

DOCKET NO. 587693

IN RE DHIA RUBAIY	§	BEFORE THE
D/B/A QUICK CHECK EXPRESS FOOD	§	
PERMIT NO. BQ266384	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1538)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened and adjourned on August 24, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 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.

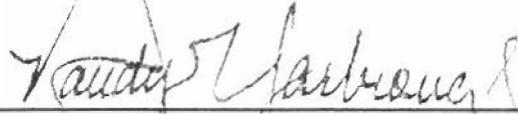
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ266384 is herein **CANCELED FOR CAUSE**.

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

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Dhia Rubaiy
d/b/a Quick Check Express Food
RESPONDENT
9218 Benning Drive
Houston, Texas 77031-2203
CERTIFIED MAIL/RRR NO. Z 473 039 317

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

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

SOAH DOCKET NO. 458-00-1538

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.S..	§	
	§	OF
	§	
DHIA RUBAIY	§	
D/B/A QUICK CHECK EXPRESS FOOD	§	
PERMIT NO. BQ-266384	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO.587693)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Petitioner) brought this action against Respondent, a permittee of the commission, alleging that the permittee, his agent, servant or employee sold, on January 6, 2000, an alcoholic beverage on the licensed premises while the permit was under suspension; the alleged sale being in violation of §11.68 and §11.61(b)(2) of the Texas Alcoholic Beverage Code. The Staff recommended that the permit be canceled. The permittee appeared at the hearing pro se. Having found that an alcoholic beverage was sold on the licensed premises by an agent, servant, or employee of the licensee while that permit was under suspension, the Administrative Law Judge recommends that the permit be canceled.

I. Procedural History

On June 9, 2000, the Staff of the Commission (Staff), notified Dhia Rubaiy d/b/a Quick Check Express Food the Staff would seek suspension or cancellation of the Respondent's Wine and Beer Retailer's Off-Premise Permit because on January 6, 2000, during a period when the permit was suspended the Respondent, his agent, servant, or employee did, on the licensed premises sell an alcoholic beverage while the permit was under suspension. After proper notice and hearing the attorney for Respondent, Ronald Monshaugen, was permitted to withdraw from representation of Respondent. On August 10, 2000 Respondent was noticed of the withdrawal of counsel and the hearing on the merits was set for August 24, 2000, at 9:00 a.m..

The hearing commenced on August 24, 2000, at 9:00 a.m. at the State Office of administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The Staff was represented by Christopher Burnett. The Respondent, Dhia Rubaiy, d/b/a Quick Check Express Food appeared and represented himself pro se. After the taking of evidence, the hearing was concluded, but the record was left open until August 31, 2000, at 5:00 p.m. for the filing of post hearing briefs and proposed findings of fact and conclusions of law by the parties.

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. (2000). 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 June 9, 2000, the Staff of the Commission (Staff), notified Dhia Rubaiy d/b/a Quick Check Express Food the Staff would seek suspension or cancellation of the Respondent's Wine and Beer Retailer's Off-Premise Permit because on January 6, 2000, during a period when the permit was suspended, the Respondent, his agent, servant, or employee did, on the licensed premises sell an alcoholic beverage while the permit was under suspension. Hearing was set for July 13, 2000. A subsequent Amended notice set this matter for August 24, 2000 at 9:00 a.m.

III. Evidence

From the Staff:

Documentary Evidence:

TABC Exhibit 1: Affidavit of Licensing Department Director for the Texas Alcoholic Beverage Commission regarding the Permit BQ-266384 issued to Dhia Rubaiy doing business as Quick Check Express Food

Testimony:

1. Nicole Bedwell :

Nicole Bedwell testified that on January 6, 2000 she was an agent of the Texas Alcoholic Beverage Commission. In that capacity she received a complaint that the Respondent was selling alcoholic beverages while his license was under suspension. She confirmed that the permit was suspended by using both the computer data base and speaking with the legal department of the commission..

Agent Bedwell testified that because both she and her partner were known by persons on the premises as Texas Alcoholic Beverage Commission she requested that Agent Lon Bui attempt to make a purchase of an alcoholic beverage at the premises of the permit holder. On January 6, 2000, Agent Bui entered Quick Check Express Food while Agent Bedwell and her partner Agent Hamilton remained out of sight.

Lon Bui entered the store and walked to the coolers at the rear of the store. At the coolers she saw a sign saying " Due to a change in our licensing we are unable to sell alcoholic beverages, No beer No wine". She then went to the clerk and asked him if he was selling alcohol. The clerk then left the store and looked around the outside of the store. The clerk returned to the store and motioned for Agent Bui to go back to the beer cooler. Agent Bui went to the beer cooler and

selected a 6 pack and took it to the check out counter and paid the clerk \$6.34 for the 6 pack. Agent Bui left the premises and returned to the unmarked vehicle with the white bag containing a 6 pack of Miller Lite beer.

Agents Bedwell, Hamilton and Bui then entered the store and contacted the clerk who was identified as Jamal Aquel. He was arrested ro sale of alcoholic beverage while the permit was under suspension. Aquel called the owner and asked him to come to the location. Jamal Aquel was allowed to ready the store for closing and to then lock up the store. The owner had not yet arrived when the agents left with the clerk,

From Respondent:

Documentary Evidence:

None

Testimony:

1. Dhia Rubaiy- Respondent

Dhia Rubaiy testified that he is the owner of Quick Check Express Food. It was Mr . Rubaiy's testimony that he had been told by a customer that an "oriental" women had been coming into his store for a number of weeks. During this time his clerk, Jamal Aquel, had become friendly with the women and they had exchanged phone numbers. It was Mr. Rubaiy's contention that the "oriental" women was Agent Lon Bu who was setting up his clerk for a sale while the permit was suspended.

IV. Statutory Criteria

1. Section 11.68 of the Code

Activities prohibited during suspension. No permittee may sell, offer for sale, distribute, or deliver any alcoholic beverage while his permit is suspended.

2. Section 11.61(b)(2) of the Code states in relevant part

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: . . . (2)that the permittee violated a provision of this code or a rule of the commission; . .

III. Discussion

On January 6, 2000, the Respondent held permit BQ266384 which had been in suspension since October 27, 1999, as a result of an Agreed Violation Order in Texas Alcoholic Beverage Commission docket number 585910. This agreed Violations Order included suspension of the permit for a 75 day period starting at 12:01 a.m. on October 27, 1999. The suspension would not have been lifted until January 10, 2000.

All of the testimony from Agent Bedwell concerning what occurred inside the store up to and including the sale of the alcohol was hearsay, but was unobjected to and is therefore admissible under the Texas Rules of Evidence Rule.802. And will not be denied probative value merely because it is hearsay. This testimony establishes that a sale of alcoholic beverages took place at the permittee's premises on January 6, 2000. That is, during the suspension period. The permittee testified that the purchase of an alcoholic beverage at his store was the result of a plan whereby an unidentified women made several visits to the store and befriended the clerk so that he would sell her alcoholic beverages during the suspension period. This testimony was also unobjected to hearsay.

The evidence in this case is clear and convincing that a sale of an alcoholic beverage was made during the agreed period of suspension of the permit. The suggestion that Agent Bui made several trips to the permitted store in order to persuade his clerk to violate the terms of the September 29, 1999 Order is without any foundation or evidentiary support. The violation history provided in TABC Exhibit 1 is a history that indicates a suspension would likely be ignored by the Respondent and therefore it is recommended that Respondents permit be canceled.

PROPOSED FINDINGS OF FACT

1. Respondent, Dhia Rubaiy d/b/a Quick Shop Express Food was the holder of of Wine and Beer Retailer's Off-Premise Permit BQ-266384.
2. On January 6, 2000 Wine and Beer Retailer's Off-Premise Permit BQ-266384 was in a period of suspension as the result of an agreed violations order entered in Texas Alcoholic Beverage Commission docket number 585910 whereby the permit was suspended for a period of 75 days beginning October 27, 1999.
3. On January 6, 2000 Jamal Aquel was an agent, servant or employee of the Respondent, Dhia Rubaiy d/b/a Quick Shop Express Food at 1513Bingle Road in Houston, Texas.
4. On January 6, 2000 Jamal Aquel sold a six pack of Miller Lite beer to Lon Bui at the Quick Check Express Food located at 1513 Bingle Road, Houston, Texas.

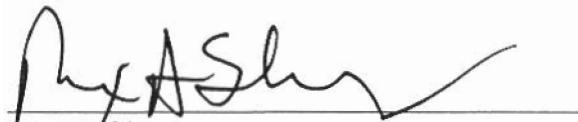
PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Sections 11.68 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 2000).
3. Service of proper and timely notice of the hearing was provided to the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN., Chapter 2001 and 1 TEX. ADMIN. CODE, Chapter 155.
4. An agent, servant or employee of Respondent ,Dhia Rubaiy d/b/a Quick Check Express Food did, on January 6, 2000, sell an alcoholic beverage while Respondent's permit was suspended in violation of Section 11.68 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-266384 be canceled.

Signed this 25th day of October 2000.



Rex A. Shaver
Administrative Law Judge