

**DOCKET NO. 624349**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
	§	
<b>MINA AND DIMI'S GREEK HOUSE, INC. D/B/A MINA AND DIMI'S GREEK HOUSE RESTAURANT, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT BG 293477</b>	§	
	§	
	§	
<b>BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-15-2600)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 10th day of July, 2015, 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 Hunter Burkhalter presiding. The hearing convened on April 7, 2015 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 May 5, 2015. 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. No exceptions were filed.

I concur with the Administrative Law Judge's analysis of this case<sup>1</sup>, and in particular with this statement at page 5 of the Proposal for Decision: "In this case, all of the factors to be considered weigh heavily in Greek House's favor." I recognize that the recommended sanction (a one day suspension or a \$150.00 civil penalty) reflected these mitigating circumstances.

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<sup>1</sup> However, to avoid any misunderstandings in the future, it is necessary to correct a statement on page 4 of the Proposal for Decision. Respondent (who holds a Wine and Beer Retailer's Permit) could not legally have purchased the wine from a Spec's location that holds a Licensed Distributor's Permit. Under Alcoholic Beverage Code §23.01(a)(2), the holder of a Local Distributor's Permit can sell alcoholic beverages only to mixed beverage and private club registration permittees.

However, I believe a more appropriate sanction, given all the facts of this case, is that Respondent be issued a Written Warning.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, **with the following modification to Conclusion of Law No. 7**, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

**Conclusion of Law No. 7 is modified to read:**

In light of all the mitigating factors, Respondent should be issued a Written Warning.

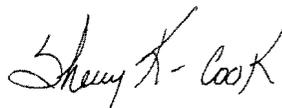
This change to Conclusion of Law No. 7 is made to reflect the sanction that is in fact being imposed, pursuant to the authority of the agency charged with rendering the decision to assess the appropriate sanction.

All motions, requests for entry of Proposed Findings of Fact 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 Respondent be issued a **WRITTEN WARNING**.

**This Order will become final and enforceable on the 4th day of August, 2015, unless a Motion for Rehearing is filed by the 3rd day of August 2015.**

**SIGNED** this the 10th day of July 2015, at Austin, Texas.



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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 10th day of July, 2015.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Hunter Burkhalter  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

Mina and Dimi's Greek House Inc.  
d/b/a Mina and Dimi's Greek House Restaurant  
**RESPONDENT**  
122 W. Huisache St.  
San Antonio, TX 78212  
**VIA FIRST CLASS MAIL, CMRRR # 70090960000121491025**

John Sedberry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [john.sedberry@tabc.texas.gov](mailto:john.sedberry@tabc.texas.gov)**

**SOAH DOCKET NO. 458-15-2600  
(TABC CASE NO. 624349)**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION,     Petitioner</b>	§ § § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>v.</b>		
<b>MINA AND DIMI'S GREEK HOUSE, INC. D/B/A MINA AND DIMI'S GREEK HOUSE RESTAURANT, (Permit No. BG-293477)     Respondent</b>		<b>OF</b>
		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) seeks to sanction Mina and Dimi's Greek House, Inc. d/b/a Mina and Dimi's Greek House Restaurant (Greek House) for a violation of the Texas Alcoholic Beverage Code. The evidence proved that Greek House committed the alleged violation. However, a number of mitigating factors weigh in Greek House's favor. Therefore, the Administrative Law Judge (ALJ) recommends that Greek House's alcoholic beverage permit be suspended for one day or, in lieu of the suspension, the restaurant pay a fine of \$150.

**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 was held on April 7, 2015, in San Antonio, Texas, before ALJ Hunter Burkhalter. Staff attorney John Sedberry represented Staff, and Alicia Tsandoula, Respondent's president and owner, appeared *pro se*. The record closed at the conclusion of the hearing.

## II. DISCUSSION

### A. Background

Greek House, which is located at 7159 Hwy 90 West in San Antonio, Texas, holds a Wine and Beer Retailer's on Premise Permit, number BG293477.<sup>1</sup> In the distant past, Greek House has been given two written warnings by the Commission, once in 1997 for employing a person under 18 years old to sell and handle alcoholic beverages; and once in 1996 for "misc. violations."<sup>2</sup>

In its Notice of Hearing, Staff alleges a new violation that, on January 18, 2014, Greek House acquired alcoholic beverages for the purpose of resale from another retail dealer of alcohol, in violation of Texas Alcoholic Beverage Code §§ 61.71(a)(20) and 69.09.

### B. Evidence

At the hearing in this matter, Staff presented a number of exhibits, without objection. Staff had no witnesses. Ms. Tsandoula testified on behalf of Greek House.

Ms. Tsandoula testified that, once every other month, the restaurant hosts a special wine-tasting dinner. The wine tasting dinner held on January 17, 2014, proved to be unusually popular, causing the restaurant to sell more wine than it had anticipated. The next day, January 18 (which was a Saturday), the restaurant found itself unexpectedly running low on wine, leaving it at risk of running out during a busy Saturday night. According to Ms. Tsandoula, the restaurant typically purchases its alcohol from Republic Distributing, a company that is permitted as a wholesale distributor of beer and wine by the Commission. On January 18, 2014, Ms. Tsandoula called her sales representative at Republic Distributing and was told that Republic Distributing could not deliver wine to her restaurant on that day. The sales

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<sup>1</sup> Staff Ex. 2.

<sup>2</sup> Staff Ex. 2.

representative suggested to Ms. Tsandoula that she simply buy the wine she needed at Spec's, a nearby liquor store. So, Ms. Tsandoula went and purchased wine at Spec's on the 18<sup>th</sup>. She admitted that something felt "not right" about buying the wine at Spec's, but she was desperate to get the product she needed for her restaurant. Staff produced a receipt indicating that Greek House purchased \$461 worth of wine from Spec's on January 18, 2014.<sup>3</sup>

Ms. Tsandoula testified that the Commission's rules regarding wine purchases for her restaurant are confusing. She had a general sense that she was only supposed to purchase wine from a permitted distributor. However, when her sales representative at Republic Distributing suggested that she purchase her wine at Spec's, Ms. Tsandoula assumed that the sale representative would not have given her bad advice. Ms. Tsandoula insisted that she had made an "honest mistake" in purchasing wine at Spec's, and that she always strives to comply with the law. She also made it clear that the restaurant would not make the same mistake in the future.

On January 24, 2014, several days after the purchase at Spec's, Ms. Tsandoula called the Commission to inquire about the status of the renewal of her permit. During that conversation, Ms. Tsandoula disclosed to the Commission representative that she had purchased wine from Spec's and she wanted to know if what she had done was legal. It was Ms. Tsandoula's phone call that initiated this enforcement action.

In response to her call, Staff initiated an investigation. The notes from the investigation corroborate Ms. Tsandoula's testimony. For example, the notes indicate that Republic Distributing had recommended to Ms. Tsandoula that she go to Spec's to make a wine purchase because Republic was out of the wine she needed.<sup>4</sup> Ms. Tsandoula wrote a letter to Staff explaining the incident. The letter is consistent with her testimony.<sup>5</sup> Staff concluded that, by purchasing the wine from Spec's, a retail dealer, Greek House had violated Texas Alcoholic Beverage Code § 61.71(a)(20), and the investigator recommended that the restaurant's permit be

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<sup>3</sup> Staff Ex. 3.

<sup>4</sup> Staff Ex. 4.

<sup>5</sup> Staff Ex. 3 at 2.

suspended for six days or, in lieu of the suspension, the restaurant pay a fine of \$300 per day for six days (for a total fine of \$1,800).<sup>6</sup>

At the hearing, Staff's counsel conceded that Ms. Tsandoula voluntarily reported the violation to the Commission. He also pointed out that she has fully cooperated with Staff's investigation. Staff's counsel also explained that some Spec's locations hold both a retailer's permit and a wholesale distributor's permit. If Ms. Tsandoula had bought her wine from a Spec's holding both permits, she would not have violated the law. However, the particular Spec's location where she purchased the wine holds only a retailer's permit.

### **C. Analysis**

The Commission is empowered to sanction any permit holder that violates the Texas Alcoholic Beverage Code or rules of the Commission.<sup>7</sup> As a holder of a Wine and Beer Retailer's on Premise Permit, Greek House is prohibited from purchasing alcoholic beverages for the purpose of resale from another retail dealer of alcoholic beverages.<sup>8</sup> In this case, Greek House candidly concedes that it violated this rule. Accordingly, the restaurant is subject to sanction by the Commission.

The Commission is required to adopt a schedule of sanctions that may be imposed on permit holders.<sup>9</sup> The Commission has adopted such a schedule.<sup>10</sup> According to that schedule, a first-time violation of the prohibition against a retail permit holder purchasing alcohol from another retail dealer warrants suspension of the license for six to eight days, or payment of a fine of \$300 per day for six to eight days.<sup>11</sup> However, when assessing a sanction, the Commission

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<sup>6</sup> Staff Ex. 4.

<sup>7</sup> Tex. Alco. Bev. Code §§ 5.33, 5.362, 61.71.

<sup>8</sup> Tex. Alco. Bev. Code §§ 61.71(20), 69.09.

<sup>9</sup> Tex. Alco. Bev. Code § 5.362(a).

<sup>10</sup> 16 Tex. Admin. Code § 34.3.

<sup>11</sup> 16 Tex. Admin. Code § 34.3 at 2.

must also consider aggravating and mitigating factors, such as the license holder's previous violation history; whether the violation was committed knowingly by the license holder; and whether the license holder "has demonstrated good faith, including taking actions to rectify the consequences of the violation and to deter future violations."<sup>12</sup> Moreover, the Commission is directed to "allow deviations from the [sanctions] schedule for clearly established mitigating circumstances."<sup>13</sup>

In this case, all of the factors to be considered weigh heavily in Greek House's favor. The restaurant's previous violation history is good, with only a written warning being issued by the Commission 18 years ago, and another issued 19 years ago. The violation in this case was clearly committed unknowingly by the restaurant. Ms. Tsandoula would not have purchased wine at Spec's but for the advice she received from a sales representative at a permitted distributor, who should have known better. Even so, Ms. Tsandoula purchased only a relatively small quantity from Spec's only enough to get the restaurant out of an unexpected shortage on a busy Saturday night. Moreover, the Commission learned about the violation only because it was self-reported by Ms. Tsandoula when she diligently called to inquire whether she had done the right thing. Throughout the investigation and hearing, Ms. Tsandoula has demonstrated good faith and a determination to prevent future violations.

In light of all these factors, Staff's counsel suggested that a light sanction, such as a three-day suspension or something even lighter, should be imposed. The ALJ agrees, and recommends that Greek House's permit be suspended for a period of one day or, in lieu of the suspension, the restaurant should pay a fine of \$150.

### III. FINDINGS OF FACT

1. Mina and Dimi's Greek House, Inc. d/b/a Mina and Dimi's Greek House Restaurant (Greek House), which is located at 7159 Hwy 90 West in San Antonio, Texas, holds a Wine and Beer Retailer's on Premise Permit, number BG293477.

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<sup>12</sup> Tex. Alco. Bev. Code §§ 5.362(c), 11.64(c)(4), (5).

<sup>13</sup> Tex. Alco. Bev. Code § 5.362(d)(1).

2. In 1997, the Texas Commission on Alcoholic Beverages (Commission) issued a written warning to Greek House for employing a person under 18 years old to sell and handle alcoholic beverages.
3. In 1996, the Commission issued a written warning to Greek House for “misc. violations.”
4. Greek House has no other prior violation history.
5. On January 17, 2014, Greek House held a special wine tasting dinner which proved to be unusually popular, causing the restaurant to sell more wine than it had anticipated.
6. The next day, January 18 (which was a Saturday), the restaurant found itself unexpectedly running low on wine, leaving it at risk of running out during a busy Saturday night.
7. Greek House typically purchases its alcohol from Republic Distributing, a company that is permitted as a wholesale distributor of beer and wine by the Commission.
8. On January 18, 2014, Alicia Tsandoula, the president and owner of Greek House, called her sales representative at Republic Distributing and was told that Republic Distributing could not deliver wine to her restaurant on that day. The sales representative suggested to Ms. Tsandoula that she buy the wine she needed at Spec’s, a nearby liquor store.
9. Following the advice she was given by her distributor, Ms. Tsandoula purchased \$461 worth of wine at Spec’s on January 18, 2014. The Spec’s location at which the wine was purchased holds only a license to sell alcohol on a retail basis.
10. Several days later, on January 24, 2014, Ms. Tsandoula called the Commission, disclosed that she had purchased wine from Spec’s, and asked if what she had done was legal. The Commission would not have learned about the incident but for Ms. Tsandoula’s call.
11. Greek House has fully cooperated with Staff’s investigation.
12. The violation in this case was committed unknowingly by the restaurant.
13. Ms. Tsandoula would not have purchased wine at Spec’s but for the advice she received from a sales representative at a permitted distributor, who should have known better.
14. Throughout the investigation and hearing, the restaurant has demonstrated good faith and a determination to prevent future violations.
15. The staff (Staff) of the Commission issued to Greek House a notice of hearing, alleging a violation of the Texas Alcoholic Beverage Code. The notice of hearing was sent on February 27, 2015.

16. 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.
17. The hearing on the merits was held on April 7, 2015, in San Antonio, Texas, before Administrative Law Judge Hunter Burkhalter. Staff attorney John Sedberry represented Staff, and Alicia Tsandoula, Greek House's president and owner, appeared *pro se*. The record closed at the conclusion of the hearing.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case. Tex. Alco. Bev. 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. Tex. Alco. Bev. Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Greek House received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052.
4. On January 18, 2014, Greek House purchased alcoholic beverages for the purpose of resale from another retail dealer of alcoholic beverages, in violation of Tex. Alco. Bev. Code §§ 61.71(a)(20), 69.09.
5. When assessing a sanction, the Commission must consider mitigating factors, such as the license holder's previous violation history; whether the violation was committed knowingly by the license holder; and whether the license holder "has demonstrated good faith, including taking actions to rectify the consequences of the violation and to deter future violations." Tex. Alco. Bev. Code §§ 5.362(c), 11.64(c)(4), (5).
6. When assessing a sanction, the Commission is directed to "allow deviations from the [sanctions] schedule for clearly established mitigating circumstances." Tex. Alco. Bev. Code § 5.362(d)(1).
7. In light of all the mitigating factors, Greek House's permit should be suspended for a period of one day or, in lieu of the suspension, the restaurant should pay a fine of \$150.

**SIGNED May 5, 2015.**



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HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 5, 2015

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

**VIA INTERAGENCY MAIL**

**RE: SOAH Docket No. 458-15-2600; Texas Alcoholic Beverage Commission v. Mina and Dimi's Greek House, Inc. d/b/a Mina and Dimi's Greek House Restaurant (Permit No. BG-293477)**

Dear Ms. Cook:

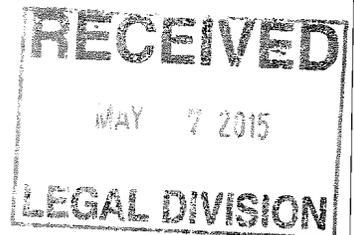
Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Hunter Burkhalter".

Hunter Burkhalter  
Administrative Law Judge



HB/mle  
Enclosure

xc John Sedberry, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL**  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA INTERAGENCY MAIL**  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with 1 Hearing CD)  
Alicia Tsandoula, Mina and Dimi's Greek House, Inc., 122 W. Huisache St., San Antonio, TX 78212 - **VIA REGULAR MAIL**