

DOCKET NO. 592458

IN RE JUNGLE, INC.	§	BEFORE THE
D/B/A HOME	§	
PERMIT NOS. MB217880, LB405066, & PE404911	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1964)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of August 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on March 8, 2001, and then again on April 26, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 27, 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. MB217880, LB405066 and PE404911 are herein **SUSPENDED**.

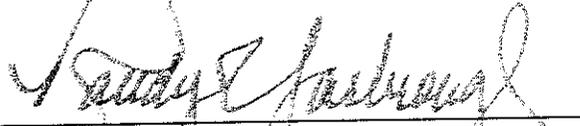
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$9,000.00** on or before the **15th** day of **November, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **sixty (60) days, beginning at 12:01 A.M. on the 22nd day of November, 2001.**

This Order will become final and enforceable on September 12, 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 22nd day of August, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

Sandra Reynolds
ATTORNEY FOR RESPONDENT
5630 Yale Blvd.
Dallas, Texas 75206-5035
CERTIFIED MAIL NO. 7000 1530 0002 0413 3407

Jungle Inc.
d/b/a Home
RESPONDENT
5627 Dyer St.
Dallas, Texas 75206
CERTIFIED MAIL NO. 7000 1530 0002 0413 3414

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 592458

REGISTER NUMBER:

NAME: JUNGLE, INC.

TRADENAME: HOME

ADDRESS: 5627 Dyer Street, Dallas, Dallas County, Texas 75206

DATE DUE: November 15, 2001

PERMITS OR LICENSES: MB217880, LB2405066, & PE404911

AMOUNT OF PENALTY: \$9,000

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 15TH DAY OF NOVEMBER 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. 458-01-1964

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
v.	§	
	§	
JUNGLE, INC., D/B/A HOME	§	OF
PERMIT NOS. MB-217880, LB-405066	§	
& PE-404911	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 592458)	§	
Respondent	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this disciplinary action against Jungle, Inc., d/b/a Home (Respondent), alleging that on or about October 6, 2000, Respondent, its agent, servant, or employee, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on Respondent's premises. The Administrative Law Judge (ALJ) finds that Staff has proven the allegations and recommends that Respondent's permits be suspended for 60 days or that Respondent pay a civil penalty of \$9,000 in lieu of suspension.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On March 8 and April 26, 2001, a hearing was held before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent was represented by Sandra Reynolds and Spencer Greeves, attorneys. The record remained open for receipt of post-hearing briefs, and was closed on May 29, 2001.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13(a) and (b) (Vernon 1995 and Supp. 2000), the Texas Alcoholic Beverage Commission (TABC) may cancel or suspend a permittee's permits for not more than three months where the permittee, with criminal negligence, permits a minor to violate sections 106.04 or 106.05 of the alcoholic beverage code on its licensed premises, and then permits a second violation within 36 months of the first violation.

TEX. ALCO. BEV. CODE ANN. § 106.04(a) (Vernon 1995 and Supp. 2000) states that a minor commits an offense if the minor consumes an alcoholic beverage.¹

TEX. ALCO. BEV. CODE ANN. § 106.05(a) (Vernon 1995 and Supp. 2000) states that, except in certain enumerated exceptions not applicable herein, a minor commits an offense if the minor possesses an alcoholic beverage.

Both consumption and possession of an alcoholic beverage by a minor are denominated as Class C misdemeanors in TEX. ALCO. BEV. CODE ANN. § 106.071(b) (Vernon 1995 and Supp. 2000).

Pursuant to TEX. ALCO. BEV. CODE ANN. § 1.04(11) (Vernon 1995 and Supp. 2000), a “permittee” is defined as the person who is the holder of the permit, or an agent, servant or employee of that person.

III. EVIDENCE

1. Staff's Evidence and Contentions

a. TABC Agent Joe Cavazos

On the evening of October 6, 2000, TABC agents Joe Cavazos and Beth Gray were present in Respondent's establishment. Agent Cavazos observed a young man standing at the bar holding a bottle of Coors Light beer. The young man was wearing typical teenage attire, had acne, and in agent Cavazos' opinion was youthful in appearance. The young man was leaning up against the bar in view of the bartender, Adam Jones, who, according to agent Cavazos, was standing approximately one or two feet away on the other side of the bar.

Agent Cavazos observed the young man take a drink from the Coors Light bottle, and then made contact with him. The young man produced a South Carolina driver's license showing he was a minor, with his date of birth being February 23, 1981. Printed at the top of his license was the statement, “UNDER 21 until 02-23-2002” (emphasis in the original). The minor informed agent Cavazos that he had obtained the Coors Light from the bartender, and pointed to Adam Jones.

Agent Cavazos confiscated the Coors Light bottle, determined from its label and the odor of its contents that the bottle contained beer, and destroyed it. He also requested that the minor remain on the premises with agent Gray. However, while agent Gray was investigating other apparent minors on the premises, the minor left the scene, leaving his driver's license behind in the agents'

¹Although under TEX. ALCO. BEV. CODE ANN. § 106.4(b) (Vernon 1995 and Supp. 2000) it is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse, this defense was not raised in the instant case.

possession.

b. TABC Agent Beth Gray

Agent Gray testified that Respondent's establishment was very crowded that evening, that approximately 250 people were present, and that in her opinion Respondent did not have sufficient staff on duty to adequately deal with a crowd that size.² Five or six public intoxication citations were issued by agents Gray and Cavazos that evening, and three or four citations were written for minors in possession of alcohol.

c. Staff Contentions

Staff contends that Respondent failed to meet its statutory and regulatory obligations by permitting, with criminal negligence, the minor to possess and consume the Coors Light beer on Respondent's premises

2. Respondent's Evidence and Contentions

Shannon McKinnon and Adam Jones are co-owners of Respondent establishment. Mr. McKinnon owns 86 percent of the establishment, Mr. Jones owns 14 percent.

a. Shannon McKinnon

Mr. McKinnon testified that persons over the age of 18 may enter Respondent's facility, but only those 21 years of age or older are given a wristband to wear on their right wrists, which authorizes them to possess or consume alcoholic beverages on the premises. Individuals without wristbands are not allowed to purchase, possess, or consume alcoholic beverages on the premises. Mr. McKinnon also testified that, given the layout of the bar and agent Cavazos' description of where he observed the minor standing vis-a-vis Mr. Jones the bartender, the minor must have been standing further away from Mr. Jones than one or two feet as estimated by agent Cavazos.

b. Willard Brinegan

Willard Brinegan testified he was working as a bartender on the evening in question, that it was very busy that night, and that customers were lined up three and four deep at the bar. He estimated that, with the bar approximately four feet wide and the customers crowding around to a depth of five or six feet, the minor must have been further away from Mr. Jones than just one or two feet as estimated by agent Cavazos. He also testified that the wristband method was used to differentiate minors from those 21 years of age and older, and that he did not see Mr. Jones serve

²Agent Gray testified there were four employees working when she was in the establishment. Mr. McKinnon, a co-owner of Respondent establishment, testified that five employees were present: three bartenders, one person at the door, and one sweeping the floor.

alcoholic beverages to any minors that evening.

c. Tanya Copeland

Tanya Copeland testified that she was working as a bartender that night also, and that the establishment was crowded, with approximately 250-300 people present. She testified that the wristband method was in use that evening to prevent minors from obtaining alcoholic beverages and that she also did not see Mr. Jones serve alcoholic beverages to minors that evening.

d. Respondent's Contentions

Respondent contends that, based on the evidence at the hearing, (1) the TABC agents failed to show that the person observed by agent Cavazos holding and drinking the Coors Light bottle was in fact a minor; that (2) even if that person was a minor, the TABC agents failed to sufficiently prove that the beverage he was holding and drinking was an alcoholic beverage; that (3) even if Respondent's bartender permitted a minor to possess or consume a beer on Respondent's premises the evidence does not show that the bartender acted with criminal negligence in doing so; that (4) even if Respondent's bartender permitted a minor to possess or consume a beer on the premises the employees at Respondent's establishment are TABC certified, and Respondent may therefore rely upon the "safe harbor" provision of TEX. ALCO. BEV. CODE ANN. § 106.14(a) (Vernon 1995 and Supp. 2000) to prevent it from being sanctioned by TABC; and that (5) even if Respondent is subject to discipline, the penalty requested by Staff is inappropriate, in that Staff requested that Respondent's permits be suspended without giving Respondent the opportunity to pay a civil penalty in lieu of a suspension.

IV. ANALYSIS

1. Minor

The young man in question admitted to agent Cavazos that he was a minor,³ and his driver's license confirmed that he was a minor. Respondent presented no evidence to the contrary. The evidence supports Staff's assertion that the young man that agent Cavazos saw holding and consuming a bottle of Coors Light beer in Respondent's establishment was a minor.

³ Agent Cavazos' testified that the young man he approached admitted to being a minor. Respondent objected to this testimony as hearsay. However, the declarant's admission to a TABC agent that he was a minor, after being observed drinking from a bottle of Coors Light beer, constitutes a statement against the declarant's interest, in that such possession or consumption is punishable as a Class C misdemeanor under TEX. ALCO. BEV. CODE ANN. § 106.071(b) (Vernon 1995 and Supp. 2000). The minor's admission, therefore, "tended to subject him to civil or criminal liability," thereby making his admission an exception to the rule against hearsay. Tex. R. Evid. 803(24).

2. Alcoholic Beverage

The agent's undisputed testimony is that the bottle in the possession of the minor was labeled Coors Light beer and that its contents smelled like beer. Respondent presented no evidence to the contrary. Accordingly, the evidence supports Staff's assertion that the contents of the Coors Light beer bottle was, in fact, Coors Light beer. Coors Light beer is an alcoholic beverage as defined in TEX. ALCO. BEV. CODE ANN. § 1.04(1). See Dixon v. State, 262 S.W.2d 488 (Tex. Cr. App. 1953).

3. Criminal Negligence

Criminal negligence is defined in § 6.03 of the Penal Code as 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."⁴

The "actor's standpoint," in the instant case, is Respondent's. Respondent knows, or certainly should know, that minors attempt to purchase alcoholic beverages from licensed premises. Respondent also knows, or should know, that as a permit holder in a highly regulated industry Respondent has an affirmative obligation to not sell alcoholic beverages to minors. It is incumbent upon the holders of such permits to take the necessary steps, and to make the necessary observations, to ensure that alcoholic beverages are not sold to minors. This is all the more important when a large number of patrons, as was present in this case, is coupled with a relatively small number of working personnel. Such a situation increases the risk that minors may attempt to obtain or consume alcoholic beverages.

Although there is some dispute concerning exactly how far away the minor was standing from Respondent's bartender when observed by agent Cavazos, the evidence nonetheless shows that, in the instant case, Respondent's bartender observed, or could have observed, a youthful-looking 19-year-old, wearing clothing consistent with that worn by young people, possessing and consuming a beer on the premises. By allowing such possession and consumption on the premises Respondent's bartender exhibited criminal negligence.

⁴Tex. Pen. Code Ann. § 6.03(d) (Vernon 2000) states as follows:

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 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 standpoint.

In addition, pursuant to Tex. Pen. Code Ann. § 6.02(d) (Vernon 2000), "criminal negligence" constitutes the lowest degree of culpable mental state of those listed in this section (i.e. intentional, knowing, reckless, and criminal negligence.)

4. Employee's Action Attributable to the Employer

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.14(a) (Vernon 1995 and Supp. 2000), the commission has provided a "safe harbor" from administrative discipline for employers who require their employees to attend commission-approved seller training programs. See Pena v. Neal, 901 S.W.2d 663, 667 (Tex.App.-- San Antonio 1995, writ denied). The intent of this statute is to protect employers from the actions of their employees where the employers have taken steps to ensure that their employees are adequately trained regarding sales to minors.

This is an affirmative defense and as such must be affirmatively set forth in the party's pleadings. Tex. R. Civ. P. 94. Respondent filed a Pre-Hearing Statement in this matter on March 8, 2001. However, Respondent did not assert this affirmative defense in its Pre-Hearing Statement, or in any other filing made prior to the hearing.

By the same token, the "safe harbor" defense was not tried by consent of the parties, either expressly or impliedly. Although testimony in the record shows that Respondent's employees are commission certified, Respondent did not raise this as an affirmative defense until closing argument, at which time Petitioner objected that the argument was inappropriate and beyond the pleadings. The passing references in the record to the employees' certification does not constitute the trial of the safe harbor defense by either express or implied consent of the parties. Tex. R. Civ. P. 67. In addition, the ALJ was not requested to amend the parties' pleadings during the course of the hearing to incorporate this defense. Tex. R. Civ. P. 66. Accordingly, Respondent has failed to properly plead this affirmative defense and may not now assert it as a means to shelter itself from discipline.

5. Proposed Discipline

Finally, Respondent argues that Petitioner's request to suspend Respondent's permits without the opportunity for Respondent to pay a civil penalty is extreme and unauthorized by the Texas Alcoholic Beverage Code.

Permitting a minor to possess or consume alcoholic beverages on Respondent's premises constitutes a health, safety and welfare violation. 16 TEX. ADMIN. CODE § 37.60(a). Pursuant to 16 TEX. ADMIN. CODE § 37.60(c), repetition of a health, safety and welfare violation within 36 months of the first violation justifies an increased penalty for a second violation.

This violation in the instant case constitutes Respondent's second health, safety and welfare violation within the last 36 months.⁵ Petitioner is therefore authorized to assess a higher level

⁵On April 12, 1999, Respondent entered into an Agreement and Waiver of Hearing with Petitioner whereby Respondent agreed that its permits would be suspended or that it would pay a civil penalty of \$6,000 for permitting a minor to possess or consume an alcoholic beverage on its premises on February 6, 1999 (Pet. Ex. No. 2). The agreement was signed by an officer of Respondent. On April 19, 1999, Petitioner issued an Order stating that Respondent agreed that a violation of the law had occurred and that Respondent was subject to a 20 day suspension or a civil penalty of \$6,000 (Pet. Ex. No. 2). That violation occurred

penalty for the second violation of permitting a minor to possess or consume an alcoholic beverage on its premises.

The suggested suspension range for a second offense of permitting a minor to possess or consume an alcoholic beverage on the permittee's premises is ten to 90 days. TEX. ALCO. BEV. CODE ANN. § 106.13(b) (Vernon 1995 and Supp. 2000); 16 TEX. ADMIN. CODE § 37.60(c). Staff's request to suspend Respondent's permits for 60 days is within this range, and is therefore appropriate.

Respondent argues that it should be given the option of paying a civil penalty in lieu of a suspension. Although a permittee may not be given the opportunity to pay a civil penalty for violating certain specific code provisions, none of those particular violations were alleged herein. TEX. ALCO. BEV. CODE ANN. § 11.64(a) (Vernon 1995 and Supp. 2000); 16 TEX. ADMIN. CODE § 37.61(a). Instead, under TEX. ALCO. BEV. CODE ANN. § 11.64(a) (Vernon 1995 and Supp. 2000), "[w]hen the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator *shall* give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended..." (emphasis added).

The parties were requested to file post-hearing briefs addressing whether Petitioner had the authority to refuse to offer Respondent the opportunity to pay a civil penalty in lieu of a suspension. Petitioner cited 16 TEX. ADMIN. CODE § 37.60(g) in its brief as the rule that addresses when suspensions may be imposed without the opportunity to pay a civil penalty. However, this regulation states, in its entirety:

(g) The standard penalty chart does not bind a hearing examiner, the administrator, or his designee as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

This regulation, by its very language, deals solely with the applicability of suggested

within 36 months of the present violation.

However, Respondent stated in its post-hearing brief that after this agreement was made, "... Respondent's plea was later changed. Since that time, Respondent has never received a notice of a hearing, has never been assessed or paid a fine, and is under the belief that the case has been dismissed." (Respondent's Post Trial Brief, at 8).

Although Respondent may have changed its plea, and may have never paid a fine, the record nonetheless shows that an Agreement and Waiver of Hearing was signed by an officer of Respondent on April 12, 1999, and that an Order was issued by Petitioner on April 19, 1999, assessing the suspension or civil penalty. No evidence was presented at the hearing showing that the Order was ever rescinded, annulled, revoked, repealed, or in any way altered or changed, or that Respondent's agreement to accept a penalty for violating the law was ever withdrawn. Accordingly, the evidence shows that Respondent has been found, within the last 36 months, to have permitted a minor to possess or consume alcoholic beverages on its premises, and that the present offense, therefore, constitutes a repeat violation.

suspension times set forth in the standard penalty chart. The standard penalty chart, however, does not address civil penalties, and says nothing at all concerning when a civil penalty may be assessed in lieu of a suspension. This regulation merely states that the length of suspensions set forth in that regulation are not binding, but does not address the *statutory* mandate, set forth in section 11.64 of the Texas Alcoholic Beverage Code, that requires that permittees, like Respondent, be given the opportunity to pay a civil penalty in lieu of a suspension.

Petitioner has not shown that the regulation cited in its brief prevents permittees, like Respondent, from paying a civil penalty in lieu of a suspension, and has not shown, therefore, that Respondent should, in the instant case, be precluded from paying a civil penalty in lieu of a suspension.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64(a) (Vernon 1995 and Supp. 2000), a civil penalty may not be less than \$150 or more than \$25,000 for each day the permits were to have been suspended. The amount of the civil penalty recommended below reflects the fact that only one actual violation of permitting a minor to possess or consume an alcoholic beverage on Respondent's premises was proven at the hearing.

V. RECOMMENDATION

The ALJ recommends that Respondent's permits be suspended for 60 days, or that a civil penalty of \$9,000 (\$150 for each of the 60 days the permits were to have been suspended) be assessed by Petitioner in lieu of the suspension.

FINDINGS OF FACT

1. All parties received notice of the hearing, all parties appeared at the hearing, and no objection was made to jurisdiction, venue, or notice.
2. Respondent, Jungle, Inc., d/b/a Home, 5627 Dyer Street, Dallas, Dallas County, Texas, is the holder of Mixed Beverage Permit MB-217880 issued by the commission on November 1, 1990, and Mixed Beverage Late Hours Permit LB-405066 and Beverage Cartage Permit PE-404911 issued by the commission on December 2, 1996.
3. On April 12, 1999, Respondent entered into an Agreement and Waiver of Hearing with Petitioner whereby Respondent agreed that its permits would be suspended or that it would pay a civil penalty of \$6,000 for permitting a minor to possess or consume an alcoholic beverage on its premises on February 6, 1999. On April 19, 1999, Petitioner issued an Order stating that Respondent agreed that a violation of the law had occurred and that Respondent was subject to a 20 day suspension or a civil penalty of \$6,000.
4. On the evening of October 6, 2000, TABC agents Joe Cavazos and Beth Gray were present in Respondent's establishment.

5. Adam Jones, a co-owner of the Respondent establishment, was working as a bartender.
6. A minor with a youthful appearance and wearing typical teenage attire was standing at the bar in the establishment holding a bottle of Coors Light beer.
7. The minor was standing within view of Respondent's bartender, Adam Jones, while holding the bottle of Coors Light beer.
8. The minor consumed part of the Coors Light beer while standing at the bar in Respondent's establishment.
9. The minor was standing within view of Respondent's bartender, Adam Jones, while consuming the beer.
10. The events set forth in Findings of Fact Nos. 4 - 9 occurred within 36 months of the violation set forth in Finding of Fact No. 3.
11. Petitioner instituted disciplinary action against Respondent alleging that Respondent, its agent, servant, or employee, with criminal negligence, permitted a minor to violate TEX. ALCO. BEV. CODE ANN. §§ 106.04 or 106.05 (Vernon 1995 and Supp. 2000) by permitting the minor to possess or consume an alcoholic beverage on Respondent's premises, and that Respondent was therefore subject to discipline pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13(a) (Vernon 1995 and Supp. 2000).
12. A hearing was held on March 8, and April 26, 2001, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent was represented by Sandra Reynolds and Spencer Greeves, attorneys.

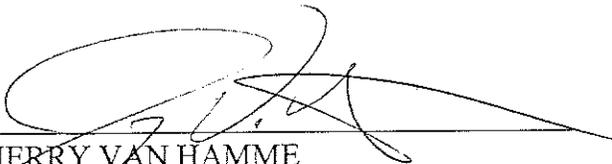
CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of ch. 5, §§ 6.01 and 11.61. The State Office of Administrative Hearings has jurisdiction over all 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, under TEX. GOV'T CODE ANN. §2003.021 (Vernon 2000).
2. Based on Findings of Fact Nos. 4 - 9, Respondent, with criminal negligence, permitted a minor to violate TEX. ALCO. BEV. CODE ANN. § 106.04 (Vernon 1995 and Supp. 2000) by permitting the minor to consume an alcoholic beverage on Respondent's premises.
3. Based on Findings of Fact Nos. 4 - 9, Respondent, with criminal negligence, permitted a minor to violate TEX. ALCO. BEV. CODE ANN. § 106.05 (Vernon 1995 and Supp. 2000) by

permitting the minor to possess an alcoholic beverage on Respondent's premises.

4. Based on Conclusions of Law Nos. 2 and 3, Respondent's permits are subject to discipline by the commission pursuant to TEX. ALCO. BEV. CODE ANN. §§ 106.13(a) and (b) and 11.64(a) (Vernon 1995 and Supp. 2000).
5. Based on Findings of Fact Nos. 3 - 10 and Conclusions of Law Nos. 2 - 4, Respondent's acts constituted a second violation, thereby subjecting Respondent's permits to a higher level of discipline pursuant to TEX. ALCO. BEV. CODE ANN. §§ 106.13(b) and 11.64(a) (Vernon 1995 and Supp. 2000); and 16 TEX. ADMIN. CODE § 37.60(a) and (c), .

SIGNED this 27 day of July, 2001.



JERRY VAN HAMME
Administrative Law Judge
State Office of Administrative Hearings