

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 18, 1999

Doyme Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

Via Certified Mail
P 906 424 109

**RE: Docket No. 458-00-1764; Texas Alcoholic Beverage Commission vs. Karim Abed Hamid, ET AL,
d/b/a Sam's Market No. 2 (TABC Case No. 584380)**

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Dewey Brackin attorney for Texas Alcoholic Beverage Commission, and to Karim Abed Hamid d/b/a Sam's Market No.2. For reasons discussed in the proposal, I recommend a penalty of seven (7) days.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Edel P. Ruiseco".

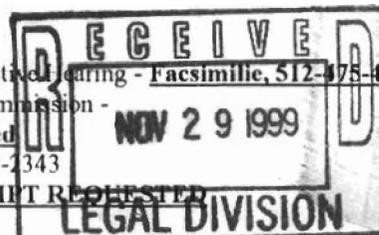
Edel P. Ruiseco
Administrative Law Judge

EPR:mar

Enclosure

xc

Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - Facsimile, 512-475-4994
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission -
Certified Mail No. P 906 424 117 Return Receipt Requested
Karim Abed Hamid, 1022 Santa Fe, Corpus Christi, Tx 78404-2343
CERTIFIED MAIL NO. P 906 424 108, RETURN RECEIPT REQUESTED



1225 Agnes Street, Suite 102
(512) 884-5023

Corpus Christi, Texas 78401
Fax (512) 884-5427

DOCKET NO. 458-00-1764

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
VS.	§	OF
KARIM ABED HAMID, ET AL, D/B/A	§	
SAM'S MARKET NO. 2	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Petitioner, Texas Alcoholic Beverage Commission (TABC), through its Staff, seeks to cancel a wine and beer retailer's off premises permit held by Karim Abed Hamid, d/b/a Sam's Market #2 (Respondent). Staff alleged that Respondent sold an alcoholic beverage to a minor. Finding the Respondent's employee negligently sold an alcoholic beverage to a minor one time, with no similar violations, this proposal recommends a penalty of seven (7) days.

REASONS FOR RECOMMENDATION

The hearing for this case was convened before Administrative Law Judge Edel P. Ruiseco (ALJ) on October 14, 1999. Dewey Brackin, Esquire, of TABC's Legal Division represented Staff. The hearing was conducted in the offices of the State Office of Administrative Hearings (SOAH), Corpus Christi, Texas. Respondent represented himself. The hearing was completed and the record closed the same day.

The parties agreed that the State Office of Administrative Hearings (SOAH) had jurisdiction of the subject matter; that venue was proper in Corpus Christi, Nueces County, Texas; and that all parties received notice of the allegations and hearing date.

There is essentially no dispute as to the facts in this case, except that Respondent contends that the store records do not reflect a sale at the time of the alleged purchase, the purchase price was one never used in the sale of the alcoholic beverage, and the employee checked identification of all purchasers of alcoholic beverages and did not sell such to a minor.

As outlined in the Findings of Fact, the testimony of the Corpus Christi Police Department officer, Sgt. Felix Gonzalez and the minor, Abel Villarreal, and the Respondent's employee Gabriel Martinez and the Respondent, Karim Abed Hamid, all support the ALJ's recommendation.

The undisputed facts are that on February 27, 1999, between the hours of 9:30 and 9:50 p.m., a minor sting operation occurred at Respondent's premises. Abel Villarreal (minor), entered the store, purchased a 6-pack of beer, showed his driver's license as requested by Gabriel Martinez (employee), the only employee of Respondent in the premises. The minor received change, took the beer and left the premises. The minor's driver's license clearly showed him to be under 21 years of age. No receipt was offered to, and none requested by, the minor. The minor immediately went to the unmarked police vehicle parked in front of the premises, and where Sgt. Gonzalez waited for the transaction to be completed. After the beer and change were handed to Sgt. Gonzalez, he called the two TABC agents parked nearby and returned to the premises with them and advised the employee that he sold beer to a minor and would be cited to appear in court. Employee immediately called Respondent who went to the store and obtained the cash register tape.

Respondent disputed the allegation that the minor purchased a 6-pack of Bud Lite beer for \$4.38, and questioned why the minor no longer had the driver's license shown to the employee. Respondent had left Sam's Market #2 (premises) at 9:30 p.m. to check and close another store, Sam's Market #1, at 10:00 p.m.

Respondent had twice before attempted to have employee trained by the TABC seller-server course, but both times the class was canceled due to too few students. This was the first violation of this type by Respondent in over 20 years of doing business. Employee confirmed that Respondent trained all employees that no beer was to be sold to minors, and that he had special signs made for the register to aid in determining who was less than 21 years old.

Respondent showed that the cash register tape (tape) did not reflect a sale at 9:43 p.m. in the amount of \$4.38 or for any beer, near that time. The tape showed two "no sale" transactions at 9:46 p.m., and no sale of beer between 9:35 and 10:00 p.m. In addition, Respondent proved that a 6-pack of Bud Lite beer sold for \$4.99, plus tax, and not for the amount of \$4.38. Respondent's employee testified that he sold a 6-pack of Busch beer, not Bud Lite, to a person whose license he checked to verify that the minor was over 21 years old. He further stated that shortly after the person left the store, three police officers entered, accused him of selling beer to a minor, and cited him to appear in court when he did not deny the accusation. Employee contended that he was scared and that is why he did not deny the accusation.

In summary, the ALJ finds the Petitioner proved that a minor was sold beer on February 27, 1999, by Respondent's employee; that the cash register was opened at 9:46 p.m. but a no sale transaction was indicated, and change was given to the minor. It is also found that Respondent had attempted to send employee to TABC's seller-server class of instruction, but both times no class was given due to lack of students. Respondent also proved that he kept signs on the premises, and trained his employees, to check the identification of every person buying beer and to not sell beer to minors. This is Respondent's first violation of this type.

FINDINGS OF FACT

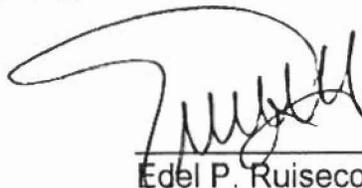
1. Karim Abed Hamid, doing business as Sam's Market #2, located at 1022 Santa Fee, Unit 5, Corpus Christi, Nueces County, Texas 78404, was issued a Wine and Beer Retailer's Off Premises permit, BQ 407321, on February 4, 1997, and renewed annually thereafter.
2. On June 28, 1999, TABC's Staff sent notice of the hearing to Respondent at her address of record, 1022 Santa Fee, Unit 5, Corpus Christi, TX 78404.
3. The hearing convened on October 14, 1999. Both parties were present. Petitioner appeared by counsel, and Respondent appeared pro se.
4. On February 27, 1999, a minor sting operation was conducted at Respondent's premises, with Abel Villarreal, an underage person (minor), assigned to purchase beer from Respondent's clerk, Gilbert Martinez (employee).
5. On February 27, 1999:
 - a. **Minor entered** the premises between 9:40 and 9:50 p.m., took a 6-pack of beer to the counter, and handed the clerk \$5.00;
 - b. Employee requested to see minor's identification, and was shown a Texas driver's license which indicated a date of birth of 02-10-81;
 - c. Employee checked the driver's license and regardless of the date showing the person was a minor, rang up the transaction as no-sale, gave the minor the beer and change from the \$5.00 bill;
 - d. No receipt was given to, nor requested by, the minor;
 - e. Minor left the premises and gave the beer and change to the officer in charge of the sting operation, Sgt. Gonzalez.
6. After the illegal purchase was confirmed, Sgt. Gonzalez advised two other TABC agents parked nearby and all three entered the premises and confronted the employee.
7. Employee did not deny selling the beer to the minor, and was cited with a summons to appear in court.
8. Respondent trained his employees that: no sales of alcoholic beverages are to be made to minors; sent all clerks to the TABC seller-server course; placed extra signs on the cash register; and twice attempted to send Employee to TABC's seller-server course, but the classes were canceled by TABC.

9. This is the first violation of selling alcoholic beverages to a minor by Respondent.
10. Respondent's Employee rang a no-sale to make it appear no money was paid for the beer; Respondent could not have anticipated or prevented an employee from pocketing money from an illegal sale.
11. Employee took the opportunity of Respondent's one-half hour absence from the premises, to sell beer to a minor and to cover up the purchase by not properly ringing up the sale.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.61 (Vernon 1998), hereafter the Code.
2. The State Office of Administrative Hearings 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 ANN. Ch. 2003 (Vernon 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 AND 2001.052 (Vernon 1998).
4. A violation of §106.03 of the Code occurred by Employee, but Respondent neither knew of nor condoned such act, and had taken all reasonable actions to prevent any such act from occurring.
5. Pursuant to §11.64(c)(1)(3) and(4) of the Code, Respondent could not have reasonably prevented the act by Employee; and Respondent exercised due diligence; however Employee violated the Code without the knowledge of Respondent, and such violation was not knowingly made by Respondent.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should not be suspended, but should be assessed a minimum suspension of seven days, and be allowed to pay a civil penalty in lieu thereof.

SIGNED this 9th day of November, 1999.



Edel P. Ruiseco, ALJ, Corpus Christi
State Office of Administrative Hearings