

**DOCKET NO. 574135**

IN RE NEW AMALIA CORPORATION	§	BEFORE THE
D/B/A SID'S FOOD STORE	§	
PERMIT NO. BQ317458	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1697)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 23rd day of October , 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica M. Branch. The hearing convened on July 27, 2000, and recessed on that date reconvened on August 14, 2000. The record was closed on August 14, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 25, 2000. 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.

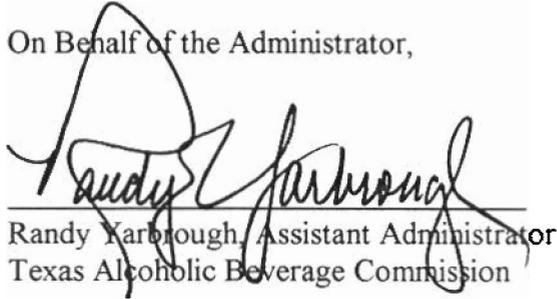
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ317458 is herein **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 17th day of January, 2001**, unless Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **10th day of January, 2001**.

**This Order will become final and enforceable on November 13, 2000**, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 23rd day of October, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Monica M. Branch  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 626-7448**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

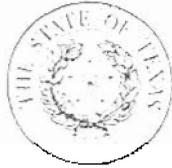
Steven Swander  
**ATTORNEY FOR RESPONDENT**  
505 Main St., Ste. 250  
Fort Worth, Texas 76102  
**CERTIFIED MAIL/RRR NO. Z 473 039 252**

New Amalia Corporation  
d/b/a Sid's Food Store  
**RESPONDENT**  
6809 McCart Street, Suite 114  
Fort Worth, Texas 76133  
**VIA REGULAR MAIL**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

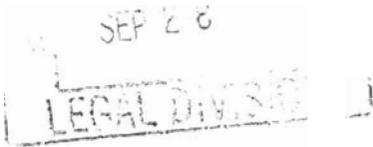
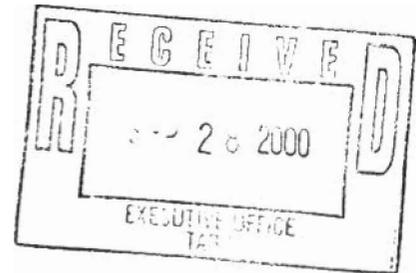
Licensing Division  
Fort Worth District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

September 25, 2000



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

**RE: Docket No. 458-00-1697; Texas Alcoholic Beverage Commission vs. New Amalia Corporation  
d/b/a Sid's Food Store; (TABC Case No. 574135)**

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 Steven Swander, Attorney for the Respondent. For reasons discussed in the proposal, I recommend suspension of Respondent's permit for a period of 10 days. I further recommend that Respondent be given an opportunity to pay a civil penalty in lieu of suspension in the amount of \$1,500.00.

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 cursive script that reads "Monica Branch".

Monica M. Branch  
Administrative Law Judge

MB:ds  
Enclosure

XC: Holly Wise, State Office of Administrative Hearings, Austin, Texas via -fax; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - via fax; Steven Swander, Attorney for Respondent, via fax

DOCKET NO. 458-00-1697

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

NEW AMALIA CORPORATION  
D/B/A SID'S FOOD STORE  
TARRANT COUNTY, TEXAS

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC or Staff) brought this disciplinary action against New Amalia Corporation d/b/a Sid's Food Store (Respondent), alleging that Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (Code). Staff requested that Respondent's permit be suspended for a period of 20 days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$3,000. The Administrative Law Judge (ALJ) recommends suspension of Respondent's permit for a period of 10 days. The ALJ further recommends that Respondent be given an opportunity to pay a civil penalty in lieu of suspension in the amount of \$1,500.

**JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61(b)(2) and 106.13. 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 proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. § 2003.021.

On June 19, 2000, Staff issued its notice of hearing, directed to New Amalia Corporation d/b/a Sid's Food Store. As evidenced by TABC Exhibit One, this notice of hearing was received by Respondent on June 22, 2000. On July 27, 2000, a hearing convened before ALJ Monica Branch (State Office of Administrative Hearings) at 2100 North Main Street, Suite 10, Fort Worth, Tarrant County, Texas. There were no contested issues of notice or jurisdiction in this proceeding. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared and was represented by Steven H. Swander, Attorney at Law. Evidence was received from both parties on that date through testimony provided by witnesses and documentary evidence. At the request of

Staff's attorney and upon agreement of Respondent, the ALJ recessed the hearing on that date and scheduled the hearing to reconvene on August 14, 2000, in order to take the testimony of an additional Staff witness.

On August 14, 2000, the hearing reconvened before ALJ Monica Branch at the previously referenced hearing site. Staff was represented by its attorney, Mr. Griffith, and Respondent was represented by its attorney, Mr. Swander. After introduction of testimony from Staff's final witness, the record was closed on August 14, 2000.

### LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized to suspend a permit for not more than 60 days, pursuant to § 106.13 of the Code, if a permittee, with criminal negligence, sells, serves or delivers an alcoholic beverage to a minor. Criminal negligence is defined in TEX. PENAL CODE ANN. § 6.03(d) as follows:

A person acts with criminal negligence, or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's viewpoint.

Staff bears the burden of proof and must establish, by a preponderance of the evidence, that the violation occurred.

When suspension of a permit is authorized, the permittee must be given an opportunity to pay a civil penalty in lieu of suspending the permit. The amount may not be less than \$150 nor more than \$25,000 for each day the permit was to have been suspended. If the penalty is not paid before the sixth day after the permittee is notified of the amount, the permittee loses the opportunity to pay it, and the permit's suspension shall be imposed. In determining the amount of the penalty, the Texas Alcoholic Beverage Commission is directed to consider the economic impact a suspension would have on the permittee. [See Code § 11.64.]

### EVIDENCE AND PARTIES' CONTENTIONS

Respondent holds a Wine and Beer Retailer's Off-Premise Permit, BQ-317458, issued to Respondent doing business as Sid's Food Store, 6809 McCart Street, Suite 114, Fort Worth, Tarrant County, Texas. Staff alleged that Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor on May 16, 1997.

On May 16, 1997, Texas Alcoholic Beverage Commission Agent Tana Travis was conducting an investigation of Sid's Food Store, 6809 McCart Street, Fort Worth, Tarrant County, Texas, after receiving a complaint that the establishment made alcoholic beverage sales to minors.

During the course of the investigation, Agent Travis observed an individual behind the counter selling four bottles of alcoholic beverage to a female whose appearance and demeanor were consistent with an individual under 21 years of age. Agent Travis approached the female subject and confirmed that the bottles purchased and carried from Respondent's premises in a brown paper bag contained St. Ides malt liquor, an alcoholic beverage. Although Agent Travis was unable to locate a driver's license or official identification card on the female subject, a Fort Worth Police Department citation was located in her vehicle. The female subject was identified as Lisa Rodriguez, DOB 02/16/80. This identification confirmed that the subject was 17 years of age and thus, a minor.

The individual who sold the alcoholic beverages to Ms. Rodriguez was identified as Amin Nazzal, a cashier employed by Sid's Food Store. Mr. Nazzal testified that he did not require identification from Ms. Rodriguez on this date because she had presented identification on at least two prior occasions indicating that she was of legal drinking age. He further stated that he did not require identification on this occasion because Ms. Rodriguez had seemed annoyed at such requests in the past. However, Ms. Rodriguez testified that although she had frequented Sid's Food Store prior to May 16, 1997, this was her first attempt at purchasing alcoholic beverages. Ms. Rodriguez stated that she chose to make an alcoholic beverage purchase on this occasion because she thought she could take advantage of a rapport which she felt existed between her and Mr. Nazzal.

Respondent's violation history, as maintained by the Texas Alcoholic Beverage Commission, reveals no suspension of Respondent's permit prior to the date of this alleged violation. No evidence regarding the economic impact any suspension of Respondent's permit might have on its business was presented for consideration in these proceedings.

#### ANALYSIS

It is clear from the evidence that Amin Nazzal, Respondent's employee, sold four bottles of an alcoholic beverage, St. Ides malt liquor, to Ms. Rodriguez. At the time of this sale, Ms. Rodriguez was a minor. The only issue to be determined is whether Mr. Nazzal acted with criminal negligence in selling the alcoholic beverages to Ms. Rodriguez. The evidence in this case supports the conclusion that Mr. Nazzal acted with criminal negligence in selling the alcoholic beverages to Ms. Rodriguez.

At the time Mr. Nazzal sold the alcoholic beverages to Ms. Rodriguez at Sid's Food Store, she was seventeen years of age. She was youthful in appearance and should not have been

mistaken for an individual who was of legal drinking age. All evidence supports the conclusion that Mr. Nazzal did not require identification from Ms. Rodriguez prior to selling her the alcoholic beverages on this occasion. Assuming arguendo that Ms. Rodriguez had previously presented false identification indicating she was of legal drinking age, a reasonably prudent person in Mr. Nazzal's position should have become suspicious when a person so obviously youthful in appearance became annoyed at a request for identification prior to an alcoholic beverage sale. This behavior should have raised Mr. Nazzal's suspicions regarding the validity of Ms. Rodriguez's identification and was further evidence that Ms. Rodriguez's demeanor was not consistent with an individual over 21 years of age. Instead of becoming suspicious, Mr. Nazzal did not require Ms. Rodriguez to present identification when selling her the alcoholic beverages on May 16, 1997. Mr. Nazzal's failure to take steps to confirm Ms. Rodriguez's age prior to selling her the alcoholic beverages was a gross deviation from the standard of conduct that should be observed in the sales of alcoholic beverages.

Although Staff has recommended that Respondent's permit be suspended for a period of 20 days, the ALJ does not find that sufficient aggravating circumstances exist to justify such a lengthy period of suspension. Based on Respondent's violation history and the evidence presented at the hearing, the ALJ recommends that a permit suspension of 10 days be imposed on Respondent. The ALJ further recommends that Respondent be given an opportunity to pay a civil penalty in the amount of \$1,500 in lieu of suspension before the sixth day after the TABC notifies Respondent of its order.

#### FINDINGS OF FACT

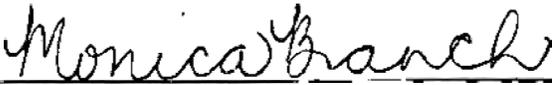
1. Respondent, New Amalia Corporation d/b/a Sid's Food Store, holds a Wine and Beer Retailer's Off-Premise Permit, BQ-317458 for the premises located at 6809 McCart Street, Suite 114, Fort Worth, Tarrant County, Texas.
2. On June 22, 2000, Respondent was served with a timely notice of hearing. The notice indicated that a hearing would be held at the State Office of Administrative Hearings, 2100 North Main Street, Suite 10, Fort Worth, Texas, on July 27, 2000, at 1:00 p.m.
3. A hearing was convened before Monica Branch, an Administrative Law Judge with the State Office of Administrative Hearings, on July 27, 2000 and August 14, 2000. Both parties appeared and presented evidence. No challenges to the sufficiency of notice or jurisdiction were made by either party.
4. On May 16, 1997, Respondent's employee, Amin Nazzal, was working as a cashier at Sid's Food Store.
5. On that date, Mr. Nazzal sold Lisa Rodriguez four bottles of St. Ides malt liquor, an alcoholic beverage, at Sid's Food Store.

6. At the time Mr. Nazzal sold the alcoholic beverages to Ms. Rodriguez, she was seventeen years of age.
7. Ms. Rodriguez was youthful in appearance and should not have been mistaken for an individual who was of legal drinking age.
8. Mr. Nazzal failed to take reasonable steps to confirm whether Ms. Rodriguez was of legal drinking age prior to selling her the alcoholic beverages.
9. Respondent's violation history, as maintained by the Texas Alcoholic Beverage Commission, reveals no suspension of Respondent's permit prior to May 16, 1997.

### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61(b)(2) and 106.13 (Vernon 2000).
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Respondent received proper notice of hearing.
4. Based on Findings of Fact Nos. 4, 5, 6, 7 and 8, Respondent's employee sold alcoholic beverages to a minor and did so with criminal negligence, in violation of TEX. ALCO. BEV. CODE ANN. §§ 106.13 and 106.03 (Vernon 2000).
5. Based on Findings of Fact Nos. 4, 5, 6, 7, 8 and 9 and Conclusion of Law No. 4, Respondent's Wine and Beer Retailer's Off-Premise Permit should be suspended for ten days.
6. Based on Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE § 11.64, Respondent should be permitted to pay a civil penalty of \$1,500 in lieu of suspension of this permit.

SIGNED on this the 25<sup>th</sup> day of September, 2000.



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MONICA BRANCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
The Vinnedge Building  
2100 N. Main Street  
Suite 10  
Ft. Worth, Texas 76106  
Phone (817) 626-0003  
Fax (817) 626-7448

**SERVICE LIST**

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CASE: New Amalia Corporation d/b/a Sid's Food Store  
DOCKET NUMBER: 458-00-1697  
AGENCY CASE NO: 574135

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

BY REGULAR MAIL

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Staff Attorney  
Texas Alcoholic Beverage Commission  
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Fax No: (972) 547-5093

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SOAH  
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