

DOCKET NO. 501824

IN RE EDWARD WILLIAM CAKA	§	BEFORE THE TEXAS
D/B/A MARKET ST. TAVERN	§	
PERMIT NO(s). MB538868, LB538869	§	
	§	ALCOHOLIC
	§	
GALVESTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1417)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on March 31, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 31, 2006. This 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. 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. MB538868 and LB538869 are herein **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$3,000.00 on or before the 27th day of June 2006, all rights and privileges under the above described permits will be **SUSPENDED for a period of twenty (20) days, beginning at 12:01 A.M. on the 5th day of July 2006.**

This Order will become final and enforceable on July 20, 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on this the 29th day of June 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/aa

Hon. Stephen J. Burger
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Edward William Caka
d/b/a Market Street Tavern
RESPONDENT
P.O. Box 8266
Galveston, Texas 77553
CERTIFIED MAIL NO. 7005 3110 0000 6409 1243

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Galveston Outpost

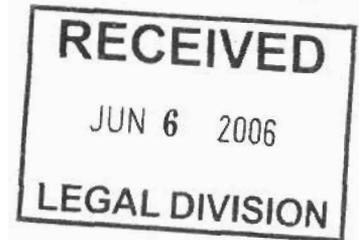
Licensing Division

State Office of Administrative Hearings

JPT
D



Shelia Bailey Taylor
Chief Administrative Law Judge



May 31, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-1417; Texas Alcoholic Beverage Commission v. Edward William Caka d/b/a Market Street Tavern

Dear Mr. Steen:

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Burger".

Stephen J. Burger
Administrative Law Judge

SJB/mc
Enclosure

xc: Sandra Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL
Edward William Caka d/b/a Market Street Tavern, P.O. Box 8266, Galveston, Texas 77553 - VIA REGULAR MAIL

ADMIN. CODE (TAC) §155.55. Because the hearing proceeded on a default basis, the Staff's allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

II. ALLEGATIONS AND LEGAL STANDARDS

Pursuant to the Notice of Hearing issued by TABC, Staff alleges that on July 21, 2005, Respondent, its agent, servant, or employee, with criminal negligence permitted a minor to possess or consume an alcoholic beverage on the premises, in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.

Additionally, the Commission's records show that Commission found that Respondent committed a similar prior violation on June 26, 2003.

III. RECOMMENDATION

Penalties for the violation of TEX. ALCO. BEV. CODE ANN. § 106.13. may be determined in accordance with the Commission's standard penalty chart found at 16 (TAC) §37.60. The penalty chart prescribes suspensions of varying lengths, depending on a Permittee's history of violations.

In this case, Staff recommended a 20 day suspension, based upon the prior violation. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee may be offered the opportunity to pay a civil penalty in lieu of suspension. Staff recommends a \$150 per day civil penalty in lieu of suspension. The ALJ agrees with the Staff's recommendation.

IV. FINDINGS OF FACT

1. Edward William Caka, d/b/a Market Street Tavern, (Respondent) is the holder of a Mixed Beverage Permit, MB-538868, which includes the Mixed Beverage Late Night Hours License, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2310 Market Street, Galveston, Galveston County, Texas.

2. On February 14, 2006, the TABC sent a Notice of Hearing by certified mail to Respondent at the mailing address of P.O. Box 8266, Galveston Texas, 77553, said mailing address set forth in the Permit referenced in finding of fact No. 1.
3. The Notice of Hearing sent to Respondent was returned to the TABC, marked "Returned to Sender," after three notification attempts by the US Post Office.
4. The February 14, 2006 Notice of Hearing contained a statement of the location and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.
5. The February 14, 2006 Notice of Hearing also contained the following language in 10-point or larger boldface type:

If you fail to appear at the hearing, the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default.

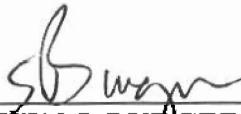
6. On March 31, 2006, a hearing was held before Administrative Law Judge Stephen J. Burger. The TABC appeared through its staff attorney Sandra Patton. Respondent did not appear and was not represented.
7. Respondent sold an alcoholic beverage to a minor on June 26, 2003.
8. On July 21, 2005, Respondent, its agent, servant or employee, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on its premises.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. §11.63; and 1 TEX. ADMIN. CODE (TAC) §155.55.

4. Based on the above Findings of Fact, on July 21, 2005, Respondent, its agent, servant, or employee, with criminal negligence did permit a minor to possess or consume an alcoholic beverage on its premises in violation of TEX. ALCO. BEV. CODE § 106.13.
5. Based on Conclusion of Law 4, and Findings of Fact 7 and 8, a 20 day suspension is warranted. 16 TEX. ADMIN. CODE § 37.60. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64, the Respondent should be allowed to pay a \$3,000 civil penalty (\$150 per day) in lieu of suspension of its permit.

SIGNED May 31, 2006.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS