

DOCKET NO. 606203

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| TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner | § | BEFORE THE TEXAS |
| | § | |
| | § | |
| VS. | § | |
| | § | |
| GUATAMBHAI THAKORBHAI AMIN D/B/A GALVESTON LIQUOR, Respondent | § | ALCOHOLIC |
| | § | |
| PERMIT P738014, PS & LICENSE BF738015 | § | |
| | § | |
| GALVESTON COUNTY, TEXAS (SOAH DOCKET NO. 458-12-3190) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this **15TH DAY OF AUGUST, 2012**, the above-styled and numbered cause.

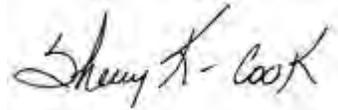
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Timothy Horan presiding. The hearing convened on February 24, 2012 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 10, 2012. 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. On April 13, 2012, Petitioner filed a Motion for Order Nunc Pro Tunc and Correcting the Proposal for Decision. Respondent filed exceptions on April 24, 2012. On April 30, 2012, Petitioner replied to the exceptions. On May 16, 2012, the Administrative Law Judge issued an Amended Proposal for Decision to correct a name. No new exceptions were filed to the Amended Proposal for Decision. On May 29, 2012, the Administrative Law Judge responded to the exceptions, recommending that no changes be made to the Proposal for Decision.

After review and due consideration of the Amended Proposal for Decision and the record in this proceeding, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended Proposal for Decision, and incorporate 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 Package Store Permit No. P738014 and the associated Package Store Tasting Permit, and Beer Retailer's Off-Premise License No. BF738015, are hereby **CANCELLED**.

This Order will become **final and enforceable** on the **11TH DAY OF SEPTEMBER, 2012**, unless a **Motion for Rehearing** is filed by the **10TH DAY OF SEPTEMBER, 2012**.

SIGNED this the **15TH DAY OF AUGUST, 2012**, at Austin, Texas.



Sherry K-Cook, 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 **15TH DAY OF AUGUST, 2012**.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: 512.322.0474

Guatambhai Thakorbbhai Amin
d/b/a Galveston Liquor
RESPONDENT
4613 FORT CROCKETT BLVD
GALVESTON, TX 77551
VIA CERTIFIED MAIL: 7007 0710 0005 4782 8497

Ronald A. Monshaugen
ATTORNEY FOR RESPONDENT
1225 North Loop West, Suite 640
Houston, Texas 77008-1757
VIA FAX: 713.880.5297

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL: RAMONA.PERRY@TABC.STATE.TX.US

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 10, 2012

RECEIVED

APR 11 2012

CABC HOUSTON
LEGAL

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

VIA REGULAR MAIL

**RE: Docket No. 458-12-3190; Texas Alcoholic Beverage Commission vs.
Guatambhai T. Amin d/b/a Galveston Liquor**

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX
77008- VIA REGULAR MAIL (with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731- VIA REGULAR MAIL
Ronald Monshaugen, Attorney at Law, 1225 North Loop West, Suite 640, Houston, Texas 77008 -VIA
REGULAR MAIL

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

DOCKET NO. 458-12-3190

| | | |
|---|----------|--------------------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE STATE OFFICE |
| | § | |
| V. | § | |
| | § | |
| | § | OF |
| GUATAMBHAI T. AMIN D/B/A GALVESTON LIQUOR PERMIT LICENSE NO(s). P-738014, PS, & BF-738015 GALVESTON COUNTY, TEXAS (TABC NO. 606203 | § | |
| | § | |
| | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission or TABC) brought this action against Guatambhai T. Amin d/b/a Galveston Liquor (Respondent) seeking cancellation of Respondent's permits/licenses. TABC alleged Respondent, his agent, servant, or employee, with criminal negligence, sold, served, dispensed or delivered an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. §106.13. This Proposal for Decision finds the Respondent's licenses/permits should be cancelled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on February 24, 2012, at the State Office of Administrative Hearings, 2020 North Loop West, Suite # 111, Houston, Texas. Attorney Ramona M. Perry represented staff. Respondent was represented by attorney Ronald Monshaugen. Administrative Law Judge (ALJ) Timothy Horan presided. The hearing concluded and the record closed the same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. DISCUSSION

A. Legal Background

TEX. ALCO. BEV. CODE ANN. § 106.13 states:

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 90 days a retail license or permit or a private club registration 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 or with criminal negligence permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than six months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

Further, criminal negligence is defined in TEX. PEN. 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.

B. Evidence and Argument

Respondent holds TABC package store permit number P-738014 (Permit), which includes the package store tasting permit, and a beer retailer's off premise license BF-738015 (License). Respondent owns and operates Galveston Liquor (Store) at 4613 Fort Crockett Boulevard in Galveston, Texas. On July 8, 2010 and January 28, 2011, Respondent, or an agent or employee of Respondent, sold alcoholic beverages to a minor. These two violations resulted in the entry of waiver orders by the TABC, which included suspensions of the Permits/Licenses and/or civil

penalties.¹

On September 16, 2011, TABC conducted a minor sting operation to locate businesses selling alcoholic beverages to minors—any one under the age of 21. TABC Agents Raymond Darden and Luther Parker together with a volunteer, [REDACTED] (or) conducted the sting operation at Respondent's store.

Agent Darden testified that he was in an undercover capacity and entered Respondent's store at approximately 8:45 p.m. on September 16, 2011, and that Agent Carter was positioned outside the store. The minor was told by the TABC Agents to enter the store and try to purchase alcohol. The minor was instructed to show identification if asked by the clerk and was further told not to lie about his age. TABC agents took the minor's photos to document what he looked like the night of the sting operation, along with a copy of his Texas driver's license.² Agent Darden stated that the minor was dressed casually in t-shirt and blue jeans, was youthful in appearance, and that he looked under 21 years of age. Agent Darden entered the store first and testified that no one else was in the store except for the clerk and that several minutes later the minor entered the store. Agent Darden observed the minor grab a six pack of Busch beer, place the beer on the counter, and pay the clerk for the beer. The clerk did not ask the minor for any identification to ascertain his age. Agent Darden stated that he was in the store the entire time the minor was in the store, watching him and the transaction. Once the minor purchased the beer, he left the store and met with the TABC agents outside the store. Agent Darden also left the store and met with Agent Parker to give him a description of the clerk who sold the alcoholic beverage to the minor.

Agent Parker testified that he entered the store after the minor had made the beer purchase and confirmed that the clerk who sold the beer to the minor was Guatambhai Amin, owner of the store. Mr. Amin told Agent Parker that he did not have any store policy or safeguards on selling alcohol to minors. Agent Parker confirmed that Mr. Amin was not TABC seller-server certified and Mr. Amin was cited for the violation.

¹ TABC Ex. 2.

² TABC Ex. 3-5.

Agent Parker stated that TABC had used the same minor in a previous sting operation at Respondent's store on January 28, 2011, and that the minor purchased an alcoholic beverage from Mr. Amin and was cited for the violation.

Mr. Amin testified that he is the owner of the liquor store and that on the evening of September 16, 2011, he was upset because he had just found out that his uncle had died in India. He admitted that he had made a mistake in selling the alcoholic beverage to the minor and that he had taken remedial action to ensure that future sales would not occur at his store. He stated that since the violation, he has taken the TABC seller-server training course and is renting a scanner which scans the driver's licenses to confirm the age of customers. Because of this, Respondent is asking for mitigation on any permit/license suspension period. Respondent further questioned the Staff's failure to bring the minor to the hearing. Finally, Respondent asserts that the court should consider the present violation as only the second TABC administrative enforcement action against Respondent because one of the previous criminal cases of a sale to a minor arising from July 8, 2010, and January 28, 2011, was plea bargained in the criminal case and was dismissed on July 15, 2011, by the county criminal court.

TABC argues that this is the third violation issued to Respondent for selling alcoholic beverages to a minor within a 36-month period and that cancellation is justified. Also, the same minor was used in a previous sting operation at Respondent's store and that Mr. Amin sold alcoholic beverages to the same minor on both occasions. Finally, Staff argues that Respondent, by his own admission, did not have any store policy when it came to preventing sales of alcoholic beverages to a minor until after the third violation.

III. ANALYSIS

The evidence clearly establishes that Respondent did, with criminal negligence, sell an alcoholic beverage to a minor on September 16, 2011. Staff presented a straight-forward case for revocation that is consistent with TEX. ALCO. BEV. CODE ANN. § 106.13. Respondent has received

three violations for sales to minors within a 36-month period. The Alcoholic Beverage Code requires three violations to justify cancellation. The ALJ finds Staff met its burden of proof.

The TABC agents testified that the minor appeared youthful in appearance and under the age of 21. Respondent failed to request identification from the minor, even though the minor was prepared to present his valid Texas driver's license as evidence that he was a minor. Agent Parker stated that the same minor was used in a previous sting operation at Respondent's store on January 28, 2011, and Respondent even asked for identification from the minor at that time. The purchase was still completed after Respondent reviewed the minor's identification. The photocopy of the minor driver's license clearly identifies John Ellis to be "UNDER 21 UNTIL 12/28/2014, Respondent did not have any TABC training nor did he have any policy at his store to prevent or to ensure that alcoholic beverages would not be sold to minors. The ALJ believes the Respondent's two previous sale to minors violations would tend to make him more vigilant. However, Respondent made remedial changes and took the TABC seller-server training only after he had received a third violation for selling alcohol to a minor.

Respondent questioned Staff's decision not to bring the minor to the hearing. Staff argued that Agent Darden was present at the hearing, had observed the entire transaction, and did testify. Respondent neither requested that the minor appear at the hearing nor did Respondent subpoena him.

Respondent states that the court should only consider the instant case as the second violation since a prior sale to a minor case was plea bargained in the county criminal court. Respondent clearly signed waivers on both prior violations and TABC entered final waiver orders on the two prior sales to minors' violations. Respondent did not offer any evidence that the TABC waiver orders were appealed or contested. This is not the proper forum to do so now.

While the ALJ is sympathetic to Respondent's situation, the Permits/Licenses should be cancelled.

IV. FINDINGS OF FACT

1. Guatambhai T. Amin, d/b/a Galveston Liquor (Respondent) holds Texas Alcoholic Beverage Commission (TABC) package store permit number P-738014 (Permit), which includes the package store tasting permit, and a beer retailer's off premise license number BF-738015 (License).
2. Respondent owns and operates Galveston Liquor (Store) at 4613 Fort Crockett Boulevard in Galveston, Texas.
3. On December 9, 2011, the TABC sent a notice of hearing to Respondent stating that a hearing would be held on this matter on February 24, 2012, at the State Office of Administrative Hearings (SOAH) in Houston, Texas.
4. The notice also contained a statement of the legal authority and jurisdiction for the hearing, a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.
5. The hearing in this matter convened on February 24, 2012, at the SOAH offices in Houston, Texas. Attorney Ramona M. Perry represented staff. The Respondent was represented by attorney Ronald Monshaugen. Administrative Law Judge (ALJ) Timothy Horan presided. The hearing concluded and the record closed the same day.
6. On July 8, 2010 and on January 28, 2011, Respondent, or an agent or employee of Respondent, sold alcoholic beverages to a minor. These violations resulted in the entry of waiver orders by the TABC, which included suspensions of the Permit and/or civil penalties against Respondent stemming from allegations that Respondent sold alcohol to minors.
7. On September 16, 2011, Respondent sold an alcoholic beverage to John Ellis, a 17-year-old minor, and failed to request identification from the minor.
8. On September 16, 2011, Respondent was not TABC seller-server certified.
9. The sale of an alcoholic beverage to a minor by Respondent on September 16, 2011, is Respondent's third such violation.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE subchapter B of chapter 5.
2. SOAH 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. On September 16, 2011, Respondent, with criminal negligence sold an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.
5. Based on the Findings of Fact and Conclusions of Law, the Permit/Licenses should be cancelled.

SIGNED April 10, 2012


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS