

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.S..	§	
	§	
FAWAZ ABU HUMOUD D/B/A	§	OF
LUCKY WAY FOOD STORE	§	
PERMIT NO. Q-243652	§	
LICENSE NO. BF-293881	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 573843)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this action against a licensee of the commission for selling an alcoholic beverage to a minor. The Staff recommended that the subject licenses be suspended for ten days. The licensee appeared at the hearing pro-se. The Staff alleged that on April 10, 1997, Respondent or his agent, employee, or servant, with criminal negligence, sold an alcoholic beverage to a minor, in violation of Section 106.03 and 106.13 of the Texas Alcoholic Beverage Code. The licensee denied any criminal negligence stating the minor agreed with the clerk that she was twenty-two years old. After reviewing all the evidence the administrative law judge finds that licensee did commit the alleged violation by his clerk selling a beer to a minor female on April 10, 1997, and that the subject licenses should be suspended for ten days.

I. Procedural History, Jurisdiction, and Notice.

On March 13, 1998, the Commission's Staff (the Staff), notified Fawaz Abu Humoud d/b/a Lucky Way Food Store (the Respondent) that the Staff would seek disciplinary action against the Respondent's permits because the Respondent or his agent, employee, or servant sold an alcoholic beverage to a minor. The Staff asserted that such act constituted grounds for suspension or cancellation of the Respondent's Wine Only Package Store Permit and its Beer Retailer's Off Premise License.

The hearing commenced on December 17, 1998, in the offices of the State Office of Administrative Hearings 2020 North Loop West, Suite 111, Houston, Harris County, Texas. The parties stipulated that venue and jurisdiction are proper in this proceeding. Therefore, those matter are set out in the findings of fact and conclusions of law without further discussion here. After the

taking of evidence, the hearing was concluded the same day with the record left open until 8:00 a.m., December 18, 1998 for the parties to call any rebuttal witnesses. The record closed on December 18, 1998. The Staff was represented by Clyde Burleson, Assistant Attorney General of Texas. The Respondent represented himself pro-se.

II. Discussion

A. Exhibits

At the hearing, Staff and Respondent offered into evidence the following:

Staff's Exhibit # 1 - License and Permit files from Staff:

Wine Only Package Store Permit Q-243652
Beer Retailer's Off-Premise License BF-293881

Respondent's Exhibit # 1 - Video tape of incident

B. Evidence

1. Testimony of Gilbert Alba:

Gilbert Alba has been an officer with TABC since May 31, 1996. He has been involved in about ten minor sting operations in the last two and a half years. On April 10, 1997, he was part of the minor sting operation at Lucky Way Food Store at 8200 West Belford in Houston, Harris County, Texas.

In Houston, the TABC goes to the Law Enforcement High School and asks students who want to be in law enforcement if they would like to participate in minor sting operations. A TABC agent looks for persons who could not be mistaken for a minor: someone very youthful in appearance. On the night of a sting operation, he preps minors by checking identification (I.D.) and money they have with them. Then, they go to various locations. The officer enters the location, then 30 seconds to one minute later, the minor enters and makes a beer selection.

On April 10, 1997, Toriketa Brown entered the store, selected a beer, and walked up to the counter. The clerk ask for her I.D., and she gave the clerk her Texas driver's license. The clerk took her money and entered the transaction into the cash register. Ms. Brown walked out with the beer. Mohamad Alomarr was the clerk. Another clerk was standing by Mr. Alomarr. Officer Alba did not hear the conversation between the clerk and the minor. He did see the minor remove her Texas driver's license from her pocket, give it to the clerk, and then place it back into her pocket.

Thereafter, the officer went out, took control of the beer, went to the "open team" in the parking lot, and made a report.

2. Testimony of Toriketa Brown:

Toriketa Brown is eighteen years old, has braces, and works for The Search Center. She went to the High School for Law Enforcement and Criminal Administration, and was involved in a series of minor sting operations on April 10, 1997.

At the Lucky Way Food Store, she walked in and went to the back to where the beer was. She picked up a sixteen ounce Budweiser beer, and went to the counter. The clerk started flirting with her, and asked her for I.D., but just glanced at her Texas driver's license saying "pretty girl, do you have a boyfriend? You are not really seventeen, you are twenty-two." She did not have any other I.D. other than her Texas driver's license. The clerk took the money and rang up the transaction. She walked out of the store with the beer, then took it out of the bag, giving it to Cameron Nicholson.

On cross examination, she testified that the clerk did not ask her if she was twenty-two years old and that the clerk did not ask her if "you are old enough to be married." He stated to her "you are twenty-two." She did not have another I.D. on her, and the I.D. she had was her real Texas driver's license. She is not paid to do sting operations.

On re-direct, she testified that pre-sting instructions include directing her to tell the truth about any question an employee may ask, including age.

3. Cameron Nicholson:

Cameron Nicholson has been a certified police officer with the TABC for eleven years. He has been involved in 25-30 minor sting operations. The officers instruct the minor on the night of the sting operation, and check to verify the minor has a valid I.D. The minor is instructed to tell the clerks his or her age if asked, to tell the truth, to give the clerks their Texas driver's license, and to give the clerks every benefit to turn down the beer sale. They look for minors who are youthful in appearance so that there is no question that the person is under twenty one years of age. On April 10, 1997, he watched the front of the store on the "open team." When Toriketa Brown came out of Lucky Way Food Store with an alcoholic beverage, he exited the vehicle and identified the clerk who made the sale, instructing the person of the violation and giving him a criminal citation.

On cross-examination, Cameron Nicholson admitted that he refused to let Fawaz Humoud see the minor's I.D. after the operation and refused to bring the minor back. He did so because it is the TABC policy for the safety of the minor and to protect the evidence in the case.

4. **Muhammad Alomarr:**

Muhammad Alomarr is the clerk at the Lucky Way Food Store who sold the minor the beer. He asked her for her I.D., and when she handed it to him he said "are you old enough, I marry you next week." She said "yes." He can read a little English.

5. **Fawaz Humoud:**

Fawaz Humoud was standing next to Muhammad Alomarr doing paper work during the incident. There were a lot of people in the store. The minor put the I.D. on the counter. He saw Mr. Alomarr pick up the I.D. and say "Oh, you are twenty two, you are old enough to marry me." She said "yes."

6. **The Video:**

The incident happened in less than thirty seconds. There is a customer at the counter when the minor walks up with a beer and money in her hand. The customer leaves. The minor puts the beer on the counter. Mohamad Alomarr asks her for her I.D. She gets an I.D. out of her high school uniform. He glances at the I.D. He smiles, and says something to her. She turns her head and leans in to hear what he is saying. She gives him the money. He rings it up and puts the money in the cash register, giving her some change. She smiles and quickly leaves.

III. Statutory Criteria

1. **Section 106.03 of the Code** states, in part:

- (a) A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor.
- (B) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

2. **Section 106.13 of the Code** states, in part:

- (a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit....if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code...

V. Analysis

There are two questions which must be answered here.

- (1) Did Toriketa Brown give Muhammad Alomarr an I.D. that showed she was a minor on April 10, 1997?

Cameron Nicholson and Gilbert Alba testified they checked Toriketa Brown's driver's license before the sting operation to make sure that it was the only I.D. she had, and that it clearly identified her as a minor. Toriketa Brown testified that she was a minor on April 10, 1997, and that she handed her valid Texas driver's license to Muhammad Alomarr during the sting operation.

- (2) Did the permittee or licensee, with criminal negligence sell, serve, dispense, or deliver an alcoholic beverage to a minor (Toriketa Brown) on April 10, 1997?

Gilbert Alba and Toriketa Brown testified that the Lucky Way Food Store clerk sold a sixteen ounce can of Budweiser to a minor. Muhammad Alomarr, the clerk, did not deny that he sold a beer to a minor. And Fawaz Humoud testified that he saw the transaction, but that the minor said or implied that she was twenty-two years old. All the witnesses agree that the minor handed the clerk an I.D. The credible evidence is that the minor only had one I.D. on her, and that was a Texas driver's license that showed her age to be seventeen years old on April 10, 1997.

PROPOSED FINDINGS OF FACT

1. Fawaz Abu Humoud d/b/a Lucky Way Food Store is the holder of Wine Only Package Store Permit Q-243652 and Beer Retailer's Off-Premise License BF-293881.
2. On September 28, 1998, notice of the hearing was properly addressed and sent by certified mail to the Respondent at P.O. Box 920969, Houston, Texas 77292, pursuant to Tex. Gov't Code Ann. Chapter 2001. *Order No. Two Setting Hearing for December 17, 1998*, was sent to the parties on November 3, 1998 after an *Unopposed Motion for Continuance*, and was properly served upon all parties, who appeared and took part in the December 17, 1998 hearing pursuant to those notices and orders.
3. The witnesses are from Houston, the licensed premises are in Houston, and the parties stipulated that venue was proper in Houston, Texas.
4. Muhammad Alomarr was an agent, servant, or employee of the Respondent on April 10, 1997.
5. On April 10, 1997, Toriketa Brown was a minor.

6. On April 10, 1997, Toriketa Brown left the Lucky Way Food Store with a sixteen ounce can of Budweiser beer.
7. On April 10, 1997, Muhammad Alomarr sold the sixteen ounce can of Budweiser beer to the minor.
8. On April 10, 1997, Toriketa Brown gave Muhammad Alomarr her valid Texas drivers's license identifying her as a minor during the beer sale.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Sections 106.13 and 11.61(b)(2) of the Tex. Alco. Bev. Code Ann.
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 2001.
3. Service of proper and timely notice of the hearing was given to the Respondent pursuant to the Administrative Procedure Act, Tex. Gov't. Code Ann. Chapter 2001 and 1 Tex. Admin. Code Chapter 155.
4. Venue was proper in Houston, Texas, pursuant to 1 Tex. Admin. Code Section 155.13.
5. Based upon the Findings of Fact, the permittee or licensee did sell an alcoholic beverage to a minor on April 10, 1997.
6. Based upon Conclusion of Law number four, the Respondent's Wine Only Package Store Permit and Beer Retailer's Off-Premise License should be suspended for ten days.

SIGNED this 20th day of January, 1999


DON SMITH
Administrative Law Judge
State Office of Administrative Hearings