

DOCKET NO. 591510

IN RE LLTX, INC.	§	BEFORE THE
D/B/A VISTA STORES #4001	§	
PERMIT NO. BQ448374	§	
	§	TEXAS ALCOHOLIC
	§	
DENTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1289)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of April, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on January 19, 2001 and continued on February 21, 2001. The record was closed on February 21, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 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 No. BQ448374 is herein **SUSPENDED**.

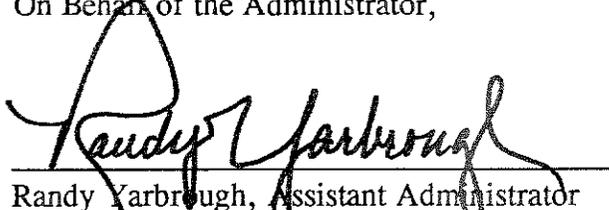
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **5th day of July, 2001**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of ten (10) days, beginning at **12:01 A.M.** on the **12th day of July, 2001**.

This Order will become final and enforceable on April 26, 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 5th day of April, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FACSIMILE (817) 377-3706

LLTX Inc.
d/b/a Vista Stores #4001
RESPONDENT
70 Crystal Lake Lane
The Woodlands, Texas 77380-1856
CERTIFIED MAIL NO. 7000 1530 0003 1927 2640

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 591510

REGISTER NUMBER:

NAME: LLTX INC.

TRADENAME: VISTA STORES #4001

ADDRESS: 1920 Carroll Boulevard, Denton, Texas 76201

DATE DUE: July 5, 2001

PERMITS OR LICENSES: BQ448374

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 5TH DAY OF JULY 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.

DOCKET NO. 458-01-1289

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

LLTX, INC.
D/B/A VISTA STORES #4001
DALLAS COUNTY, TEXAS
(TABC CASE NO. 591510)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought to suspend the permit held by LLTX, Inc. d/b/a Vista Stores #4001 (Respondent) for allegedly selling alcoholic beverages to a minor. The Staff requested a ten-day suspension of the permit, or that Respondent be penalized \$1,500.00 in lieu of suspension. The Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended.

I. PROCEDURAL HISTORY & JURISDICTION

On January 19, 2001, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission (TABC) Legal Division. Respondent appeared through its officer Avery Davidovich. The hearing was continued with the agreement of the parties until February 21, 2001. Respondent failed to appear at the second hearing. The record was closed on February 21, 2001. Because notice and jurisdiction were not contested issues, those matters are addressed only in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Applicable Law

The TABC may suspend a permit if the "permittee with criminal negligence sold . . . an alcoholic beverage to a minor." TEX. ALCO. BEV. CODE ANN. § 106.13 (a) (Vernon 2001) (the Code). A person acts with criminal negligence:

with respect to . . . the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that 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 standpoint.

§ 6.03(d), TEX. PEN. CODE ANN. (Vernon 2001).

B. Evidence

On August 4, 2000, Matthew S. Gotcher, an employee of Respondent, sold alcoholic beverages to Samantha Sheffield. The sale occurred at the permitted premises located at 1920 Carroll Boulevard, Denton, Denton County, Texas. Ms. Sheffield was 17 years old on August 4, 2000. Mr. Gotcher did not request identification from Ms. Sheffield. Ms. Sheffield testified that if Mr. Gotcher had requested identification she would have produced her provisional driver's license. A copy of Ms. Sheffield's driver's license was admitted in evidence as TABC Exhibit 6. The license clearly shows Ms. Sheffield's birthday was August 17, 1982.

Denton Police Officer Mike Taylor accompanied Ms. Sheffield to the licensed premises. He testified that Ms. Sheffield was under his direction and was to attempt to purchase alcoholic beverages from the licensed premises as a part of a "minor sting." Officer Taylor watched Ms. Sheffield enter the store. He saw Mr. Gotcher make the sale of alcoholic beverages, Seagram's wine coolers, to Ms. Sheffield. Ms. Sheffield exited the store and surrendered the alcoholic beverages to Officer Taylor. She described Mr. Gotcher to Officer Taylor. Officer Taylor then entered the store and confronted Mr. Gotcher. Officer Taylor confirmed that Mr. Gotcher had made the sale to Ms. Sheffield, and confirmed Mr. Gotcher's identity through his driver's license. Officer Taylor testified that Ms. Sheffield was small in stature, and her dress and appearance were those of a teenager. He believed no reasonable person would mistake Ms. Sheffield for a person of 21 years.

C. Analysis, Conclusion, and Recommendation

The sole issue is whether Mr. Gotcher acted with criminal negligence in making the sale to Ms. Sheffield. Ms. Sheffield's youthful appearance should have raised Mr. Gotcher's suspicions. Mr. Gotcher should have requested identification from Ms. Sheffield. His failure to request identification was a gross deviation from the care an ordinary store clerk would exercise when a person such as Ms. Sheffield attempted to purchase alcoholic beverages.

No evidence of the economic impact of the proposed suspension upon Respondent was admitted. No evidence of any aggravating or ameliorating circumstances concerning the violation was admitted. The Respondent's violation history was admitted as a part of TABC Exhibit 2. Respondent was originally issued its permit in July of 1999. Aside from the violation found in this proposal, the Respondent has committed no other violations of the Code.

The TABC's "standard penalty chart" allows a suspension of seven to 20 days for a first violation of § 106.03 of the Code. 16 TEX. ADMIN. CODE § 37.60. A 10-day suspension as recommended by the Staff is within the range and is reasonable considering the Respondent's violation history. The Code allows a civil penalty to be substituted for a suspension, and provides a penalty range of not less than \$150.00 nor more than \$25,000.00 for each day of a suspension. §§ 11.64(a) and 61.71(b)(5) of the Code. The Staff's recommendation of a \$1,500.00 penalty is the minimum penalty and is reasonable considering the Respondent's violation history.

The ALJ recommends the TABC find Mr. Gotcher acted with criminal negligence in the sale of alcoholic beverages to Ms. Sheffield. The TABC should order that Respondent's permit be suspended for 10 days, or that Respondent be penalized \$1,500.00 in lieu of suspension.

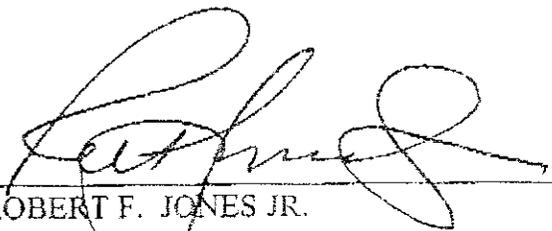
IV. FINDINGS OF FACT

1. By letter dated October 19, 2000, which was sent to LLTX, Inc. d/b/a Vista Stores #4001 (Respondent), the Staff of the Texas Alcoholic Beverage Commission (Staff) alleged that Respondent, on August 4, 2000, with criminal negligence sold an alcoholic beverage to a minor.
2. On December 27, 2000, the Staff issued a notice of hearing notifying all parties that a hearing would be held on the Staff's allegation and informing the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
3. The hearing convened held on January 19, 2001, and February 21, 2001, in Dallas, Dallas County, Texas, before Robert F. Jones Jr., an administrative law judge with State Office of Administrative Hearings (SOAH). The Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission (TABC) Legal Division. Respondent appeared on January 19, 2001, through its officer Avery Davidovich. The hearing was continued with the agreement of the parties until February 21, 2001. Respondent failed to appear at the second hearing. The record was closed on February 21, 2001.
4. On August 4, 2000, Matthew S. Gotcher, an employee of Respondent, sold alcoholic beverages to Samantha Sheffield at the permitted premises located at 1920 Carroll Boulevard, Denton, Denton County, Texas.
5. Ms. Sheffield was 17 years old on August 4, 2000.
6. Ms. Sheffield had a youthful appearance as reflected by her facial features, stature, and apparel.
7. Mr. Gotcher failed to request identification from Ms. Sheffield.
8. A reasonable person would not mistake Ms. Sheffield for a person of 21 years.
9. No evidence of the economic impact of the proposed suspension upon Respondent was admitted.
10. No evidence of any aggravating or ameliorating circumstances concerning the violation was admitted.
11. Respondent has committed no other violations of the Code since Respondent was originally issued its permit in July of 1999.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 106 of the Code.
2. SOAH has jurisdiction over all matters relating to the conduct of 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 2001).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2001).
4. Based on the foregoing findings, Mr. Gotcher deviated from the standard of care that an ordinary person would exercise under all the circumstances as viewed from Mr. Gotcher's standpoint. § 6.03(d), TEX. PEN. CODE ANN. (Vernon 2001).
5. Based on the foregoing findings and conclusions, Mr. Gotcher acted with criminal negligence in making the sale of alcohol to Ms. Sheffield. § 106.13 (a) of the Code.
6. Based on the foregoing findings and conclusions, Respondent's permit should be suspended for ten days, or Respondent should be penalized \$1,500.00 in lieu of suspension. See §§ 11.64(a), 61.71(b)(5) of the Code; 16 TEX. ADMIN. CODE § 37.60.

SIGNED March 13, 2001.


ROBERT F. JONES JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS