

DOCKET NO. 595964

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

APPLICATION OF SAMATHA BLAZE
BUCKY, D/B/A OUT RAGEOUS MB
EL PASO COUNTY, TEXAS
(SOAH Docket No. 458-02-1545)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 14th day of May, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis Lopez. The hearing convened on March 25, 2002 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 12, 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. 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.

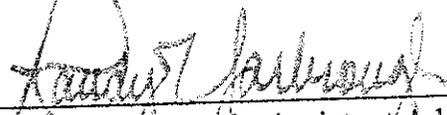
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of Bucky Samantha Blaze d/b/a Out Rageous, for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **DENIED**.

This Order will become final and enforceable on June 1, 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 14th day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Administrative Law Judge
State Office of Administrative Hearings
El Paso, Texas
VIA FACSIMILE; (915) 834-5657

Tom Wright
ATTORNEY FOR APPLICANT
916 Magoffin
El Paso, Texas 79901
VIA FACSIMILE: (915) 351-7517

Samantha Blaze Bucky
d/b/a Out Rageous
RESPONDENT
1510 Bengal 'B'
El Paso, Texas 79935-4307
CERTIFIED MAIL NO. 7001 2510 0000 7278 7667
RETURN RECEIPT REQUESTED

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

El Paso District Office
Licensing Division

DOCKET NO. 458-02-1545

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

APPLICATION OF
BUCKY SAMANTHA BLAZE
D/B/A OUT RAGEOUS
EL PASO COUNTY, TEXAS
TABC NO. 595964

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Staff) brought this action against Bucky Samantha Blaze, doing business as Out Rageous, (Respondent). The Staff alleged that Respondent had falsely or incorrectly answered a question in her application for a permit for a bar, which meant that the permit could be refused under the Texas Alcoholic Beverage Code (the Code). This proposal recommends that issuance of a permit to Respondent be refused.

The hearing on the merits began on March 25, 2002, at the State Office of Administrative Hearings, 401 East Franklin Avenue, Suite 580, El Paso, Texas. The Staff appeared through attorney Dewey Brackin. Respondent appeared through attorney Tom Wright. Administrative Law Judge Louis Lopez presided. The record was closed on the same day.

Since there were no contested issues related to jurisdiction or notice, those matters are set out below in the Findings of Fact and Conclusions of Law.

I. LEGAL PROVISIONS

The following provisions are relevant to this case:

Code Section 11.46 (Vernon 1995 and Supp 2001). **GENERAL GROUNDS FOR REFUSAL.** (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

.....

(4) the application failed to answer or falsely or incorrectly answered a question in an original or renewal application;

.....

II. EVIDENCE

The Staff introduced five exhibits into evidence: (1) Respondent's Application for a Retailer's Permit or License, (2) another copy of Respondent's Application along with her 2000 Federal Income Tax Form 1040 and a lease for her business, (3) a photocopy of Respondent's Texas driver's license, (4) Respondent's criminal history from the Texas Department of Public Safety, and (5) a TABC Offense Report completed by TABC Agent Victor Kuykendoll. Respondent introduced three exhibits into evidence: (1) a statement from the El Paso County Clerk showing the disposition of five arrests of Respondent in the records, (2) a statement from the District Clerk in El Paso County, Texas showing that no felony indictment had been filed against Respondent, and (3) a Case Identification Slip from El Paso Municipal Court No. 1 showing Respondent was accused of Disorderly Conduct on November 9, 1999. All exhibits were admitted without objection. Petitioner called no one to testify. Respondent called herself as a witness.

On July 2, 2001, Respondent submitted an Application for a Retailer's Permit or License to the Staff indicating she wanted to open a bar called Out Rageous. There was a question in the application which asked whether the applicant had "ever been arrested or picked up for investigation for any reason." Respondent answered "no." The question was in a section labeled Criminal History.

On July 19, 2001, the Staff received a criminal history report on Respondent from the Texas Department of Public Safety which showed Respondent had been arrested at least three times from October 4, 1998, to July, 2001. The Staff notified her that she had given a false answer. Respondent then submitted an affidavit completed on July 25, 2001, admitting she should have answered the question "yes" and indicating she had been arrested a total of 11 times. One of the listed offenses was for unpaid tickets, and she was unsure of an arrest for driving while license suspended. The Staff did not approve the application in spite of the correcting affidavit because Respondent had submitted it only after being informed of her false answer in the application.

Respondent testified that she had first read the question as asking whether she had ever been arrested for investigation. In other words, she read the question as if it had been written, "Have you ever been arrested, or picked up, for an investigation?" She had never been arrested for investigation, so she thought the answer was "no." She further contended that her affidavit of July 25 had corrected the application and that it therefore should have been approved.

III. DISCUSSION

Respondent was not credible in her claim that she only understood the question to ask whether she had ever been arrested for investigation. While the question can conceivably be read the way she claimed, a much more likely reading is that it intended to inquire whether the applicant had ever been arrested. A little reflection on Respondent's part would have made it clear that the application wanted to know about any arrests, especially since it was in a section labeled Criminal History. If Respondent had any question on the interpretation, she could have called the Staff's El Paso office.

Respondent had strong motive to hide her past arrest record. It appears she had actually been arrested for eight offenses before making her application, including four assaults, one disorderly conduct, one prostitution, and two driving while intoxicated. She surely was concerned that a record showing that many arrests could affect her application. The application was complete on July 2, 2001. Her correcting affidavit should not be counted as properly amending or curing the application because it was submitted only after she had been informed that the Staff had obtained her Texas arrest record.

IV. CONCLUSION

Based on a preponderance of the evidence, issuance of a permit to Respondent should be refused.

FINDINGS OF FACT

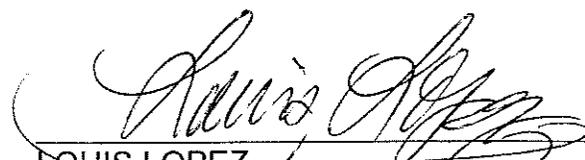
1. Bucky Samantha Blaze, doing business as Out Rageous (Respondent), made an application for a permit for a bar with the Texas Alcoholic Beverage Commission (TABC) on July 2, 2001.
2. There was no dispute on jurisdiction, and the parties stipulated that notice and service of notice were proper.
3. On October 2, 2001, the staff of TABC (the Staff) sent a notice to Respondent that had violated CODE §11.46(a)(4) when she failed to answer or falsely or incorrectly answered a question on an application for a permit.
4. On January 31, 2002, the Staff sent a Notice of Hearing by certified mail to Respondent. The hearing notice specified the time, place, and nature of the hearing; the legal authority for the hearing; and the matter to be determined.
5. On July 2, 2001, Respondent submitted an Application for a Retailer's Permit or License to the Staff seeking a permit for a bar.
6. Respondent answered "no" to Question #7 in the application which asked whether the applicant had "ever been arrested or picked up for investigation for any reason."

7. Respondent's criminal history with the Texas Department of Public Safety showed she had been arrested at least three times from October 4, 1998, to July, 2001.
8. The Staff notified Respondent that she had falsely answered Question #7.
9. Respondent submitted an affidavit completed on July 25, 2001, admitting she should have answered the question "yes" and indicating she had been arrested a total of 11 times.
10. Respondent submitted the affidavit only as a result of the Staff's informing her the answer was considered false.
11. Respondent's application was complete on July 2, 2001, and not after she submitted her correcting affidavit.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. [CODE] §§5.31--5.44.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to CODE §5.43(a) and TEX. GOV'T. CODE ANN. §§2003.021 and 2003.042.
3. Service of proper notice of the hearing was made on Respondent pursuant to CODE §11.63 and the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§2001.051 and 2001.052.
4. On July 2, 2001, Respondent falsely answered a question on her original application for a permit for a bar in violation of CODE §11.46(a)(4).
5. Based on the foregoing Findings of Fact and Conclusions of Law, issuance of a permit to Respondent should be refused.

SIGNED this 12th day of April, 2002.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS