

IT IS THEREFORE ORDERED that the privileges granted by the Commission and the activities authorized under the above permits by the Code will be **SUSPENDED beginning at 12:01 a.m. on May 27, 2015** and shall remain suspended **for TWENTY (20) CONSECUTIVE DAYS**. **IT IS FURTHER ORDERED** that Respondent shall not have the opportunity to pay a civil penalty in lieu of the suspension.

This Order will become final and enforceable on the 16th day of May, 2015, unless a Motion for Rehearing is filed by the 15th day of May, 2015.

SIGNED this the 22nd day of April, 2015, at Austin, Texas.



Sherry K-Cook, Executive Director
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 22nd day of April, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (512) 322-2061

Jet Lounge Inc.
d/b/a Jet Lounge
RESPONDENT
1515 Pease St. Unit C
Houston , TX 77002
VIA FIRST CLASS MAIL, CMRRR # 70120470000133035152

Clyde W. Burleson
ATTORNEY FOR RESPONDENT
1533 W. Alabama, Suite 100
Houston, Texas 77006
VIA FIRST CLASS MAIL, CMRRR# 70120470000133035169
AND
VIA FACSIMILE: (713) 526-3787

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
November 4, 2014

RECEIVED

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CRUCIAL
LEGAL

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-4440; Texas Alcoholic Beverage Commission vs. Jet Lounge Inc. d/b/a Jet Lounge

Dear Ms. Cook:

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 that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr
Enclosure

xc Sandra K. Patton Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
Clyde Burleson, Attorney at Law, 1533 W. Alabama, Suite 100, Houston, TX 77006 - VIA REGULAR MAIL

**SOAH DOCKET NO. 458-14-4440
(TABC CASE NO. 622539)**

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

v.

**JET LOUNGE INC.
D/B/A JET LOUNGE,
Permit No. MB669541, LB,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Jet Lounge Inc. d/b/a Jet Lounge (Respondent or Jet Lounge), alleging that Respondent violated Texas Alcoholic Beverage Code (Code) §11.61. The Administrative Law Judge (ALJ) finds Petitioner proved its allegations by a preponderance of the evidence and recommends that Respondent's license be suspended for 20 days without an opportunity to pay a civil penalty.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits convened on September 19, 2014, at 2020 North Loop West, Suite 111, Houston, Texas, before ALJ Lindy Hendricks. Staff was represented by attorney Sandra K. Patton. Respondent was represented by attorney Clyde Burleson. The record closed at the conclusion of the hearing.

II. DISCUSSION

A. Background

Jet Lounge is located at 1515 Pease Street, Unit C, in Houston, Texas, and holds mixed beverage and mixed beverage late hours permit number MB669541.

B. Allegations and Legal Standards

In its Notice of Hearing, Staff alleged the following violations occurred on November 24, 2013:

- (1) Respondent or its agent, servant, or employee, sold or offered to sell mixed beverages during prohibited hours, in violation of Code §§ 11.61(b)(2), (23), and 105.03.
- (2) Respondent or its agent, servant, or employee, permitted consumption of an alcoholic beverage on the licensed premises at a time when the consumption of alcoholic beverages is prohibited, in violation of Code §§ 11.61(b)(2), (22), and 105.06.
- (3) Respondent or its agent, servant, or employee, possessed or permitted to be possessed on the licensed premises for which the permit is issued any alcoholic beverage not covered by an invoice from the supplier from whom the alcoholic beverage was purchased, in violation of Code §§ 11.61(b)(2), 28.06(a), and 16 Texas Administrative Code (TAC) 41.50(h)(1),(2).

The Code prohibits the sale of alcoholic beverages after 2:00 a.m. and the consumption of any alcoholic beverages after 2:15 a.m.¹

C. Evidence

Staff presented the testimony of TABC Agents Jonathan Harris and Peter Gonzales. Respondent presented the testimony of Mitchel Burman, owner of Jet Lounge.

Agent Harris testified he entered Jet Lounge on November 21, 2013, at 2:10 a.m., in an undercover capacity. He attempted to buy a Budweiser beer from a bartender later identified as Kelsey Miller. Ms. Miller stated she could not sell him beer because it was illegal at the time. Agent Harris then ordered a vodka. Ms. Miller told Agent Harris to wait 45 minutes and she would sell it. At approximately 2:55 a.m., Agent Harris was able to purchase vodka for \$20 from Ms. Harris. He observed Ms. Miller mix the vodka with Sprite. Based on taste and smell, Agent Harris confirmed that the alcohol in his drink was vodka. Ms. Miller told Agent Harris that the manager had refilled empty miniature Ozarka bottles with vodka and resealed them

¹ Code §§ 11.61(b)(2), (22), (23); 105.03; and 105.06.

almost to the original manufacturer's standard. After Agent Harris made his purchase, he contacted the outside or "open" team.

Respondent stipulated that the Ozarka bottles seized that night contained vodka.

Agent Gonzales entered Jet Lounge as part of the open team. He made contact with the manager, identified as Patrice Michelle Gonzales. Ms. Gonzales was aware the Ozarka bottles contained vodka. She showed Agent Gonzales where the bottles were kept at the bar. Ms. Gonzales stated the vodka was not invoiced to Jet Lounge. A promoter had brought the bottles to Jet Lounge a week earlier and they were kept in the office. The vodka was then moved to the bar to be sold. According to Ms. Gonzales, the owner knew about the vodka and told employees to sell it after hours. Agent Gonzales spoke to Ms. Miller who stated she knew the bottles contained vodka and that it was illegal to sell alcohol after hours. According to Ms. Miller, the owner asked them to sell the vodka to make money for the bar.

Mr. Burman is the owner of Jet Lounge. He was not present the night of the incident. Mr. Burman testified he had hired a promotion company to bring in crowds to Jet Lounge. Mr. Burman stated he was not aware of the water bottles filled with vodka and did not condone the actions of his employees. According to Mr. Burman, he did not receive any cash from the transactions. He believed the employee and manager had an agreement to share the proceeds from the vodka sales with the promoter. Mr. Burman testified that he terminated all the employees involved in the incident.

D. Analysis and Appropriate Penalty

It is undisputed that Ozarka water bottles were emptied and refilled with vodka. The bottles were then resealed to look like unopened bottles of water. Respondent's employee admitted the alcohol was not invoiced, and no invoices were produced at the time of the investigation or hearing. The ALJ finds that Respondent possessed alcohol that was not covered by an invoice from the supplier from whom the alcoholic beverage was purchased alcohol.

It is also undisputed that, at approximately 2:55 a.m., Respondent's employee sold an alcoholic beverage, namely vodka, and permitted Agent Harris to consume it during prohibited hours.

Respondent did not dispute the allegations but sought mitigation of the penalty and requested an opportunity to pay a civil penalty. Respondent stated that the owner was not present or aware of the violations. Respondent argued that the employees acted without the owner's knowledge and were terminated to prevent future violations.

Staff argued that Respondent is responsible for the actions of its employees because a permittee is defined as the holder of the permit and his agent, servant, or employee.² Staff further argued that, based on Respondent's administrative history which included prior public safety violations, Respondent should not be given an opportunity to pay a civil penalty in this matter. Staff recommended Respondent's permit be suspended for 20 days without an opportunity to pay a civil penalty as provided under Code §11.64(a) for violations related to the sale or consumption of alcohol during prohibited hours.

The ALJ agrees that Respondent is responsible for the actions of its employees even when its owner is not present at the business. The ALJ also finds the employees' statements to be consistent and show that the owner knew or should have known of the violations. The alcohol had been stored in the office for a week, was concealed and resealed in water bottles to avoid detection, and was sold at an inflated price of \$20. The employees knew it was illegal to sell alcohol after hours, but the owner had instructed them to do so to make more money. For these reasons, the ALJ recommends that Respondent's permits should be suspended for 20 days without the opportunity to pay a civil penalty.

III. FINDINGS OF FACT

1. Jet Lounge Inc. d/b/a Jet Lounge (Jet Lounge or Respondent) is located at 1515 Pease Street, Unit C, in Houston, Texas, and holds mixed beverage and mixed beverage late hours permit number MB669541.

² Code § 1.04(11).

2. Staff of the Texas Commission on Alcoholic Beverages (Commission) issued a notice of hearing, alleging multiple violations of the Texas Alcoholic Beverage Code (Code). The notice was sent to Respondent on July 21, 2014.
3. The notice stated the time, place, and nature of the hearing; legal authority and jurisdiction under which the hearing was to be held; statutes and rules involved; and matters asserted.
4. The hearing on the merits convened on September 19, 2014, at 2020 North Loop West, Suite 111, in Houston, Texas. Staff attorney Sandra K. Patton represented Staff, and attorney Clyde Burleson represented Respondent. The record closed at the conclusion of the hearing.
5. On November 24, 2013, Respondent's bartender, Kelsey Miller, sold an alcoholic beverage at 2:55 a.m. during prohibited hours to Agent Harris.
6. Ms. Miller permitted Agent Harris to consume the alcohol during prohibited hours.
7. Respondent knew or should have known of the violations.
8. The alcohol had been stored in the office for a week, was concealed and resealed in water bottles to avoid detection, and was sold at an inflated price of \$20.
9. Ms. Miller and the manager, Patrice Gonzales, knew it was illegal to sell alcohol after 2:00 a.m., but the owner had instructed them to do so to make more money.
10. The alcohol was not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 11.61.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Tex. Gov't Code §§ 2001.051-.052.
4. Respondent sold and permitted the consumption of an alcoholic beverage during prohibited hours and thus violated Code §§ 11.61(b)(2), (22), (23), 105.03, and 105.06.
5. Respondent possessed or permitted to be possessed on the licensed premises for which

the permit is issued any alcoholic beverage not covered by an invoice from the supplier from whom the alcoholic beverage was purchased and thus violated Code §§ 11.61(b)(2), 28.06(a), and 16 Tex. Admin. Code § 41.50(h)(1), (2).

6. Respondent's permit should be suspended for 20 days without the opportunity to pay a civil penalty. Code §§ 11.61 and 11.64(a).

SIGNED November 3, 2014.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS