

DOCKET NO. 593618

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
SAKHI CORPORATION D/B/A NEWWAY KWIK STOP #1, Respondent	§	ALCOHOLIC
	§	
PERMIT/ LICENSE NOS. Q667978, BF667980 GREGG COUNTY, TEXAS (SOAH DOCKET NO. 458-11-0040)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of August, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Michelle Kalas presiding. The hearing convened on October 11, 2010 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on December 7, 2010. The 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, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that Wine Only Package Store Permit No. Q667978 and Beer Retailer's Off Premise License BF667980 held by Sakhi Corporation d/b/a Newway Kwik Stop #1 are hereby **CANCELLED**.

This Order will become final and enforceable on the 5TH day of SEPTEMBER, 2011, unless a Motion for Rehearing is filed **before** that date.

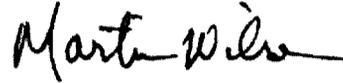
SIGNED this the 10th day of August, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 10th day of August, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Michelle Kalas
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, Texas 75235
VIA FACSIMILE: 512.322.0471

Joe W. Newsom, Jr.
ATTORNEY FOR RESPONDENT
403 West Tyler Street
Gilmer, Texas 75544
VIA REGULAR MAIL
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Sakhi Corporation
d/b/a Newway Kwik Stop #1
RESPONDENT
227 S Main Street
Gladewater, Texas 75647
VIA REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL: sandra.patton@tabc.state.tx.us

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DATE: **12/07/2010**
NUMBER OF PAGES INCLUDING THIS COVER SHEET: **11**
REGARDING: **PROPOSAL FOR DECISION**
DOCKET NUMBER: **458-11-0040**

JUDGE MICHELLE KALLAS

FAX TO:**FAX TO:**

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NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT SANDRA PERRY(spe) (214) 956-8616

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 7, 2010

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA FACSIMILE 512/206-3203

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.
SAKHI CORPORATION d/b/a NEWWAY KWIK STOP #1
SOAH DOCKET NO. 458-11-0040**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/lan
Enclosure

Xc: Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426-7965**
Joe Newsom, Jr., Attorney for Respondent, **VIA FACSIMILE 903/680-2310**
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3226**

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DOCKET NO. 458-11-0040

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	OF
SAKHI CORPORATION d/b/a NEWWAY KWIK STOP #1, Respondent	§	
	§	
	§	
TABC NO. 593618	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC, Commission) staff (Petitioner) brought this enforcement action against Sakhi Corporation (Respondent), d/b/a Newway Kwik Stop #1 (the store), alleging that Respondent falsely, or incorrectly, answered a question on an original or renewal application and allowed an unauthorized person to use a permit in the conduct of business. The Administrative Law Judge (ALJ) finds that Petitioner proved the allegations by a preponderance of the evidence and recommends that Respondent's license and permit be cancelled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.05, 11.46, 11.61, and 109.53. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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 10, 2010, Petitioner issued its notice of hearing, directed to Respondent. On October 11, 2010, a hearing convened before SOAH ALJ Michelle Kallas at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Sandra

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 2

Patton, TABC Staff Attorney. Respondent was present and represented at the hearing by Joe Newsome, attorney. The record closed on October 11, 2010.

II. DISCUSSION

A. Applicable Law

The Commission or administrator may suspend or cancel an original or renewal permit if the permittee violates a provision of the Alcoholic Beverage Code (Code) or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2). The Code provides that it is a violation to provide false or incorrect information when answering a question in connection to an original or renewal application. TEX. ALCO. BEV. CODE ANN. §§ 11.46 (a)(4) and 11.61 (b)(4).

The Code also provides that a permit holder may not allow the use of the permit by anyone other than the person to whom the permit was issued. TEX. ALCO. BEV. CODE ANN. § 11.05. A permit holder is to maintain exclusive occupancy and control of the permitted, or licensed, premises in every phase of the business. It is unlawful to surrender control of the employees, premises, or business to a person other than the permit holder. TEX. ALCO. BEV. CODE ANN. § 109.53.

B. Evidence

Sakhi Muhammad¹ testified at the hearing that he is the president and only owner of Sakhi Corporation. He further testified that he was the original owner, president, and director of the corporation. When asked if he was the 100% shareholder in the corporation, Mr. Muhammad then invoked his 5th Amendment Right against self incrimination and refused to answer any further questions.

¹ For the purposes of this decision, the owner of Sakhi Corporation will be referred to as Sakhi Muhammad. During the hearing, he was referred to as both Sakhi Muhammad and Muhammad Sakhi.

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 3

TABC Enforcement Agent David Salazar testified that the original permit was issued on August 9, 2007. On the original permit application (TABC Exhibit #1 pp. 14-24), Mr. Muhammad was the only person listed as the owner and officer for Sakhi Corporation. Furthermore, on question "J" of the original application, Mr. Muhammad stated he was the only person, through Sakhi Corporation, to make an investment into the business.² Agent Salazar testified that there have been three renewal applications filed since the original permit was issued. On all three renewal applications, Mr. Muhammad answered the following two questions in the negative:

...

6. Is this application being made by you for the benefit of someone else?

...

8. Have there been changes since your original application that have not been reported on this or previous applications?³

Agent Salazar testified that TABC did not receive any information regarding any other officers or owners of the store.

Agent Salazar testified that, on January 21, 2010, he conducted an open compliance check at the permitted premises and found drug paraphernalia. He spoke with Deretha Hines, the store clerk on duty, who informed him to contact the store owner, Qumar Zuman. Mr. Zuman arrived at the location and informed Agent Salazar that he was a part-time employee who ran errands for the store. Agent Salazar gave the citation to Mr. Zuman.

On January 25, 2010, Agent Salazar was contacted by Harriet Pearson regarding the drug paraphernalia citation. Ms. Pearson identified herself as the accountant for the store and stated that Mr. Zuman was the owner.

² TABC Exhibit #1 pg. 18.

³ TABC Exhibit #1 pp. 8, 10, and 12.

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 4

According to Agent Salazar, on February 5, 2010, TABC Sgt. Taylor called the store and spoke with someone who identified himself as "Mr. Muhammad." The person on the phone stated he was going to send his manager to settle the drug paraphernalia violation. When informed that the manager could not settle the violation, the person stated he would come in personally. However, Mr. Zuman appeared at the TABC office to settle the violation. At this point, Mr. Zuman identified himself as the store manager. As he was not the owner, Mr. Zuman was not allowed to settle the violation.

Agent Salazar testified Sgt. Taylor then sent him to the permit location to look for Mr. Muhammad. At the store, Agent Salazar spoke with Ms. Jones.⁴ Ms. Jones stated she had worked at the store for several years and was a manager. She referred to Mr. Zuman as the "big boss." According to Ms. Jones, Mr. Muhammad had not been at the store that day. She stated that Mr. Zuman had been there but left after telling her he had to take care of a problem with TABC.

On February 16, 2010, Mr. Muhammad and Mr. Zuman met with Agent Salazar at the TABC district office to deal with the drug paraphernalia violation. During an interview with Agent Salazar, Mr. Muhammad stated that, in 2006, he and Mr. Zuman each made a \$25,000.00 investment into the store. He admitted that, while he was the sole owner of Sakhi Corporation, he was not the sole owner of the store but had applied for the alcohol permit under Sakhi Corporation. Mr. Muhammad stated Mr. Zuman handled all the business for the store, and he had no idea as to the store's gross sales or profits. According to Mr. Muhammad, Mr. Zuman paid him \$3,000.00-\$5,000.00 per month from the store.⁵ He did not know how much Mr. Zuman paid himself.

Following Mr. Muhammad's interview, Agent Salazar met again with Mr. Muhammad and Mr. Zuman. He asked to see the bank records for the store. According to Agent Salazar, Mr.

⁴ Agent Salazar did not testify as to Ms. Jones's first name.

⁵ TABC Exhibit #2.

Zuman, not Mr. Muhammad, directed him to contact the store's accountant, Ms. Pearson, and provided him with her phone number.

Agent Salazar was provided with bank statements from Texas Bank and Trust covering July 1, 2009, through February 1, 2010. According to the bank records, both Mr. Muhammad and Mr. Zuman were authorized to sign checks on the store's account. However, Agent Salazar noted that all checks on the account had been signed by Mr. Zuman. During an eight-month-period, deposits from the store totaling approximately \$3000.00 had be deposited in Mr. Muhammad's personal account, while \$16,950.00 had been deposited into Mr. Zuman's personal accounts. Agent Salazar also noticed that checks were also written by Mr. Zuman for non-business expenses, including, cell phone bill payments, a medical bill payment, and a personal auto loan payment. Agent Salazar also discovered a personal auto loan application by Mr. Zuman at Texas Bank and Trust where he indicated he was employed as a "partner/supervisor" at the store. Agent Salazar testified that this was the auto loan for which a payment was made from the store account by Mr. Zuman.⁶

Mr. Zuman told Agent Salazar that he was not an owner of the store. Agent Salazar testified Mr. Zuman was not eligible to hold an alcohol permit as he was not in the country legally. Based upon his investigation, Agent Salazar issued citations for subterfuge and making false statements on an original and renewal application.

C. Discussion and Recommendation

1. False or Incorrect Statement on Permit Application

The preponderance of the evidence supports a finding that there was a false statement on the original application and the subsequent renewal applications. On the original application, Mr. Muhammad indicated that the only investment in the store was by himself through Sakhi

⁶ TABC Exhibit #3.

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 6

Corporation. However, according to Mr. Muhammad's February 16, 2010, voluntary statement, in 2006, both he and Mr. Zuman invested in the store. Furthermore, on subsequent renewal applications, Mr. Muhammad failed to acknowledge this investment and also failed to acknowledge that the permit was actually being used for the benefit of an individual other than the person filing the application. The evidence shows that Mr. Zuman, while not the actual permit holder, was benefiting from the use of the permit. Mr. Zuman was paying himself nearly three times more from the store than was being paid to Mr. Muhammad and had actually made a payment on a personal auto loan from the store account.

2. Subterfuge

The preponderance of the evidence also establishes a finding of subterfuge. According to TEX. ALCO. BEV. CODE ANN. § 11.05, a permit holder may not allow the use of the permit by anyone other than the person to whom the permit was issued. A permit holder is to maintain exclusive occupancy and control of the permitted, or licensed, premises in every phase of the business. It is unlawful to surrender control of the employees, premises, or business to a person other than the permit holder. TEX. ALCO. BEV. CODE ANN. § 109.53.

In this case, the evidence shows that Mr. Muhammad turned over use of the permit to Mr. Zuman, an individual to whom the permit was not issued. As Mr. Zuman was not in the country legally, he was not eligible to hold a permit issued by TABC. According to the store's accountant and at least one employee, Mr. Zuman owned the store. Mr. Muhammad did not maintain control of the business in any form. He had no idea as to the amount of the store's gross sales or profits. Mr. Muhammad himself admitted that Mr. Zuman handled all of the business for the store. According to Mr. Muhammad, Mr. Zuman paid him a certain amount each month and paid himself an amount of which Mr. Muhammad did not know. When Agent Salazar requested the business records for the store, Mr. Zuman was the one to authorize their release from the accountant. Furthermore, the store's bank records show that the only person to write checks for both business and non-business

purposes was Mr. Zuman. It is clear that Mr. Zuman actually controlled this business.

Respondent argued that Mr. Zuman was merely a manager for the store. However, this argument is not persuasive. While it seems suspect, the court can understand a store owner paying employees more than he may pay himself. However, it seems unreasonable for a manager to actually be paying the owner while the store owner has no idea what the manager is being paid. Furthermore, it is unreasonable for a store owner to not know any of the financial information regarding the store's gross sales and profits.

Given the facts in this case, Petitioner has established that Respondent falsely, or incorrectly, answered a question on an original or renewal application and allowed an unauthorized person to use a permit in the conduct of business. Therefore, the ALJ finds Respondent's permit and license should be cancelled.

III. FINDINGS OF FACT

1. Sakhi Corporation (Respondent), d/b/a Newway Kwik Stop #1 (the store) holds a Wine Only Package Store Permit, Q-667978, and a Beer Retailer's Off Premise License, BF-667980, issued by Texas Alcoholic Beverage Commission (TABC, Petitioner) for the premises located at 227 S. Main Street, Gladewater, Gregg County, Texas.
2. Sakhi Muhammad is the owner of Sakhi Corporation.
3. On the original application, Mr. Muhammad claimed he was the only person, through Sakhi Corporation, to make an investment in the store.
4. On three renewal applications, Mr. Muhammad stated the application was not being made for the benefit of someone other than the permit holder and that there had not been any changes since the original application that had not been reported.
5. During an open compliance check on January 21, 2010, TABC Enforcement Agent David Salazar located drug paraphernalia on the premises for which a citation was issued.
6. On that date, a store clerk informed Agent Salazar that Qumar Zuman owned the store.

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 8

7. Mr. Zuman initially claimed he was a part-time employee who ran errands for the store then later claimed to be a manager.
8. The store's accountant, identified Mr. Zuman as the owner of the store.
9. Both Mr. Muhammad and Mr. Zuman made an investment in the store.
10. Mr. Muhammad was not aware of the amount of the store's gross sales or profit.
11. Mr. Zuman paid Mr. Muhammad monthly from the proceeds of the store.
12. Mr. Muhammad did not have any idea how much Mr. Zuman was paying himself.
13. Both Mr. Muhammad and Mr. Zuman were authorized to write checks on the store's account; however, only Mr. Zuman had written any checks.
14. From July 1, 2009 through February 1, 2010, Mr. Zuman paid himself significantly more money than was paid to Mr. Muhammad.
15. On June 24, 2009, Mr. Zuman made a payment on a personal auto loan from the store account.
16. Mr. Zuman controlled the business and benefited from the use of the permit.
17. On September 10, 2010, Petitioner sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the TABC's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
18. The hearing on the merits convened October 11, 2010, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas, before Administrative Law Judge (ALJ) Michelle Kallas. Petitioner was represented at the hearing by Sandra Patton, TABC Staff Attorney. Respondent was present and represented at the hearing by Joe Newsome, attorney. The record closed on that date.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.05, 11.46, 11.61, and 109.53.

SOAH DOCKET NO. 458-11-0040

PROPOSAL FOR DECISION

PAGE 9

2. SOAH has jurisdiction to conduct the 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 ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.501 and 16 TAC § 37.3.
4. Respondent falsely, or incorrectly, answered a question on an original or renewal application. TEX. ALCO. BEV. CODE ANN. §§ 11.46 (a)(4) and 11.61 (b)(4).
5. Respondent allowed the use of the permit in the conduct of business. TEX. ALCO. BEV. CODE ANN. §§ 11.05 and 109.53.
6. Respondent's permit should be cancelled. TEX. ALCO. BEV. CODE ANN. § 11.61.

SIGNED December 7, 2010.



Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings