

DOCKET NO. 590670

IN RE FOR BIG KIDS ONLY, INC.
D/B/A SAFARI SPORTS BAR
PERMIT NOS. MB268240, LB268241,
PE268242

NUECES COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-0864)

§
§
§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 9th day of May 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened and adjourned on March 1, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 13, 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 Permit Nos. MB268240, LB268241, and PE268242 are herein **SUSPENDED**.

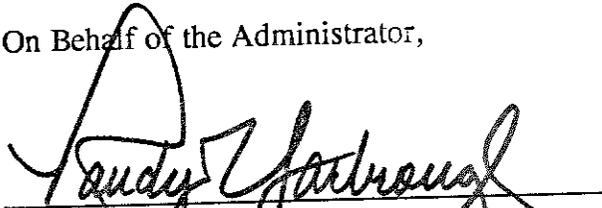
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,250.00** on or before the **9th day of August, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **fifteen (15) days, beginning at 12:01 A.M. on the 16th day of August, 2001**.

This Order will become final and enforceable on May 30, 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 9th day of May, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings
Corpus Christi, Texas
VIA FACSIMILE (361) 884-5427

For Big Kids Only, Inc.
d/b/a Safari Sports Bar
RESPONDENT
4528 Weber Rd.
Corpus Christi, Texas 78411
CERTIFIED MAIL NO. 7000 1530 0003 1927 4309

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Corpus Christi District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 590670

REGISTER NUMBER:

NAME: FOR BIG KIDS ONLY, INC.

TRADENAME: SAFARI SPORTS BAR

ADDRESS: 4528 Weber Rd., Corpus Christi, Texas 78411

DATE DUE: August 9, 2001

PERMITS OR LICENSES: MB268240, LB268241 & PE268242

AMOUNT OF PENALTY: \$2,250.00

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 9TH DAY OF AUGUST 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 BEVERAGE
COMMISSION

V.S.

FOR BIG KIDS ONLY, INC.,
D/B/A SAFARI SPORTS BAR,
PERMIT NOS. MB-268240, LB-268241,
PE-268242
NUECES COUNTY, TEXAS
(TABC CASE NO. 590670)

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Commission) brought this action against a licensee of the Commission for permitting the consumption of an alcoholic beverage during prohibited hours. The Staff recommended that the subject license and permit be suspended for 15 days and the licensee be allowed to pay \$150.00 per day in lieu of suspension. The licensee appeared at the hearing and represented herself. This Proposal for Decision recommends that Petitioner's action be sustained.

I. Procedural History

On August 31, 2000, the Staff of the Texas Alcoholic Beverage Commission (the Staff), notified For Big Kids Only, doing business as Safari Sports Bar (Respondent) that the Staff would seek disciplinary action against Respondent's permits because Respondent allegedly permitted consumption of alcoholic beverages during prohibited hours.

The hearing commenced on March 1, 2001, in the offices of the State Office of Administrative Hearings, 1225 Agnes Street, Corpus Christi, Texas before the undersigned Administrative Law Judge (ALJ). After the taking of evidence, the hearing was concluded. The record was left open until 5:00 p.m. on March 15, 2001, for the filing of closing arguments. Staff was represented by Christopher Burnett, Assistant Attorney General of Texas. Respondent was represented by the owner of the Safari Sports Bar, Sue Robinson.

II. Jurisdiction and Notice

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

III. Discussion

Petitioner called one witness, Texas Alcoholic Beverage Commission Agent Mark Menn. Petitioner offered one exhibit, a certified copy of Respondent's licenses, permits, and administrative history. This was admitted without objection (Petitioner's Ex. 1).

Respondent called two witnesses, Sue Robinson, the owner of the Safari Sports Bar, and Deric Van Meter, a bartender at the Safari Sports Bar. Respondent offered one exhibit, a diagram of the Safari Sports Bar. This was admitted without objection (Respondent's Ex. 1).

A. Petitioner's Witness

1. Mark Menn

Mark Menn is a Texas Alcoholic Beverage Commission agent. On July 29, 2000 at approximately 2:50 a.m., he drove past the Safari Sports Bar and saw several vehicles in the parking lot. Agent Menn stated that he thought this was an indication that a violation such as consuming alcohol on the premises during prohibited hours may be occurring.

Agent Menn approached the Safari Sports Bar and viewed inside. He looked through an area of the window between the window blind and the window frame. He said that he could clearly see the bar area which was approximately 10 to 15 feet from the window. The lighting in the bar was "typical bar lighting."

Agent Menn saw three people near the bar. One person was behind the bar doing chores and one was seated on a stool facing the bar. The person on the stool was near a video entertainment machine. Agent Menn did not testify as to the location of the third individual.

At 2:53 a.m., Agent Menn saw the person sitting at the bar (later identified as Eric Van Meter) put a 12-ounce Budweiser beer bottle to his mouth and take a drink. Upon observing this, Agent Menn knocked on the front entrance and announced his presence. Agent Menn testified that Mr. Van Meter is an employee of Respondent.

B. Respondent's Witnesses

1. Sue Robinson

Ms. Robinson is the owner of the Safari Sports Bar. She stated that she was not present at the bar on July 29, 2000. However, it is the general procedure for the bartenders to gather all the drinks at 2:15 a.m. and take the trash to the outside dumpster.

Ms. Robinson also said that there is a blind area behind the Megatouch entertainment game that cannot be seen from behind the bar. Because of this visibility problem, occasionally the

bartenders do not see the trash in this area.

2. Deric Van Meter

Mr. Van Meter was working as a bartender at the Safari Sports Bar on July 29, 2000. He said that the beer bottle was found behind the Megatouch entertainment game after the rest of the trash had been taken from the bar and placed outside. It was a partially consumed bottle from a customer. The bottle was not seen during the cleanup of the bar. Mr. Van Meter set the bottle in front of him on the bar. He said that he would have disposed of the beer bottle, but the trash had already been taken from the bar and placed outside. He also had a Dr. Pepper in a red glass in front of him.

Mr. Van Meter testified that when he heard the knock on the door, he threw away the bottle because he did not want anyone to think that he was consuming an alcoholic beverage after hours. Mr. Van Meter denies drinking from the bottle.

IV. Statutory Criteria

1. TEX. ALCO. BEV. CODE ANN § 11.61

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(2) the permittee violated a provision of this code or a rule of the commission;

2. TEX. ALCO. BEV. CODE ANN § 105.06

(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon and on any other day between 2:15 a.m. and 7 a.m.

V. Discussion

The testimony of Agent Menn and Deric Van Meter is conflicting, which requires a determination of the credibility of the witnesses. Agent Menn testified that he saw Mr. Van Meter raise the beer bottle to his mouth and take a drink. Mr. Van Meter testified that he did not consume alcohol from the bottle.

Mr. Van Meter testified that the beer bottle was found behind the Megatouch entertainment game after the trash had been taken from the bar. He said that he would have disposed of the bottle when it was discovered, but the trash had already been taken outside. However, when he heard Agent Menn knock on the door, Mr. Van Meter said that he threw the bottle away because he did not want anyone to think that he was consuming alcohol after hours.

There was no testimony pertaining to where Mr. Van Meter disposed of the beer bottle or why he could only dispose of it when he heard Agent Menn knock on the door. It seems to the court that Mr. Van Meter's actions after he heard the knock on the door indicate that he was consuming alcohol after hours. Based on this act and the testimony of Agent Menn, Petitioner has proven its case based upon a preponderance of the evidence standard.

PROPOSED FINDINGS OF FACT

1. For Big Kids Only, Inc., d/b/a Safari Sports Bar (Respondent) is the holder of Mixed Beverage Permit No. MB-268240, Mixed Beverage Late Hours Permit No. LB-268241, and Beverage Cartage Permit No. PE-268242.
2. The Texas Alcoholic Beverage Commission sent a notice of hearing to Respondent dated November 7, 2000.
3. The notice of hearing contained a statement of the time, place, and 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 matters asserted.
4. The hearing was convened on March 1, 2001, in the offices of the State Office of Administrative Hearings, 1225 Agnes Street, Corpus Christi, Texas. After the taking of evidence, the hearing was concluded. The record was left open until 5:00 p.m on March 15, 2001 for the filing of closing arguments. Staff was represented by Christopher Burnett, Assistant Attorney General of Texas. Respondent was represented by the owner of the Safari Sports Bar, Sue Robinson.
5. On July 29, 2000, Deric Van Meter was an employee of Respondent.
6. On July 29, 2000, Deric Van Meter consumed an alcoholic beverage on the licensed premises during prohibited hours.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§106.13 and 11.61(b)(2) (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction in 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. § 2001.
3. The Texas Alcoholic Beverage Commission provided adequate notice of the hearing pursuant to TEX. ALCO. BEV. CODE ANN. §11.63 and TEX. GOV'T CODE ANN. §2001.

4. Based upon Findings of Fact Nos. 5 and 6, Respondent's servant consumed alcohol on the licensed premises during prohibited hours in violation of TEX. ALCO. BEV. CODE ANN §§ 105.06, 11.61 (b) (2) (Vernon 2000).

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that the Respondent's Mixed Beverage Permit, Mixed Beverage Late Hours Permit, and Beverage Cartage Permit should be suspended for a period of 15 days, and Respondent should be allowed to pay a civil penalty in the amount of \$150.00 per day in lieu of suspension.

Signed this 13 day of April, 2001.



KYLE J. GROVES
Administrative Law Judge
State Office of Administrative Hearings