

SOAH DOCKET NO. 458-02-3507

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

TAHIR ENTERPRISE, INC.
D/B/A TIGERLAND QUICKSTOP,
PERMIT NO. BQ-412455
(TABC CASE NO. 599504)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Tahir Enterprises, Inc., d/b/a Tigerland Quick Stop (Respondent), alleging that on August 6, 2001, Respondent, its agent, servant, or employee, purchased or received an unlawful benefit from food stamps on the licensed premises in violation of TEX. ALCO. BEV. CODE §11.61 (b)(7) and 16 TAC §35.31. The Staff recommended that Respondent's permit be suspended for 30 days or, in lieu of suspension, Respondent be permitted to pay a civil penalty of \$150 per day of the suspension period. The Administrative Law Judge (ALJ) concludes that the Petitioner proved by a preponderance of the evidence that Respondent received an unlawful benefit from food stamps on the licensed premises. Consequently, this Proposal For Decision (PFD) recommends that Respondent's permit be suspended for 30 days or, in lieu of suspension, Respondent be permitted to pay a civil penalty of \$150 per day for a total penalty of \$4,500.

I. JURISDICTION AND NOTICE

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

II. PROCEDURAL HISTORY

On July 9, 2001, the Staff notified Respondent that a hearing would be held to determine whether disciplinary action should be taken against the Respondent's permit based on an allegation that on or about August 6, 2001, the Respondent, his agent, servant, or employee purchased or received an unlawful benefit from food stamps on the licensed premises. The Staff asserted that such acts constituted grounds for suspension or cancellation of the Wine and Beer Retailer's Off-Premise Permit held by the Respondent.

The hearing commenced on September 13, 2002 at the State Office of Administrative Hearings, 2020 North Loop West, Suite, 111, Houston, Texas. The Staff was represented by Lindy To, of the TABC Legal Section. The Respondent appeared and represented himself. On that same date the hearing concluded and the record closed.



III. DISCUSSION

A. Background

The Respondent is the holder of Wine and Beer Retailer's Off-Premise Permit BQ-412455 and held that permit on the date of the alleged violation. On August 6, 2002, the United States Department of Agriculture conducted an undercover operation in which it sent a confidential informant into Respondent's store to purchase items with a food stamp EBT card in an attempt to determine if Respondent or Respondent's agent, servant, or employee would allow the confidential informant to purchase ineligible items. The Respondent sold minor non-food items, which are ineligible for EBT benefits. A charge letter was sent to the Respondent on October 26, 2001 notifying him of the pending investigation of the establishment's violations of the regulations governing the Food Stamp Program, more specifically, federal regulation 7 CFR 270-282. On January 9, 2002, the Respondent was notified by letter of the establishment's disqualification from participation in the Food Stamp Program for a period of one year.

B. Legal Standards

TABC may suspend or cancel a permit or license if a permittee or licensee is found to have violated a provision of the Texas Alcoholic Beverage Code (the Code) or a rule adopted by TABC.

TEXAS ALCOHOLIC BEVERAGE CODE §11.61(b)(7) states:

(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:

(7) the place and manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

16 TAC §35.31 states in pertinent parts:

(a) This rule relates to §§ ...11.61(b)(7)... of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Alcoholic Beverage Code cited in paragraph (a) of this rule if any of the offenses listed in paragraph (c) of this rule are committed:

(1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or

- (2) by any person on the licensee or permittee's licensed premises; and
- (3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule are as follows:

- (16) any law, regulation or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace, and safety of the people.

C. Evidence

TABC offered 10 documents, which were admitted, and called one witness. The Respondent called one witness.

1. Testimony of Harold Mash

Mr. Mash testified that he is an investigator employed by the United States Department of Agriculture. His duties include responding to Reports For Investigation and determining whether an establishment has violated the Food Stamp Act by selling non-food items for EBT benefits or purchasing EBT benefits for cash.

In this capacity, Mr. Mash used a confidential informant to attempt to buy food and non-food items at Respondent's establishment. Mr. Mash testified that ineligible items are defined as items not for immediate consumption and having no nutritional value. Mr. Mash stated that he sent the confidential informant into the store with only a food stamp EBT card. Mr. Mash identified TABC exhibits 6 through 9 as Transaction Reports that he prepared on the alleged violation dates, which includes August 6, 2001. The witness stated that the reports show the eligible and ineligible items purchased with the EBT card furnished to the confidential informant prior to entering the Respondent's establishment. The ineligible items listed on the Transaction Reports included laundry detergent, laundry bleach, dish detergent, paper towels, bath soap, bathroom tissue, plastic sandwich bags, liquid fabric softener, Mr. Mash also identified TABC exhibit 10 as the receipts that correlate with the information on the Transaction Reports for each transaction date. The witness testified that at the conclusion of the investigation, it was determined that the Respondent violated Food Stamp Program regulation 7 CFR 270-282 and was disqualified from participating in the program for a period of one year.

2. Testimony of Tahir Mahmood

Mr. Mahmood is the holder of a Wine & Beer Retailer's Off-Premise Permit. Mr. Mahmood operates the premises located at 1175 Highway 418 West, Silsbee, Texas 77656. Mr. Mahmood stated that he was not the clerk that sold the items to the confidential informant. In addition, the witness stated that his store does not stock the products listed on the Transaction Reports.

D. Analysis

Staff has alleged that grounds for suspension of Respondent's permit exist in this case "based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency" and based on a violation of a law, regulation, or ordinance of the federal government or of the county or municipality in which the licensed premises is located, "which is detrimental to the general welfare, health, peace and safety of the people". Specifically, Staff alleges that the Respondent's place or manner in which he conducted his business, by allowing the purchase of ineligible items with Lone Star card EBT benefits, is a violation of federal regulation 7 CFR 270-282 of the Food Stamp Program which is a detriment to the general welfare, health, peace, and safety of the people and on the public sense of decency.

It was clearly established by the testimony of Investigator Mash and TABC exhibits 6-10 that ineligible items were purchased at Respondent's business with Lone Star card EBT benefits on more than one occasion, including the alleged date of August 6, 2001.

The Respondent's argument that he did not personally sell the items is not compelling. Staff need only show that "the permittee/licensee, its agent, servant, or employee" purchased or received unlawful benefits from food stamps on the licensed premises. It should be noted that the witness, Investigator Mash, gave a thorough account of the undercover operation and clearly identified the employee who received the benefits as the owner, Mr. Mahmood.

TABC exhibits 3 and 4, convincingly proved that the Respondent violated Section 278.2(a) of Food Stamp Program regulation 7 CFR 270-282 and was disqualified from participation for a period of one year, pursuant to Section 278.6(e)(4) of the Food Stamp Program regulation. Most convincingly, TABC exhibit 5 contains a statement that sets out the purpose of the program and the detriment to the program when there is a violation by a participant. The statement reads in pertinent parts:

"The Food Stamp Program is available to all persons regardless of race, color, national origin, sex, age, or disability...before being authorized to accept the Lone Star card EBT benefits, firms must agree that they will abide by the regulations governing the Food Stamp Program...any firm, which violates the regulations, and anyone who pressures a firm to do so, weakens and endangers the whole program, which was set up to combat hunger and malnutrition."

It is clear from the statement that this program is a positive benefit for the general welfare and health of the public because it provides a public good of combating hunger and malnutrition, and any violation of the regulations governing the program is detrimental to the general welfare, health, peace and safety of the people.

There was substantial evidence at this hearing to show that the place or manner in which the permittee/licensee conducts his business jeopardizes the general welfare, health, peace, morals and safety of the people or the public sense of decency.

E. Recommendation

Petitioner recommends that the Respondent's permit be suspended for 30 days or, in lieu of suspension, that Respondent be allowed to pay a penalty of \$150 for each day of the suspension period. Based on the evidence presented, the ALJ agrees that a 30 day suspension is warranted due to the nature of this violation. The ALJ also agrees that, in lieu of the suspension, Respondent be allowed to pay a penalty of \$150 a day for a total penalty of \$4,500.

IV. PROPOSED FINDINGS OF FACT

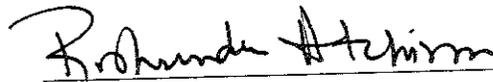
1. Respondent, Tahir Enterprises, Inc. d/b/a Tigerland Quick Stop, is the holder of Wine and Beer Retailer's Off-Premise Permit BQ-412455.
2. Between July 24, 2001 and August 6, 2001, the United States Department of Agriculture conducted an undercover operation involving Respondent's business located at 1175 Hwy. 418 West, Silsbee, Texas, where a confidential informant attempted to purchase ineligible items with Lone Star Card EBT benefits. Ineligible items are goods that are not for immediate consumption and lack nutritional value.
3. On July 24, 2002, Respondent, its agent, servant, or employee allowed the confidential informant to purchase ineligible items with Lone Star card EBT benefits.
4. On August 1, 2001, Respondent, its agent, servant, or employee allowed the confidential informant to purchase ineligible items with Lone Star card EBT benefits.
5. On August 2, 2001, Respondent, its agent, servant, or employee allowed the confidential informant to purchase ineligible items with Lone Star card EBT benefits.
6. On August 6, 2001, Respondent, its agent, servant, or employee allowed the confidential informant to purchase ineligible items with Lone Star card EBT benefits.
7. The Respondent violated regulation 7 CFR 270-283 of the Federal Food Stamp Program.
8. The Respondent was disqualified from participating in the food stamp program for a period of one year.

9. On July 9, 2002, the Texas Alcoholic Beverage Commission sent notice of hearing to Respondent. The notice contained a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§6.01 and 11.61.
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. Chapter 2003.
3. Proper and timely notice of hearing was given to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN, Chapter 2001 and 1 TAC Chapter 155.4.
4. Based on Findings of Fact Numbers 2 through 8, the place or manner in which the Respondent conducted his business, by receiving an unlawful benefit from food stamps on the licensed premises, violated federal regulation 7 CFR 270-282 of the Food Stamp Program and jeopardized the general welfare, health, peace, morals and safety of the people or the public sense of decency, pursuant to TEXAS ALCOHOLIC BEVERAGE CODE §11.61(b)(7) and 16 TAC § 35.31.
5. Based on Conclusion of Law Number 4, Petitioner is justified in assessing a suspension of Respondent's permit for 30 days, or in lieu of suspension, allowing Respondent to pay a penalty of \$150 per day for a total penalty of \$4,500.

SIGNED this 12th day of November, 2002



Roshunda Atchison
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599504

IN RE TAHIR ENTERPRISES INC.	§	BEFORE THE
D/B/A TIGERLAND QUICK STOP	§	
PERMIT NO. BQ412455	§	
	§	TEXAS ALCOHOLIC
	§	
HARDIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3507)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of December 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Atchison. The hearing convened on September 13, 2002, and adjourned on September 13, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 12, 2002. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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. BQ412455 is hereby **SUSPENDED for thirty (30)**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$4,500.00** on or before the **5th day of March, 2003**, all rights and privileges under the above described permit will be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 12th day of March, 2003**.

This Order will become final and enforceable on December 26, 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 or through the U.S. Mail, as indicated below.

SIGNED this 5th day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Roshunda Atchison
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

TAHIR ENTERPRISES INC.
D/B/A TIGERLAND QUICK STOP
RESPONDENT
1175 Hwy 418 West
Silsbee, Texas 77656
CERTIFIED MAIL NO. 7001 2510 0003 8686 7819

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Houston District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 599504

REGISTER NUMBER:

NAME: TAHIR ENTERPRISES INC. TRADENAME: TIGERLAND QUICK STOP

ADDRESS: 1175 Hwy 418 West, Silsbee, Hardin County, Texas 77656

DATE DUE: March 5, 2003

PERMITS OR LICENSES: BQ412455

AMOUNT OF PENALTY: \$4,500.00

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 MARCH 2003, 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.