

**DOCKET NO. 591983**

IN RE RICHARD NEAL LOUGHRIDGE	§	BEFORE THE
D/B/A PAPA'S ICE HOUSE KEG &	§	
PARTY SUPPLIES	§	
PERMIT NO. BG-261149 & BL-295792	§	TEXAS ALCOHOLIC
	§	
MONTGOMERY COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1478)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 19th day of April, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on January 17, 2002, 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 March 19, 2002. 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. Respondent filed Special Exceptions on April 10, 2002.

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/License Nos. BG-261149 & BL-295792 are hereby **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$2,250.00 on or before the 19th day of June, 2002, 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 26th day of June, 2002.

This Order will become final and enforceable on May 10, 2002, 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 19th day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Rex A. Shaver  
Administrative Law Judge  
State Office of Administrative Hearings, Houston  
*VIA FACSIMILE: (713) 812-1001*

Clyde Burleson  
**ATTORNEY FOR RESPONDENT**  
11767 Katy Freeway, Suite 740  
Houston, Texas 77079  
*VIA FACSIMILE: (281) 597-8284*

Richard Neal Loughridge  
d/b/a Papa's Ice House Keg & Party Supplies  
**RESPONDENT**  
24703 IH 45 North  
Spring, Texas 77383  
*CERTIFIED MAIL NO. 7000 1530 0003 1929 2389*

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
Texas Alcoholic Beverage Commission  
Legal Division

Beaumont District Office  
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 591983

REGISTER NUMBER:

NAME: 3901 Entertainment Corp.

TRADENAME: Babes by the Bay

ADDRESS: 3901 Padre Boulevard, South Padre Island, Texas

DATE DUE: June 19, 2002

PERMITS OR LICENSES: BG-261149 & BL-295792

AMOUNT OF PENALTY: \$2,250.00

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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 19TH DAY OF JUNE, 2002, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

**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.



The Respondent is the holder of Wine and Beer Retailer's Permit BG-261149 and Retail Dealer's On-Premise Late Hours License BL-295792 and held that permit and license on the date of the alleged violation. On January 22, 2001, the Notice of Hearing in this matter was mailed to the Respondent at 24703 IH-45 North, Spring, Texas 77383. Respondent received the notice pursuant to TEX. GOV'T CODE ANN. Chapter 2001.

### III. REASONS FOR DECISION

#### A. Legal Standard

The Commission may suspend or cancel a permit or license if a Respondent or licensee is found to have violated a provision of the Code or a rule adopted by the Commission. TEX. ALCO. BEV.CODE ANN. §§6.01(b), 11.61(b)(2), and 61.71(a)(1)

Section 1.08 of the Code provides: CRIMINAL NEGLIGENCE DEFINED. For purposes of this code, a person acts with criminal negligence if the person acts with a mental state that would constitute criminal negligence under Chapter 6, Penal Code, if the act were an offense.

Chapter 6, Penal Code Section 6.03 (d) provides DEFINITIONS OF CULPABLE MENTAL STATES A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and justifiable 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 the circumstances as viewed from the actor's standpoint.

Section 106.13 (a) of the Code provides in relevant part:

...the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that a licensee or Permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor. .

#### B. Evidence

##### I. TABC's Evidence

TABC Exhibit 1: Affidavit from Licensing Department Director for the TABC.

TABC Exhibit 2: A photograph of Brian Rhodes.

TABC Exhibit 3: A photograph of Greg Hardy

TABC Exhibit 4: Photocopy of a Master Card charge receipt.

TABC Exhibit 5: Receipt from Papa's Ice House.

TABC Exhibit 6: Photocopy of a check on the account of Brian Rhodes payable to Papa's Ice House.

TABC Exhibit 7: Photocopy of the Texas Driver's License of Brian Rhodes.

TABC Exhibit 8: Written statement by Greg Hardy

TABC Exhibit 9: Written statement by Brian Rhodes.

Van Kasmiroski testified that on the evening of April 21 2000 and early morning of April 22, 2000 he was an enforcement agent of the Texas Alcoholic Beverage Commission. and that he was called to meet other agents at 14444 Stubner-Airline in Houston, Harris County, Texas. Upon arrival he was advised that the Precinct 4 Constable Deputies had been called to an assault at that location. They discovered that a "keg party" was being held at that address. The deputies reported issuing citations for Minor in Possession of alcoholic beverages. The deputies also advised the witness that there were three kegs of beer on the property.

In an attempt to learn who had purchased the kegs of beer the witness spoke with Brian Rhodes, whose Texas Driver's license gave his date of birth as January 24, 1981. Mr. Rhodes said that on that day he had gone to Papa's Ice House in Montgomery County and purchased the three kegs of beer and made a deposit for return of the kegs. He said he had been accompanied by his friend Craig Hardy. The witness inquired if either of them had used a false or fake identification when making the purchase. Both Mr. Rhodes and Mr. Hardy denied using a false or fake identification for the purchase and allowed the witness to search their wallets. The witness found no false or fake identification. The witness asked Mr. Rhodes if he had any proof of the transaction. Mr. Rhodes responded by showing him a credit card receipt for \$245 charged to his Visa card for purchases at Papa's Ice House.

The witness also spoke with Craig Hardy who confirmed that he had been with Mr. Rhodes when he went to Papa's Ice House. He told the witness that he had filled out the keg deposit paper work and gave the witness a sales receipt from Papa's Ice House dated April 21, 2000, and showing a sale of one keg of Bud-Light beer, one keg of Miller beer and one Keg of Shiner Bock beer to Craig Hardy.

Both Mr. Rhodes and Mr. Hardy went to the Houston District Office of the TABC on the morning of April 22, 2000 and were photographed.. The photographs were admitted into evidence. The witness testified that Brian Rhodes and Craig Hardy were both clean shaven on the night of April 21, 2000, as they were on the day of the photographs.

During his interview with Mr. Hardy and Mr. Rhodes the Mr. Kasmiroski was given a description of the bartender who had sold the kegs to Mr. Rhodes. He then contacted Papa's Ice House by telephone and obtained the name of the female bartender "Josey" who was allegedly the only person working that night in the area where kegs could be purchased. Later that week, the

witness went to the Papa's Ice House and spoke with one of the owner's sons who provided him with a work schedule indicating that Emily Joset Mendel was working at the time of the alleged sale to the minor. The witness approached Ms. Mendel and advised her that he believed she may have sold alcohol to a minor. He then determined that Ms. Mendel did not have a current TABC seller certification.

On cross examination, Mr. Kasmiroski stated that he has received field training and experience in the conduct of minor sting operations. He agreed that the guidelines established by the Commission for the operation of a minor sting operation were intended to maximize the opportunity for a conviction if the matter had to go to court. He agreed that at the time of the operation the minor should not be over the age of eighteen, should not be large in stature, or have a beard or mustache and should have not previously purchased alcohol from the subject of the sting. The guidelines also provide that the purchase not be made at "rush hour" for the seller. In the opinion of the Mr. Kasmiroski, neither Mr. Rhodes nor Mr. Hardy were suitable for use in a minor sting because of their ages and clothing with names of colleges printed on them.

## **2. Respondent's Evidence**

**Respondent Exhibit 1 : Minor Sting Guidelines for Law Enforcement last updated 12-04-2001.**

Mr. Richard Neal Loughridge testified that he is the Permittee of Papa's Ice House and that he has been in the alcohol sales business for over 32 years. He stated that during the last 3 years he has had no violations of the Code and that his violation history contains no sales to minors. He said it was his policy that all employees had to be TABC certified but that the certificate of the employee he referred to as "Josey" had expired about a month before this sale. The policy and instruction to employees is to always check identification even if the customer looks 25 or 30 years of age. Any sale without checking for identification would have been against his policy. Mr. Loughridge explained that with any sale of a keg he requires that the purchaser's identification be checked and that accepting one identification for proof of age and another identification with a different name for a check would not be allowed. On cross examination Mr. Loughridge stated that he has a meeting with his employees once a month to discuss and reinforce the policy concerning sales of alcohol. He denied any knowledge that this sale had taken place or if his employee asked for any identification from the buyer

## **IV. ANALYSIS AND RECOMMENDATION**

### **A. Analysis**

In the charge against the Respondent set out in the Notice of Hearing the Staff alleged that on or about April 21, 2000, Permittee, Richard Neal Loughridge, d/b/a Papa's Ice House Keg and Party Supplies, its agent, servant or employee with criminal negligence sold an alcoholic beverage to a minor.

That the sale of three (3) kegs of beer to a minor had occurred was proven by credit card receipts, a canceled check, a sales receipt from Papa's Ice House and the Texas Driver's License of Brian Rhodes. The Respondent, while not admitting the sale, stated that the real fact at issue was if the sale amounted to criminal negligence as set out in Chapter 6, Penal Code Section 6.03 (d) which provides that a person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and justifiable 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 the circumstances as viewed from the actor's standpoint"* (emphasis added).

The circumstances surrounding this sale were such that the failure to confirm that Mr. Rhodes was not yet 21 years of age and subsequently refuse to sell alcohol to him was a gross deviation of the standard of care that an ordinary person would have exercised under the circumstances as viewed from the actor's standpoint. Those circumstances included the facts that Brian Rhodes did not appear to be over the age of 21; the purchase was of an amount of beer far in excess of an amount that could be consumed one person; and Brian Rhodes made that purchase with a credit card bearing his name and placed a security deposit by way of a personal check also bearing his name.

Emily Joset Mendel should have been aware that there was a substantial and justifiable risk that her failure to confirm the age of Brian Rhodes might result in the sale of alcohol to a minor. In this case there was not just a single alcoholic beverage but three kegs of beer. The apparent age of the purchaser and the large volume of the purchase should have resulted in even greater caution on the part of Ms. Mendel.

It was the Respondent's contention that the fact that the minor in this case would not have been eligible to act the part of the purchaser in a minor sting operation indicates that it was not grossly negligent to sell to him without first confirming his age. The fact that Mr. Rhodes was 19 years old and not "less than 18 years old" as set out in the Minor Sting Guidelines does not make the failure to check his identification any less negligent. The photographs of Mr. Hardy and Mr. Rhodes show young men of whom proof of age would be requested by any reasonably cautious seller in the same or similar circumstances.

TABC may suspend or cancel a permit or license if a Respondent or licensee is found to have violated a provision of the Code or a rule adopted by TABC. TEX. ALCO. BEV. CODE ANN. §§6.01(b), 11.61(b)(2), and 61.71(a)(1). The preponderance of the evidence indicates the Respondent violated Section 106.13(a) of the Code.

The Staff made no recommendation as to length of suspension or payment of a civil penalty in lieu of suspension. The Staff and Respondent agreed that there were no previous sales of alcohol to minors by the Respondent.

## B. Recommendation

The ALJ recommends that the Respondent be assessed a 15 day suspension of its permit or, in lieu of the suspension be permitted to pay a penalty of \$150 per day for a total of \$2,250.

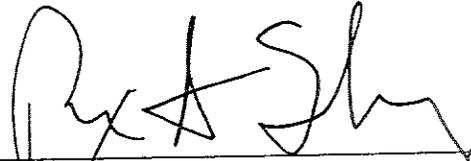
## V. PROPOSED FINDINGS OF FACT

1. Richard Neil Loughridge d/b/a Papa's Ice House Keg & Party Supplies, (Respondent) holds Wine and Beer Retailer's Permit, BG 261149 and Retail Dealer's On-Premise Late Hours License, BL-295792, issued by the Texas Alcoholic Beverage Commission.
2. On April 21, 2000, Brian Rhodes, who was born January 24, 1981, was nineteen years of age.
3. On April 21, 2000, Emily Joset Mendel was an agent, servant or employee of the Respondent.
4. On April 21, 2000, Emily Joset Mendel accepted payment from Brian Rhodes for one keg of Bud-Lite beer, one keg of Miller beer and one keg of Shiner Bock beer.
5. Brian Rhodes made payment to Respondent for these three kegs of beer by charging \$245.00 to his Visa credit card..
6. Brian Rhodes gave his check number 514 from Sterling Bank in the amount of \$200.00 to Respondent as deposit on the three kegs of beer.
7. The conduct of Emily Joset Mendel was a gross deviation from the standard of care that an ordinary person would exercise under the circumstances as viewed from her stand point.
8. The Respondent or its agent received the notice of hearing.
9. The Staff of the Texas Alcoholic Beverage commission made no recommendation as to length of suspension of Respondent's Permit.
10. The hearing to consider the allegation convened on January 17, 2002 pursuant to the Notice of Hearing, in the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Harris County, Texas. The Staff was represented by Mr. Dewey Brackin, of the TABC Legal Section. The Respondent was represented by its attorney, Mr. Clyde Burleson.

## VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV CODE ANN. §§6.01(b), 11.61(b)(2).and 61.71.
2. The State Office of Administrative Hearings 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. §§2003.021(b) and 2003.042(5).
3. The Respondent received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. §2001.051.
4. Based on Findings of Fact Nos. 1-7, the Respondent, its agent, servant or employee did, with criminal negligence, sell an alcoholic beverage to a minor in violation of section 106.13 (a) TEX. ALCO. BEV CODE ANN.
5. Based on the foregoing Findings of Fact and the Conclusions of Law, TABC is warranted in suspending the Respondent's permit for a period of 15 days, or in lieu of such suspension, be permitted to pay a monetary penalty of \$ 2,250.00.TEX. ALCO. BEV CODE ANN. §§6.01(b), 11.61(b)(2).and 61.71.

Signed this 19<sup>th</sup> day of March, 2002.



REX A. SHAVER  
Administrative Law Judge  
State Office of Administrative Hearings