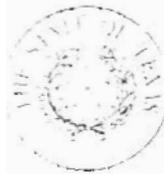
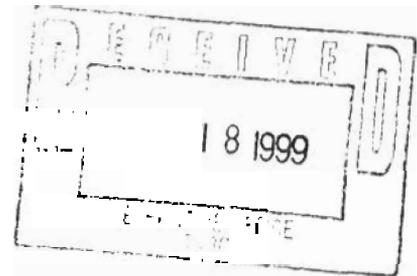


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



October 14, 1999

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

CERTIFIED MAIL,
RETURN RECEIPT
Z 283 051 825

RE: Docket No. 458-99-1649; Texas Alcoholic Beverage Commission vs. Bassam Lufti Azhari d/b/a Pick Kwik Food Stores, TABC Case No. 584633

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Stephen F. Shaw, Attorney for Respondent. For reasons discussed in the proposal, I recommend that Respondent's Wine Only Package Store Permit Number Q-263145 and Beer Retainer's Off Premise License Number BF-315658 should be canceled.

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.

TABC

OCT 18 1999

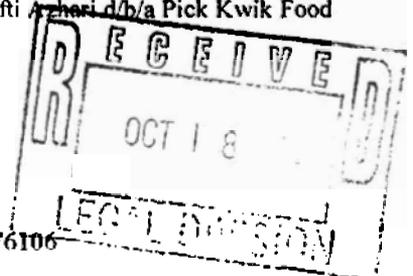
RECEIVED

Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearing - **Regular Mail**; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **CMRR# Z 283 051 826**; Bassam Lufti Azhari d/b/a Pick Kwik Food Store, 2321 Miller Avenue, Fort Worth, Texas 76105- **CMRR # Z 283 051 827**

Sincerely,

Robert F. Jones, Jr.
Administrative Law Judge



The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448

DOCKET NO. 458-99-1649

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE
COMMISSION §
§
§
VS. § OF
§
BASSAM LUFTI AZHARI D/B/A §
PICK KWIK FOOD STORE §
PERMIT NO. Q-263145 §
LICENSE NO. BF-315658 §
TARRANT COUNTY, TEXAS §
(TABC CASE NO. 584633) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) brought this disciplinary action against Bassam Lufti Azhari d/b/a Pick Kwik Food Store (Respondent) alleging that Respondent engaged in a device, scheme or plan which surrendered control of the employees, premises, and business of Respondent, in violation of the Texas Alcoholic Beverage Code (the Code), in that (a) on August 18, 1998, Respondent permitted the use or display of his permit or license for the benefit of one Carlos M. Beyrouthy, who was not authorized by law to have an interest in the license and permit, and (b) on May 11, 1999, Respondent permitted the use or display of his permit or license for the benefit of one Khamis Khalil Dabeit, who was not authorized by law to have an interest in the license and permit. Staff alleged these actions violated §§ 109.53 and 11.05 of the Code, and requested that Respondent's permit and license be canceled or suspended. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit and license.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under §§ 11.61(b)(2), 109.53, and 11.05, TEX. ALCO. BEV. CODE. The State Office of Administrative Hearings (SOAH) 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, under §2003.021, TEX. GOV'T CODE. There were no contested issues of notice or jurisdiction in this proceeding.

On August 20, 1999, the Staff issued its Notice of Hearing, admitted into evidence as Petitioner's Exhibit Number 1. The notice was directed to Bassam Lufti Azhari d/b/a Pick Kwik Food Store, at the licensed premises located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas 76105. The notice was received and the certified mail return receipt signed on August 23, 1999. On September 14, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at the Fort Worth Office of

the State Office of Administrative Hearings, The Vinnedge Building, 2100 North Main Street, Suite 10, Lower Level, Fort Worth, Texas 76106. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear either in person or by counsel. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed true. Further, evidence was received from the Staff on September 14, 1999, and the record was closed on September 14, 1999.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 11.61(b)(2) of the Code to cancel a permit if it is found that the permittee has violated a provision of the Code during the existence of the permit. § 109.53 provides:

No person who has not been a citizen of Texas for a period of one year immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code.

. . .

Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated.

. . .

No person shall . . . consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices.

. . .

Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful.

§ 11.05 states:

No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

EVIDENCE AND STAFF'S CONTENTIONS

The Staff's Exhibit 2 proved that Respondent was issued Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658. The permit and license were issued on March 28, 1996, and have been continuously renewed. The permits were issued to Bassam Lufti Azhari d/b/a Pick Kwik Food Store (Azhari). The licensed premises was located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas. Staff alleged that Azhari engaged in a subterfuge concerning his permit and license in two particulars. First, on August 18, 1998, Respondent permitted the use or display of his permit or license for the benefit of one Carlos M. Beyrouthy, who was not authorized by law to have an interest in the license and permit. Second, on May 11, 1999, Respondent permitted the use or display of his permit or license for the benefit of one Khamis Khalil Dabeit, who was not authorized by law to have an interest in the license and permit.

Marvin Montero, an agent of the Texas Alcoholic Beverage Commission, testified concerning a "subterfuge" investigation he had made of the Respondent's business. Montero identified certain documents filed of record in a civil lawsuit in Cause Number 153-178511-99, and styled *Carlos M. Beyrouthy versus Khamis Khalil Dabeit*, pending in the District Court of Tarrant County, Texas, 153rd Judicial District (the civil suit). Petitioner's Exhibit 3 is a certified copy of various filings made in the civil suit. Contained in Exhibit 3 are:

(a) A copy of a Partnership Agreement between Azhari and one Carlos M. Beyrouthy, dated August 18, 1998. The Partnership Agreement forms a partnership to operate a convenience store called "Pick Kwik" located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas.

(b) A certified copy of Plaintiff's Original Petition in the civil lawsuit, sworn to by Beyrouthy, alleging that Respondent and Beyrouthy operated a business called Pick Kwik Food Store, located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas, and specifically referencing the use of Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658 by Respondent and Beyrouthy. The Petition is sworn to by Beyrouthy, and supported by Azhari's affidavit.

(c) A certified copy of a Bill of Sale between Respondent and one Khamis Khalil Dabeit, dated May 11, 1999, which transfers "Personal Property: Quick Pick Store, 2321 Miller Avenue, Fort Worth, Texas," from Azhari

to Dabeit. The "Bill of Sale" is repudiated by Azhari in an affidavit, and described as a trick by Dabeit to gain a commercial or litigation advantage.

Montero testified that in neither the Azhari-Beyrouthy partnership nor the Azhari-Dabeit sale was the Commission informed of the proposed change of ownership. The notice is required to assure the Commission that the proposed new owner meets the qualifications of § 109.53, TEX. ALCO. BEV. CODE. Montero further identified the transactions as violating § 11.05, TEX. ALCO. BEV. CODE, by Azhari consenting to or allowing the use or display of his permit by a person other than the person to whom the permit was issued.

ANALYSIS

1. Azhari-Beyrouthy Partnership

The evidence in the case clearly demonstrates that Azhari and Beyrouthy created partnership in the Pick Kwik Food Store, and that partnership included the use and benefit of Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658. Neither Azhari nor Beyrouthy reported the ownership change to the Commission, or filed an application for a new or amended permit or license. Staff has received no proof from Azhari or Beyrouthy that Beyrouthy has been a citizen of the State of Texas for the required period of time. Staff has proved a "subterfuge" and a violation of §§ 109.53 and 11.05 in that Azhari "consent[ed] to or allow[ed] the use or display of his permit by [Beyrouthy,] a person other than the person to whom the permit was issued."

2. Azhari-Dabeit Sale

The evidence in the case does not demonstrates by a preponderance that Azhari sold the Pick Kwik Food Store, including the use and benefit of Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658, to Dabeit. First, the "Bill of Sale" refers to a sale of "personal property", which might or might not include a permit and license personal to Azhari. Indeed, § 11.03 of the code indicates that a permit, or license, is a "purely personal privilege"; further, it "is not property." Second, Azhari repudiated the bill of sale in his affidavit. Third, apparently Dabeit has not entered into possession of the premises or attempted to obtain the use and benefit of Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658, and has been restrained from doing so in the civil lawsuit. The ALJ cannot find, from a preponderance of the evidence, any subterfuge in the alleged transaction between Azhari and Dabeit.

RECOMMENDATION

Under § 11.61(b)(2), TEX. ALCO. BEV. CODE., Azhari is subject to suspension of

his permit and license for not more than 60 days or cancellation of his permit and license. Under § 11.64(a), "when the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended."

The ALJ recommends that Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658, held by Bassam Lufti Azhari d/b/a Pick Kwik Food Store, located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas, be canceled. The bases for this recommendation are as follows:

(a) Respondent operates a convenience store, and although no evidence was received on this point, experience teaches that the sale of alcoholic beverages likely constitutes a major source of the Respondent's business;

(b) Respondent made default in this case;

(c) Respondent and his partner, Carlos M. Beyrouthy schemed to avoid the requirements of the Code; and

(d) Respondent's and Beyrouthy's business, including the permit and license, have become the subject of a lawsuit.

(e) any aggravating or ameliorating circumstances

(i) the violation was caused by intentional conduct of the Respondent and Beyrouthy;

(ii) the violation did not cause serious bodily injury or death of another; and/or

(iv) Respondent's and Beyrouthy may seek a redress by way of application for a new permit and license.

Any other requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly set forth below, should be denied.

FINDINGS OF FACT

1. Bassam Lufti Azhari d/b/a Pick Kwik Food Store was issued Wine Only

Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658, on March 28, 1996.

2. Bassam Lufti Azhari d/b/a Pick Kwik Food Store licensed premises are located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas.
3. On August 18, 1998, Azhari and Carlos M. Beyrouthy entered into a Partnership Agreement, forming a partnership to operate a convenience store doing business as "Pick Kwik" located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas
4. Pursuant to the Partnership Agreement, Respondent and Beyrouthy operated a business Pick Kwik Food Store, located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas, and specifically used and benefited from Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658.
5. Beyrouthy had the use and benefit of Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658, at a time when the Commission had not been informed of his interest in the business, had not investigated Beyrouthy's qualifications, and Beyrouthy had not applied for a permit and license.
6. On August 20, 1999, the Staff issued its Notice of Hearing. The notice was directed to Bassam Lufti Azhari d/b/a Pick Kwik Food Store, at the licensed premises located at 2321 Miller Avenue, Fort Worth, Tarrant County, Texas 76105. The notice was received and the certified mail return receipt signed on August 23, 1999.
7. On September 14, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at the Fort Worth Office of the State Office of Administrative Hearings, The Vinnedge Building, 2100 North Main Street, Suite 10, Lower Level, Fort Worth, Texas 76106. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear either in person or by counsel. The record was closed on September 14, 1999.

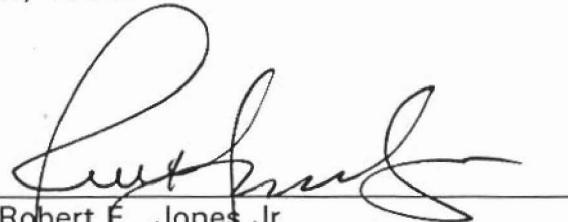
CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under §§ 11.61(b)(2) and 109.53 and 11.05, TEX. ALCO. BEV. CODE.
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 §2003.021, TEX. GOV'T CODE.

3. Respondent received notice of the proceedings and hearing, pursuant to § 2001.052, TEX. GOV'T CODE., and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 5, Bassam Lufti Azhari d/b/a Pick Kwik Food Store violated §§ 11.61(b)(2), 109.53, and 11.05, TEX. ALCO. BEV. CODE.
5. Based on Conclusion of Law No. 4, Bassam Lufti Azhari's Wine Only Package Store Permit Number Q-263145 and Beer Retailer's Off Premise License Number BF-315658 should be canceled.

SIGNED this 14th day of October, 1999.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS