Hollywood was sent to Bud's Beer Barn to attempt to purchase alcoholic beverages. In order to determine whether the entrapment defense is valid, the trier of fact must examine the actions of the State to determine whether Respondent's employees were induced to engage in the alleged illegal conduct through persuasion or other means likely to cause them to commit the offense, or whether they were merely afforded an opportunity to do so. *See* TEX. PENAL CODE ANN. § 8.06(a)(Vernon 1994).

Secondly, Respondent argues that, according to his established procedures when he is not at the store, Ms. Nwachukwu is assigned to the booth and has no direct contact with the customers in the drive-through window; Ms. Rayl is the person hired to work as floor attendant. As floor attendant, she is required to be certified by the TABC to sell alcohol, and her job is to make contact

with the customer, take the order, check identification, collect the money, pick up the order, give the money to the person in the booth, receive any change from the person in the booth and give the change and alcoholic beverage to the customer. The person who collects the money from the customer is the same person who gives the change and alcoholic beverage to the customer. The person in the booth has no contact with the customer and takes no money directly from the customer. Therefore, Ms. Nwachukwu could not have sold an alcoholic beverage to Ms. Hollywood on January 20, 2000. Respondent further stated that while both employees, according to store procedures, are supposed to watch out for minors, it is the primary responsibility of the floor attendant to do so because that person is specifically trained to do that; the person in the booth is too far removed from the drive-through window.

**D. Analysis.** Petitioner's burden in this case is to show that it is more likely than not that a criminally negligent sale to a minor occurred. Petitioner met that burden. There is no question that the sale of alcoholic beverages to a minor occurred at Bud's Beer Barn. Respondent argues that because of his established procedures at the store, Ms. Nwachukwu could not and did not sell alcoholic beverages to Ms. Hollywood. Respondent's argument is unpersuasive. Respondent admits that he was not present at the time of the sale, but was informed of the sale by his employees after the sale occurred. Since Ms. Nwachukwu and Ms. Rayl were not present at the hearing, any statement from Respondent regarding what Ms. Nwachukwu did or did not do on January 20, 2000, is mere speculation.

Detective Guzman proved to be a credible witness. On cross examination, he stated that he was sure that Ms. Nwachukwu was the person who approached the minor, took the money and the order, retrieved the beer from the cooler, rang up the sale and handed the beer and change to Ms. Rayl to return to the customer. The ALJ is convinced that the detective's testimony is based on his personal observations that evening and that the events occurred as he described. The ALJ also infers from statements made by Respondent that situations may arise in which Ms. Rayl, as the assigned floor attendant, may be in the back of the store and does not make the initial contact with the customer, thereby resulting in someone else acting as floor attendant on her behalf. The ALJ believes that such a situation occurred on January 20, 2000, when Ms. Hollywood drove into the drive-through window of Respondent's premises.

The evidence supports the conclusion that Respondent's employees acted with criminal negligence by selling an alcoholic beverage to a minor on January 20, 2000. Contrary to Respondent's training and established procedures, Respondent's employees did not request identification from an individual who was 16 years of age.

Respondent testified that his employees are trained to check identification of individuals who look to be under the age of 27 and are purchasing either alcoholic beverages or cigarettes. Respondent also testified that, as part of his established procedure, the floor attendant has the choice of checking the identification either prior to collecting the money from the customer or prior to completing the sale. Failure to perceive that Ms. Hollywood was under 21 years of age was such a gross deviation from the standard of care an ordinary person would exercise under the circumstances that it constitutes criminal negligence. By selling an alcoholic beverage to a minor, with criminal negligence, Respondent's employees violated the Code. Respondent is statutorily

responsible for the acts of his employees; however, the ALJ is convinced that Respondent was not present at the time of the sale and did not directly or indirectly encourage his employees to violate the law.

Further analysis of Staff's allegations poses five questions. These questions must be analyzed in light of the evidence introduced regarding each employee's individual participation in the alleged sale. These questions are:

- a. Was Ms. Nwachukwu criminally negligent in her participation of the sale of alcoholic beverages to Ms. Hollywood?
- b. If so, were her actions attributable to Respondent?
- c. Was Ms. Rayl criminally negligent in her participation of the sale of alcoholic beverages to Ms. Hollywood?
- d. If so, were here actions attributable to Respondent?
- e. If a violation was committed, do the circumstances warrant a relaxation of the applicable Code provisions?

**1. Ms. Nwachukwu's participation.** Ms. Nwachukwu walked up to the window and made contact with Ms. Hollywood when she drove up. Ms. Nwachukwu took Ms. Hollywood's order for a six-pack of Coors Light Beer, collected the money without asking for identification, retrieved the beer from the cooler and rung up the sale at the register. Ms. Nwachukwu was criminally negligent in her participation of the sale of alcoholic beverages to Ms. Hollywood because Ms. Nwachukwu failed to follow Respondent's established procedure of requesting and checking identification of individuals who appear to be under 27 years of age as she was trained to do.

Section 106.14 of the Code establishes a three prong test for determining whether the actions of an employee shall be attributable to the employer. To avoid attribution, Respondent must show that he required his employees to attend a commission-approved seller training program, that the employee had actually attended such a program, and that Respondent had not encouraged the employee to violate the law. Although Respondent testified that it is a requirement that the floor attendant be trained and certified by the TABC, there was no indication that Ms. Nwachukwu had attended any such program. Therefore, the actions of Ms. Nwachukwu are attributable to the Respondent.

**2. Ms. Rayl's participation.** Ms. Rayl, who was in the booth when Ms. Hollywood drove up, received the \$10 bill collected from Ms. Hollywood as Ms. Nwachukwu rang up the sale at the register. Ms. Rayl then took the change and the beer, walked over to the window and handed the change and the beer to Ms. Hollywood without asking for identification. Ms. Rayl was criminally negligent in her participation of the sale of alcoholic beverages to Ms. Hollywood because Ms. Rayl failed to follow Respondent's established procedure of requesting and checking identification of individuals who appear to be under 27 years of age as she was trained to do.

Respondent testified that Ms. Rayl is alcohol trained and certified by the TABC. The ALJ agrees with Respondent that Ms. Rayl's participation in the sale of alcoholic beverages to Ms. Hollywood should not be attributed to him and recommends that no action be taken against Respondent with regard to Ms. Rayl's involvement.

**3. The circumstances warrant a relaxation of the applicable Code provisions.**

When suspension of a permit or a license is authorized under the Code, the permittee or licensee shall be given the opportunity to pay a civil penalty rather than have the permit or license suspended. In cases in which a civil penalty is assessed, the TABC shall determine the amount of the penalty, and in doing so, shall consider the economic impact a suspension may have on the permittee or licensee. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. If the permittee or licensee does not pay the penalty before the sixth day after the TABC notifies him of the amount, the TABC shall impose the suspension. TEX. ALCO. BEV. CODE ANN. § 11.64(a)(Vernon 2000).

The standard penalty chart provides for a suspension of the permit or license for seven to twenty days for a first violation involving the sale of an alcoholic beverage to a minor; ten to ninety days for a second violation; and sixty days to twelve months, or cancellation for a third offense. 16 TEX. ADMIN. CODE § 37.60 (Vernon 2000). Staff introduced evidence at the hearing of a prior violation involving the sale of an alcoholic beverage to a minor by Respondent in May, 1999. Staff recommends a 14 day suspension, or in lieu thereof, the payment of \$2,100 in civil penalty.

The commission or administrator may relax the provisions of the Code concerning suspension and cancellation and assess a sanction the commission or administrator finds just for reasons including if the Respondent established that the violation could not reasonably have been prevented by the exercise of due diligence, that the Respondent was entrapped or that his employee violated the Code without his knowledge. TEX. ALCO. BEV. CODE ANN. § 106.13 (c)(Vernon 2000).

In Respondent's case, there was no evidence of entrapment. The violation could have been prevented by the simple measure of asking Ms. Hollywood for identification. Her driver's license was stamped "provisional" across the front and showed her date of birth to be January 31, 1983. Respondent's employees were aware of the illegality of selling beer to minors. However, there was no showing that the violation occurred with the knowledge of the Respondent. Circumstances justifying a relaxation of the Code has been shown. Therefore, the ALJ recommends suspension of 10 days, or the payment of \$1,500 in civil penalty.

### III. CONCLUSION

On January 20, 2000, Respondent's employee sold alcoholic beverages to a minor. The employee's actions were criminally negligent and are attributable to Respondent. The ALJ recommends that a license suspension of ten days be imposed on Respondent. The ALJ further recommends that Respondent be given an opportunity to pay a civil penalty in the amount of \$1,500 in lieu of suspension before the sixth day after the TABC notifies Respondent of its order.

## PROPOSED FINDINGS OF FACT

1. Respondent, Jude Ugoeze Nwachukwu d/b/a Bud's Beer Barn, holds a Beer Retailer's Off-Premise License, number BF436676, issued by the Texas Alcoholic Beverage Commission, for the premises located at 1622 Market Center Boulevard, Dallas, Dallas County, Texas.
2. On November 20, 2000, a notice of hearing was issued to Respondent by Staff. This notice informed Respondent of the matters asserted against him and provided him with the time, place and nature of the hearing.
3. On December 1, 2000, a telephone prehearing conference was conducted by Brenda Coleman, Administrative Law Judge. Both parties appeared for the conference.
4. A hearing convened on December 6, 2000, in the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent appeared pro se. The record closed that day.
5. On January 20, 2000, Respondent's employee, Crystal Rayl, had seller-server training.
6. On January 20, 2000, Respondent's employee, Lillian Nwachukwu, sold a six-pack of Coors Lite Beer to a minor, Crystal Hollywood.
7. Ms. Hollywood was born on January 31, 1983, and was 16 years old on the date of the sale.
8. Ms. Hollywood was dressed in typical teenage attire and had a youthful appearance.
9. Contrary to Respondent's policies, Ms. Nwachukwu failed to ask Ms. Hollywood for identification before selling alcoholic beverages to her.
10. At the time of the sale, Ms. Hollywood had in her possession a driver's license which indicated that she was under 21 years of age.
11. With respect to circumstances surrounding her conduct on January 20, 2000, in selling alcoholic beverages to Ms. Hollywood, Ms. Nwachukwu should have been aware of a substantial and unjustifiable risk that Ms. Hollywood was a minor.
12. The risk that Ms. Hollywood was a minor was such that the failure to perceive it constituted a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from Ms. Nwachukwu's standpoint.
13. Respondent, through his employee, sold an alcoholic beverage to a minor.
14. Respondent did not know that Ms. Nwachukwu violated the Texas Alcoholic Beverage Code by selling alcoholic beverages to a minor on January 20, 2000.

15. Respondent did not directly or indirectly encourage Ms. Nwachukwu to sell alcoholic beverages to minors.
16. Respondent has a previous enforcement action.

### PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Ch. 5, §§ 6.01 and 106.13.
2. The State Office of Administrative Hearings has jurisdiction over 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. Ch. 2003 (Vernon 2000).
3. Respondent received adequate notice of the proceedings and hearing.
4. Based on Findings of Fact Nos. 6 - 13, Respondent's employee sold alcoholic beverages to a minor, with criminal negligence. TEX. ALCO. BEV. CODE ANN. §§ 1.04(16); 61.71(a)(5) and 106.13(a).
5. Based on Findings of Fact Nos. 6 - 13, and Conclusion of Law No. 4, Respondent's Beer Retailer's Off-Premises License, number BF436676, should be suspended for ten days.
6. Based on Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be given an opportunity to pay a civil penalty in the amount of \$1,500 in lieu of the suspension.

SIGNED this 16<sup>TH</sup> day of February, 2001.

  
BRENDA COLEMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS