

DOCKET NO. 458-02-4118

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**PAK.GDN CORPORATION
D/B/A ONE STOP GROCERY & GRILL,
Respondent
TARRANT COUNTY, TEXAS**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against PAK.GDN Corporation d/b/a One Stop Grocery & Grill (Respondent). Petitioner alleged that Respondent, with criminal negligence, sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (Code). Petitioner requested that Respondent's permit and license be suspended for a period of seven days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$1,050. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) agrees with this recommendation.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 24.06, 61.71, 106.03, and 106.13. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On September 3, 2002, Petitioner issued its Notice of Hearing, directed to PAK.GDN Corporation d/b/a One Stop Grocery & Grill, 2600 East Belknap, Fort Worth, TX 76111 via certified mail, return receipt requested. The Notice of Hearing was received by Respondent on September 6, 2002, as evidenced by the signature of Respondent on the return receipt. There were no contested issues of notice or jurisdiction in this proceeding.

On October 11, 2002, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent, Iqbal Khanmohammed, appeared pro se. Evidence was received on that date. The record closed on October 11, 2002.



LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 106.13 of the Code to suspend a retail license or permit for not more than 90 days if a licensee or permittee, with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor. Criminal negligence is defined in TEX. PENAL CODE ANN. § 6.03(d) 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.

Pursuant to § 11.64 of the Code, when a license or permit suspension is authorized, the licensee or permittee must be afforded the opportunity to pay a civil penalty in lieu of the suspension. In determining the amount of the penalty, the Texas Alcoholic Beverage Commission shall consider the economic impact a suspension would have on the licensee or permittee.

EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent is the holder of a Beer Retailer's Off Premise License and a Wine Only Package Store Permit issued by TABC. Respondent did not dispute this allegation. Licensing records contained in TABC Exhibit Three establish that a Beer Retailer's Off Premise License, Number BF-481237, and Wine Only Package Store Permit, Number Q-481236, were issued to Respondent for the premises located at 2001 8th Avenue, Fort Worth, Tarrant County, Texas on October 10, 2000.

The parties stipulated to the following facts: Respondent, or its agent, servant or employee, Issam Saleh, on or about May 17, 2002, with criminal negligence, sold an alcoholic beverage, Coors Beer, to a minor in violation of §§ 106.03(a), 61.71(a)(1), and/or 106.13(a) of the Texas Alcoholic Beverage Code. This violation applies to all permits held by the Respondent pursuant to Texas Alcoholic Beverage Code § 24.06.

Additionally, Petitioner offered evidence of matters deemed admitted by Respondent, pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2). TABC Exhibit Two contains requests for admissions served on Respondent at his address of record on September 3, 2002. Respondent indicated that he did receive the requests for admissions, but did not file a response. Respondent did not request a withdrawal of the deemed admissions, and indicated that he did not object to the matters deemed admitted. The matters deemed admitted are as follows:

1. PAK.GDN Corporation d/b/a One Stop Grocery & Grill, Respondent, is the holder of a wine only package store permit, Q 481236, and a beer retailer's off premise license, BF 481237, issued by the Petitioner, the Texas Alcoholic Beverage Commission, for the premises known as One Stop Grocery & Grill located at 2001 8th Avenue, Fort Worth, Tarrant County, Texas.
2. The permits referenced in request 1 are currently in effect and were in effect on all dates relevant to the original, supplemental, or amended Notice of Hearing.
3. The State Office of Administrative Hearings has jurisdiction over this matter.
4. Petitioner has jurisdiction over this matter.
5. Respondent received adequate notice of this hearing.
6. Respondent does not have good cause if these requests were answered late or not answered.
7. Respondent or its agent, servant, or employee, Issam Saleh, on or about May 17, 2002, with criminal negligence, sold an alcoholic beverage, Coors Beer, to a minor in violation of §§ 106.03(a), 61.71(a)(1), and/or 106.13(a) of the Texas Alcoholic Beverage Code.

Finally, Respondent's violation history, as maintained by the Texas Alcoholic Beverage Commission, reveals no suspension of Respondent's permit or license prior to the date of this alleged violation. Respondent presented no evidence for consideration in this proceeding regarding the economic impact any suspension on his permit and license might have on his business, nor did he present evidence reflecting any aggravating or mitigating circumstances involved.

ANALYSIS

It is clear from the evidence, and undisputed, that Respondent holds a Beer Retailer's Off Premise License and a Wine Only Package Store Permit. It is undisputed that Respondent, or its agent, servant or employee, Issam Saleh, on or about May 17, 2002, with criminal negligence, sold an alcoholic beverage, Coors Beer, to a minor in violation of §§ 106.03(a), 61.71(a)(1), and/or 106.13(a) of the Texas Alcoholic Beverage Code. Additionally, this violation applies to all permits held by the Respondent pursuant to Texas Alcoholic Beverage Code § 24.06. The only contested issue to be determined in this case is the amount of civil penalty to be imposed in lieu of suspension. Petitioner recommended the minimal suspension period and minimal civil penalty amount possible for this particular violation. See TEX. ADMIN. CODE § 37.60. Although the Respondent asked the ALJ to reduce the amount of the recommended civil penalty, no evidence was presented regarding the economic impact a suspension on Respondent's permit and license might have on his business or regarding any aggravating or mitigating circumstances. Thus, the ALJ has nothing to consider which

could justify reducing the civil penalty recommended by Petitioner.

RECOMMENDATION

The ALJ finds that Respondent, or its agent, servant or employee, Issam Saleh, on or about May 17, 2002, with criminal negligence, sold an alcoholic beverage, Coors Beer, to a minor. Thus, the ALJ recommends that a permit and license suspension for a period of seven days be imposed, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$1,050.

PROPOSED FINDINGS OF FACT

1. PAK.GDN Corporation d/b/a One Stop Grocery & Grill, (Respondent), is the holder of a Wine Only Package Store Permit, Q 481236, and a Beer Retailer's Off Premise License, BF 481237, issued by the Texas Alcoholic Beverage Commission (TABC) on October 10, 2000, for the premises located at 2001 8th Avenue, Fort Worth, Tarrant County, Texas.
2. On September 3, 2002, Respondent was served with a timely notice of hearing. The notice indicated that a hearing would be held at the State Office of Administrative Hearings (SOAH), 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas, on October 11, 2002, at 10:30 a.m.
3. On October 11, 2002, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent, Iqbal Khanmohammed, appeared pro se. Evidence was received on that date. The record closed on October 11, 2002.
4. On May 17, 2002, Respondent, or its agent, servant or employee, Issam Saleh, sold an alcoholic beverage, Coors Beer, to a minor with criminal negligence.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 24.06, 61.71, 106.03, and 106.13.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of hearing.
4. Based on Proposed Findings of Fact No. 4, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 106.03 and 106.13.

5. Based on Proposed Findings of Fact No. 4 and Proposed Conclusion of Law No. 4, Respondent's Beer Retailer's Off Premise License and Wine Only Package Store Permit should be suspended for seven days.

6. Based on Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1,050 in lieu of suspension of his permit and license.

SIGNED on this the 19th day of November, 2002.


CINDY T. GREENLEAF
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600200

IN RE PAK.GDN CORPORATION	§	BEFORE THE
D/B/A ONE STOP GROCERY & GRILL	§	
PERMIT NO. Q-481236	§	
LICENSE NO. BF481237	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-4118)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 11th day of December 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cindy T. Greenleaf. The hearing convened on October 11, 2002, and adjourned on October 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 19, 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. Q-481236 and License No. BF481237 are hereby **SUSPENDED for seven (7) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,050.00** on or before the **5th day of March, 2003**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of seven (7) days, beginning at 12:01 A.M. on the 12th day of March, 2003**.

This Order will become final and enforceable on January 1, 2003, 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 11 day of December, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Cindy T. Greenleaf
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

PAK.GDN CORPORATION
D/B/A ONE STOP GROCERY & GRILL
RESPONDENT
2600 E Belknap
Fort Worth, Texas 76111
CERTIFIED MAIL NO. 7001 2510 0003 8688 8081

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 600200

REGISTER NUMBER:

NAME: PAK.GDN CORPORATION

TRADENAME: ONE STOP GROCERY & GRILL

ADDRESS: 2001 8th Avenue, Fort Worth, Texas 76110

DATE DUE: January 5, 2003

PERMITS OR LICENSES: Q-481236, BF481237

AMOUNT OF PENALTY: \$1,050.00

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.