

**DOCKET NO. 587485**

IN RE PAUL LAM TRAN	§	BEFORE THE
D/B/A SUPER K FOOD STORE #8	§	
PERMIT NO. BQ292819	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 358-00-1009)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of October, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex Shaver. The hearing convened and adjourned on June 16, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 21, 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. Agreed Findings of Facts and Conclusions of Law were filed jointed by Petitioner and Respondent on June 23, 2000.

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.

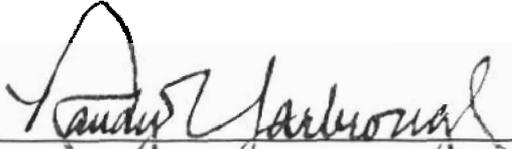
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ292819 is herein **SUSPENDED for a period of three (3) days, beginning at 12:01 A.M. on the 17th day of January, 2001**, unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the **10th day of January, 2001**.

**This Order will become final and enforceable on November 8, 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 17th day of October, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Rex Shaver  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (713) 812-1001**

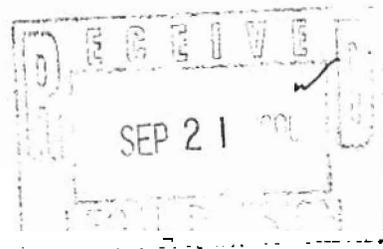
Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Paul Lam Tran  
**RESPONDENT**  
4702 Richmond Avenue  
Houston, Texas 77027  
**CERTIFIED MAIL NO. Z 473 043 000**

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge  
September 21, 2000

Mr. Doyne Bailey, Administrator  
*Texas Alcoholic Beverage Commission*  
5806 Mesa, Suite 160  
Austin, Texas 78711

**HAND DELIVERY**

**RE: Docket No. 458-00-1009; Paul Lam Tran, d/b/a/ Super K Food Store #8;  
Permit No. BQ-292819, Harris County, Texas (TABC Case No. 587485)**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Christopher Burnett, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Hal Ridley, attorney for Respondent. For reasons discussed in the Proposal for Decision, the proposal recommends that the permit be suspended for a period of 3 days and that consideration be given to allowing the payment of a penalty of \$150.00 per day in lieu of that suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

Rex Shaver  
Administrative Law Judge

THrk  
Enclosure

cc: Christopher Burnett, Staff Attorney, *TABC*, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**  
Ynhi Nguyen, 8303 Fawn Terrace, Houston, Texas 77071 - **VIA REGULAR U.S. MAIL**  
Rommel Corro, Docket Clerk, *State Office of Administrative Hearings* - **VIA HAND DELIVERY**

SOAH DOCKET NO. 458-00-1009

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE  
COMMISSION §  
§  
§  
VS. § OF  
§  
PAUL LAM TRAN §  
D/B/A SUPER K FOOD STORE #8 §  
PERMIT NO. BQ-292819 §  
HARRIS COUNTY, TEXAS §  
(TABC CASE NO. 587485) § ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (the Petitioner) brought this action against Respondent, Paul Lam Tran, for selling, on the licensed premises, an alcoholic beverage to a minor on the 3rd day of December, 2000; the alleged sale being in violation of §106.03 and §106.13 of the Texas Alcoholic Beverage Code. The Staff recommended that the permit be suspended for 20 days. The permittee appeared at the hearing in person and by counsel. The Administrative Law Judge (ALJ) finds that an agent, servant or employee of the licensee did, with criminal negligence sold an alcoholic beverage to a minor on the licensed premises in violation of the Texas Alcoholic Beverage Code. The ALJ further finds that the minor presented a forged out of state drivers license as proof of having attained the age of 21 years and this constitutes a mitigating circumstance. The ALJ recommends that the permit be suspended for a period of 3 days and that consideration be given to allowing the payment of a penalty of \$150.00 per day in lieu of that suspension.

**I. Procedural History**

On the 31st day of May, 2000, the Staff of the Commission (Staff), notified Paul Lam Tran d/b/a Super K Food Store #8 (Respondent), that Staff would seek suspension or cancellation of the Respondent's Wine and Beer Retailer's Off-Premise Permit because an agent, servant or employee of Respondent with criminal negligence sold an alcoholic beverage to a minor on the licensed premises.

The hearing was held before Rex A. Shaver, Administrative Law Judge, on the 16th day of June, 2000, in the Offices of the State Office of Administrative Hearings, North Freeway Business Plaza, 2020 N. Loop West, Suite 111, Houston, Texas. The Staff was represented by Mr. Christopher Burnett. The Respondent, Paul Lam Tran, d/b/a Super K Food Store #8 was represented by his counsel, Ynhi Nguyen. After the taking of evidence, including stipulation of facts, the hearing was concluded, but the record was left open until the 30th day of June, 2000, for the filing of post hearing briefs and proposed findings of fact and conclusions of law by the parties. No post hearing filings were received by the ALJ.

## II. Jurisdiction and Notice

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Also. Bev. Code Ann. (the Code) §6.01 and Tex. Gov't. Code Ann. Chapter 2001 et seq. (1998). 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. Chapter 2003.

On the 31st day of May an amended notice of hearing was properly addressed and sent by certified mail to the Respondent at 4702 Richmond Avenue, Houston, Texas 77027. This matter was set by the State Office of Administrative Hearings for hearing on the 16th day of June, 2000 with a pre-hearing conference on the 9th day of June, 2000. All parties appeared and announced ready.

## III. Evidence

The parties entered the following Stipulation of Facts:

1. Respondent, Paul Lam Tran d/b/a Super K Food Store #8 was holder of Wine and Beer Retailer's Off-Premise Permit on the 3rd day of December 1999 and continued to hold that permit on the date of hearing.
2. Carlos Berrigan was an employee of the Respondent on the 3rd day of December, 1999, and on that date sold an alcoholic beverage to Christopher Kyle Fischer.
3. Christopher Kyle Fischer, a minor, was born on the 28 day of December, 1980.
4. Christopher Kyle Fischer presented to Carlos Berrigan a false Louisiana Driver's License bearing Fischer's photograph and an erroneous date of birth of 12-28-77.
5. Carlos Berrigan was not Seller/Server certified on the 3rd day of December, 2000.

**From the Staff:**

**Documentary Evidence:**

*TABC Exhibit 1: Affidavit of Licensing Department Director as custodian of records and files of the Texas Alcoholic Beverage Commission attesting to true and correct copies of permit BQ-292819 and its violation history.*

**Testimony: NONE**

**From Respondent:**

**Documentary Evidence:**

**Respondent Exhibit 1:** *Louisiana Driver's License 449430020. Bearing the name "Christopher Hill" and presented by Christopher Fischer as proof of age on the 3rd day of December, 1999.*

**Respondent Exhibit 2:** *Affidavit of Christopher Kyle Fischer.*

**Testimony:** NONE

#### **IV. Statutory Criteria**

**1. Section 106.13 of the Code states, in part:**

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit...if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code. . .

#### **III. Discussion**

The following facts are undisputed. On the 3rd day of December, 1999 Carlos Berrigan was an employee of the permit holder, Paul Lam Tran d/b/a Super K food Store #8. On that same date, Christopher K. Fischer was under the age of 21 years when he entered the licensed premises and purchased an alcoholic beverage from Carlos Berrigan. It is also undisputed that prior to consummating the sale Mr. Berrigan requested proof of age. Mr. Fischer then presented a Louisiana drivers license bearing his photograph but the name "Christopher Hill" and a birth date of the 28th day of December , 1997.

Mr. Fischer's Affidavit states that his actual birthday is the 28th day of December, 1980. When approached by law officers, after leaving the premises ,Mr. Fischer failed to tell the officers that he had presented a false identification and dropped the Louisiana driver's license in the parking lot so that he would not be found with it in his possession. An examination of the Louisiana driver's license reveals that it is an apparently valid license bearing the likeness and description of Mr. Fischer. Had this been a Texas Driver's license the seller could make use of the mitigation defense provided in Sec. 106.03 of the Texas Alcoholic Beverage Code.

However, the evidence presented at this hearing makes it clear that while the permit holder's employee did sell an alcoholic beverage to a minor he only did so after relying on an out of state driver's license. The violation could reasonably have been prevented. The clerk could have asked

for confirmation of that out of state identification by way of additional identification such as student or employment identification cards or even credit cards bearing the same name. If there was no additional identification bearing the same name the clerk could then refuse to make the sale. This failure makes total mitigation under Sec. 11.64 of the Texas Alcoholic Beverage Code inappropriate in this case. The employee failed to take the additional steps. It is recommended that the suspension be for only 3 days and that consideration be given to allowing the payment of a \$150 per day in lieu of that suspension.

### **PROPOSED FINDINGS OF FACT**

1. Respondent, Paul Lam Tran d/b/a Super K Food Store #8 was holder of Wine and Beer Retailer's Off-Premise Permit on the 3rd day of December 1999 and continued to hold that permit on the date of hearing the 16th day of June, 2000.
2. Carlos Berrigan was an employee of the Respondent on the 3rd day of December, 1999, and on that date sold an alcoholic beverage to Christopher Kyle Fischer.
3. Christopher Kyle Fischer was born on the 28 day of December, 1980.
4. Christopher Kyle Fischer presented to Carlos Berrigan a fake Louisiana driver's license bearing Fischer's photograph and an erroneous date of birth of 12-28-77.
5. Carlos Berrigan was not Seller/Server certified on the 3rd day of December, 2000.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Sections 106.13 and 11.61(b)(2) of the TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction in 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. Chapter 2003 (Vernon's 1999).
3. Service of proper and timely notice of the hearing was given to the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN., Chapter 2001 and 1 TEX. ADMIN. CODE, Chapter 155.
4. Carlos Berrigan, an employee of the Respondent, did, on the 3rd day of December, 1999, with criminal negligence sell, serve or deliver an alcoholic beverage to a minor in violation of Section 106.13 of the TEX. ALCO. BEV. CODE ANN.

**RECOMMENDATION**

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that Respondent's Wine and Beer Retailer's Off - Premise Permit BQ-292819 be suspended for 3 days and that consideration be given to allowing the payment of a penalty of \$150 per day in lieu of suspension.

Signed this <sup>21</sup> day of September, 2000.

*For*   
\_\_\_\_\_  
Rex Shaver  
Administrative Law Judge  
State Office of Administrative Hearings

# State Office of Administrative Hearings

Shelia Bailey Taylor  
Chief Administrative Law Judge  
September 21, 2000

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

HAND DELIVERY

On this date the following item(s) were delivered to you regarding;  
Docket No. 458-00-1009; Paul Lam Tran, d/b/a/ Super K Food Store #8;  
Permit No. BQ-292819, Harris County, Texas (TABC Case No. 587485)

1. Proposal for Decision

Your signature below acknowledges receipt of the above-referenced item(s) from the State Office of Administrative Hearings.

  
\_\_\_\_\_  
Signature of Receiving Party  
RSrk

9-21-00  
\_\_\_\_\_  
Date