

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

VS.

VALI, INC., D/B/A AVENUE K. MOBIL
STATION, Respondent

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner) brought this action against Vali, Inc., d/b/a Avenue K. Mobil Station (Respondent), alleging that on March 9, 2002, Respondent, its agent, servant or employee, with criminal negligence, sold an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE §106.13(a). The staff recommended Respondent's permit be suspended for 10 days or, in lieu of suspension, Respondent be permitted to pay a civil penalty of \$1,500. The Administrative Law Judge (ALJ) concludes Petitioner proved by a preponderance of the evidence that Respondent, with criminal negligence, sold an alcoholic beverage to a minor. Consequently, this Proposal for Decision (PFD) recommends Respondent's permit be suspended for 10 days or, in lieu of suspension, Respondent be permitted to pay a civil penalty of \$1,500.

I. Jurisdiction and Notice

Notice and jurisdiction were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

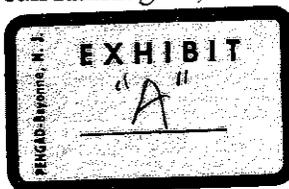
II. Procedural History

The hearing convened and the record closed on October 24, 2002. The hearing was conducted at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150A, Dallas, Texas. Petitioner was represented by Timothy Griffith, staff attorney. Respondent appeared through owner Vali Ahmadi. ALJ Brenda Coleman presided over the hearing. After the hearing, the case was reassigned to ALJ Carrie McLarty, who reviewed the record in this case, including the tape of the proceedings and the exhibits admitted into evidence at the hearing, and who issues this PFD.

III. Discussion

A. Background

On March 9, 2002, Officer Richard Glenn of the Plano Police Department conducted an undercover operation in which Beverly Jean Harrington, a minor, was sent into Respondent's store



to buy beer. The purpose of the operation was to determine if Respondent or Respondent's agent, servant, or employee would properly request identification from Ms. Herrington and refuse to sell her beer. Respondent's employee sold Ms. Herrington beer without asking Ms. Herrington for identification or proof of age.

B. Legal Standards

The commission may suspend a permit for 60 days or less if, with criminal negligence, the permittee sells an alcoholic beverage to a minor. TEX. ALCO. BEV. CODE §106.13 (a).

A permittee acts with criminal negligence when the permittee ought to have been aware of a substantial and justifiable risk that the circumstances exist or the result will occur. The failure to perceive the risk must constitute a gross deviation from the care that an ordinary person would exercise under the same circumstances. TEX. PEN. CODE §6.03(d).

C. Evidence

Petitioner presented the testimony of Officer Glenn. In addition, it presented documentary evidence including Respondent's permit and history, and a copy of a photograph of Ms. Herrington.

Mr. Ahmadi testified on behalf of Respondent. Respondent did not present any documentary evidence.

1. Officer Richard Glenn

Officer Glenn is employed by the Plano Police Department. On March 9, 2002, Officer Glenn conducted a minor sting operation at Respondent's business. He testified he instructed Ms. Herrington to enter Respondent's business and attempt to buy an alcoholic beverage. She was instructed to produce identification if requested. Ms. Herrington took a six-pack of Zima beer to the counter. Respondent's clerk, Abbas Vazire, was handling merchandise and operating the cash register. Ms. Herrington paid Mr. Vazire for the beer. Mr. Vazire did not ask Ms. Herrington for identification or proof of age prior to selling her the beer.

Officer Glenn testified it was obvious from the label that the beverage purchased by Ms. Herrington was an alcoholic beverage. He also testified Ms. Herrington was 17 years old at the time of this operation, with a date of birth of August 5, 1984. Officer Glenn explained Ms. Herrington was of a youthful appearance and was obviously under 21 years old.

2. Vali Ahmadi

Mr. Ahmadi testified Mr. Vazire was terminated from employment for poor performance about five to six months prior to the hearing. He testified all employees are trained regarding the sale of alcoholic beverages and cigarettes. Mr. Ahmadi contended everyone makes mistakes.

D. Analysis

It is uncontroverted that Respondent's employee sold beer to Ms. Herrington on March 9, 2002, when Ms. Herrington was 17 years old. Ms. Herrington clearly appears to be underage or, at the very least, of an age that would compel a reasonable person to ask for proof of age. The employee's failure to perceive Ms. Herrington's age and the risk posed by selling beer to a minor is a gross deviation from what a reasonable person would perceive under the same circumstances.

Mr. Ahmadi's laudable actions of terminating Mr. Vazire's employment and providing training to his employees in the sale of alcoholic beverages and cigarettes does not detract from the fact that beer was sold to a minor at Respondent's business on March 9, 2002.

E. Recommendation

Petitioner recommends Respondent's permit be suspended for 10 days or, in lieu of suspension, Respondent be allowed to pay a penalty of \$1,500. Based on the evidence presented, the ALJ agrees with Respondent's recommendation.

IV. PROPOSED FINDINGS OF FACT

1. Vali, Inc., d/b/a Avenue K. Mobil Station (Respondent) sells wine and beer pursuant to Texas Alcoholic Beverage Commission (Petitioner) permit number BQ458580.
2. On March 9, 2002, Petitioner conducted an undercover operation involving Respondent's business in Plano, Texas, wherein Beverly Jean Herrington, age 17, attempted to purchase beer from Respondent.
3. On March 9, 2002, Ms. Herrington appeared to be younger than 21 year old.
4. Respondent's employee sold a six-pack of beer to Ms. Herrington on March 9, 2002, without requiring Ms. Herrington to produce proof of her age.
5. Based on Findings of Fact numbers 3 and 4, Petitioner determined Respondent's permit should be suspended for 10 days or, in lieu of suspension, Respondent be allowed to pay a fine of \$1,500.
6. Respondent initiated an administrative appeal of Petitioner's proposed suspension of his permit, resulting in the October 24, 2002, hearing.
7. On September 3, 2002, notice of the hearing was sent 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.

8. The hearing in this case was conducted on October 24, 2002, at the State Office of Administrative Hearings in Dallas, Texas.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§6.01 and 106.13(a).
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§2001.051 and 2001.052.
4. Based on Findings of Fact numbers 3 and 4, Respondent's employee acted with criminal negligence in selling an alcoholic beverage to a minor, pursuant to TEX. ALCO. BEV. CODE §106.13 (a) and TEX. PEN. CODE §6.03(d).
5. Based on Conclusion of Law number 4, Petitioner is justified in assessing a suspension of Respondent's permit for 10 days or, in lieu of suspension, allowing Respondent to pay a penalty of \$1,500.

SIGNED this 16th day of December, 2002.



Carrie L. McLarty
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600703

IN RE VALI, INC.	§	BEFORE THE
D/B/A AVENUE K MOBIL STATION	§	
PERMIT NO. BQ458580	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-4114)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened on October 24, 2002, and adjourned on October 24, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 16, 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. BQ458580 is hereby **SUSPENDED for ten (10) days**.

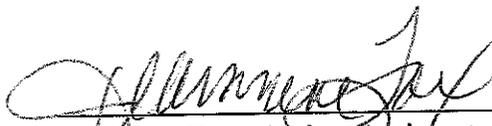
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **2nd day of April, 2003**, all rights and privileges under the above described permit will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 9th day of April, 2003**.

This Order will become final and enforceable on January 28, 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 7th day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Carrie L. McLarty
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

VALI, INC.
D/B/A AVENUE K MOBIL STATION
RESPONDENT
1800 Ave K
Plano, Texas 75074-5908
CERTIFIED MAIL/RRR NO. 7001 2510 0003 8688 7657

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 600703

REGISTER NUMBER:

NAME: VALI, INC.

TRADENAME: AVENUE K MOBIL STATION

ADDRESS: 1800 Ave K, Plano, Texas 75074-5908

DATE DUE: April 2, 2003

PERMITS OR LICENSES: BQ458580

AMOUNT OF PENALTY: \$1,500.00

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 2ND DAY OF APRIL 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.