

DOCKET NO. 458-03-2058

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	1.	
PSA SCOTT SISTERS INC.	§	
D/B/A SAFARI CAFÉ	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 600029)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) alleged that PSA Scott Sisters Inc. d/b/a Safari Café (Respondent) was knowingly in possession of alcoholic beverages which were not covered by an invoice. Staff sought to suspend Respondent's permit for 60 days, or alternatively, to require Respondent to pay a penalty of \$9,000. The Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended for 60 days or that Respondent pay a penalty of \$9,000.

I. PROCEDURAL HISTORY & JURISDICTION

Notice and jurisdiction were not contested issues, and those matters are addressed in the proposed Findings of Fact and Conclusions of Law.

On March 21, 2003, a hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. The Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission (TABC) Legal Division. Respondent appeared through Calvin Scott. The record closed on March 21, 2003.

II. DISCUSSION**A. Applicable Law**

The TABC may suspend a mixed beverage permit if the holder knowingly possesses "on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased." TEX. ALCO. BEV. CODE ANN. §§ 28.06(c), 11.61(b)(2), (15)(Vernon 2003) (the Code).

B. Evidence

The TABC issued mixed beverage permit MB494546, mixed beverage late-hours permit LB494547, and food-and-beverage certificate FB494548 to Respondent. Respondent's permitted premises (Safari Café) are located at 702 East Safari, Grand Prairie, Dallas County, Texas.



On April 26, 2002, TABC Agent Bryan Stringer, in the company of other TABC agents, made an inspection of Safari Café. The agents first noticed four bottles of alcohol behind the bar which appeared to have tax stamps that had been transferred from other bottles. The agents examined the bottles and determined the tax stamps had in fact been transferred from other bottles and affixed to the four bottles. These were bottles of brandy, cognac, vodka, and a brand name Irish creme liqueur. The bottles were seized. Agent Stringer obtained invoicing from the Respondent's wholesale suppliers, Seigel's Wholesale and Bob's Discount, that Mr. Scott had on the premises. Agent Stringer also obtained invoicing to Respondent from Seigel's Wholesale and Bob's Discount. Agent Stringer determined that the numbers on the tax stamps from the confiscated bottles were listed on the invoicing. The tax numbers related to other bottles of liquor, which were listed on the invoicing. The confiscated bottles did not appear on the invoicing from the suppliers.

TABC Captain David Alexander testified that the transfer of the tax stamps was evidence of knowledge of the Respondent that the Respondent was in possession of alcoholic beverages not covered by an invoice. He recommended suspending Respondent's permit for 60 days, or alternatively, to require Respondent to pay a penalty of \$9,000.

C. Analysis, Conclusion, and Recommendation

The evidence discloses a *per se* violation of § 28.06(c) of the Code. The tax stamp substitution precludes any finding of mistake or accident. This is a "major regulatory violation," as defined in the Standard Penalty Chart. 16 TEX. ADMIN. CODE § 37.60(a). A first offense of § 28.06(c) calls for a suspension of 15 days for a first offense. As the ALJ understands Staff's position, possession of each of the four bottles specifically identified in the record (the brandy, cognac, vodka, and liqueur) should be treated as a separate offense. According to this view, four 15-day suspensions (or one 60-day suspension) should be imposed. § 28.06(c)'s language forbids possession of "any alcoholic beverage which is not covered by an invoice." The question is whether "any alcoholic beverage which is not covered by an invoice" refers to a single bottle or a single episode.

Respondent's permit authorizes the sale of mixed beverages for consumption on the premises "from unsealed containers." § 28.01(a)(2) of the Code. Tax stamps are affixed to sealed containers. §§ 201.03 & 201.71 of the Code. Once a bottle is empty, the tax "identification stamp on the bottle" must be invalidated. § 28.09 of the Code. The ALJ finds that Chapters 28 and 201 evidence an intent to treat "any alcoholic beverage which is not covered by an invoice," as a single bottle. The ALJ concludes that each bottle not covered by an invoice is a separate violation § 28.06(c).

The ALJ recommends the TABC find Respondent was knowingly in possession on the licensed premises of alcoholic beverages which were not covered by an invoice. The TABC should order that Respondent's permit be suspended for 60 days, or alternatively, that Respondent pay a \$9,000 civil penalty.

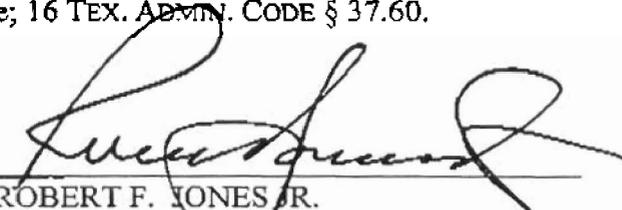
IV. PROPOSED FINDINGS OF FACT

1. The TABC issued mixed beverage permit MB494546, mixed beverage late-hours permit LB494547, and food-and-beverage certificate FB494548 to Respondent.
2. Respondent's permitted premises (Safari Café) are located at 702 East Safari, Grand Prairie, Dallas County, Texas.
3. On April 26, 2002, TABC Agent Bryan Stringer made an inspection of Safari Café.
4. The agent located four bottles of alcohol behind the bar which had tax stamps that had been transferred from other bottles.
5. These were bottles of brandy, cognac, vodka, and a brand name Irish creme liqueur. The bottles were seized.
6. Agent Stringer obtained invoicing from the Respondent's wholesale suppliers, Seigel's Wholesale and Bob's Discount, that Respondent had on the premises.
7. Agent Stringer obtained invoicing to Respondent from Seigel's Wholesale and Bob's Discount.
8. Agent Stringer determined that the numbers on the tax stamps from the confiscated bottles were listed on the invoicing. The tax numbers related to other bottles of liquor, which were listed on the invoicing. The confiscated bottles did not appear on the invoicing from the suppliers.
9. The transfer of the tax stamps is evidence of knowledge of the Respondent that the Respondent was in possession of alcoholic beverages not covered by an invoice.
10. On February 11, 2003, Staff issued a notice of hearing (NOH) and served the NOH on Respondent. The NOH informed all parties that a hearing would be held concerning Staff's allegations and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
11. On March 21, 2003, a hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. The Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission (TABC) Legal Division. Respondent appeared through Calvin Scott. The record closed on March 21, 2003.

V. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 29 of the Code.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2001).
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 2001).
4. Based on the foregoing findings, Respondent knowingly possessed on the licensed premises four alcoholic beverages which were not covered by an invoice from the supplier from whom the alcoholic beverage was purchased. § 28.06(c) of the Code.
5. Based on the foregoing findings and conclusions, Respondent's permit should be suspended for 60 days, or alternatively, Respondent should pay a civil penalty of \$9,000. See §§ 28.06(c), 11.61(b)(2), (15) of the Code; 16 TEX. ADMIN. CODE § 37.60.

SIGNED April 10, 2003.



ROBERT F. JONES JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600029

IN RE PSA SCOTT SISTERS INC.	§	BEFORE THE
D/B/A SAFARI CAFE	§	
PERMIT NOS. MB494546, LB494547,	§	
FB494548	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2058)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones. The hearing convened on March 21, 2003, and adjourned on March 21, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 10, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB494546, LB494547 and FB494548 will be **SUSPENDED**.

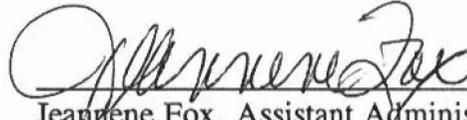
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$9,000.00** on or before the **18th** day of **June, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **sixty (60) days**, beginning at **12:01 A.M.** on the **25th** day of **June, 2003**.

This Order will become final and enforceable on May 26, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 5th day of May, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Robert Jones
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

PSA SCOTT SISTERS INC.
D/B/A SAFARI CAFE
RESPONDENT
702 E. Safari
Grand Prairie, TX 75050-2328
CERTIFIED MAIL NO. 7001 2510 0003 8687 0550

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 600029

REGISTER NUMBER:

NAME: PSA SCOTT SISTERS INC.

TRADENAME: SAFARI CAFE

ADDRESS: 702 E Safari, Grand Prairie, Dallas County, Texas 75050-2328

DATE DUE: June 18, 2003

PERMITS OR LICENSES: MB494546, LB494547, FB494548

AMOUNT OF PENALTY:

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 18TH DAY OF JUNE, 2003, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.