

DOCKET NO. 587715

IN RE HIEN VINH MAI	§	BEFORE THE
D/B/A MAYFIELD FOOD STORE	§	
LICENSE NO. BF456604	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0610)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of June 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Branch. The hearing convened on April 11, 2000 and adjourned April 11, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 30, 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.

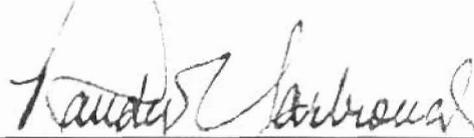
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that License No. BF456604 is herein **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on July 12, 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 21st day of June, 2000.

On Behalf of the Administrator.



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Monica 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

Hien Vinh Mai
d/b/a Mayfield Food Store
RESPONDENT
1913 W. Mayfield Rd.
Arlington, Texas 76015-2837
CERTIFIED MAIL/RRR NO. Z 473 040 344

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

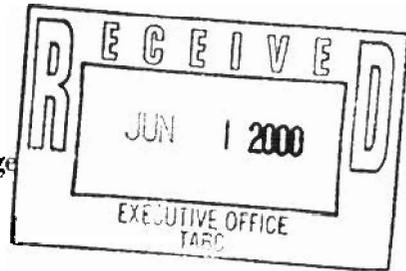
Licensing Division
Fort Worth District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 30, 2000



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

VIA CERTIFIED MAIL Z 283 051 961
Return Receipt Requested

**RE: Docket No. 458-00-0610; Texas Alcoholic Beverage Commission vs. Hien Vinh Mai
d/b/a Mayfield Food Store (TABC Case No. 587715)**

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 Hien Vinh Mai Respondent. For reasons discussed in the proposal, I recommend that Respondent's license 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.

Sincerely,

Monica Branch
Administrative Law Judge

MB:ds
Enclosure

xc: Holly Wise, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; Hien Vinh Mai, Respondent, d/b/a Mayfield Food Store, 1913 W. Mayfield Road, Arlington, Texas 76015-2837 **CERTIFIED MAIL NO. Z 283 051 962, RETURN RECEIPT REQUESTED**

DOCKET NO. 458-00-0610

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	OF
HIEN VINH MAI D/B/A MAYFIELD FOOD STORE TARRANT COUNTY, TEXAS	§	
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC or Staff) brought this disciplinary action against Hien Vinh Mai d/b/a Mayfield Food Store (Respondent), alleging that Respondent's agent, servant, or employee, with criminal negligence, sold, served, or delivered an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (Code). Staff requested that Respondent's license be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

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, 61.71 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).

On March 8, 2000, Staff issued its notice of hearing, directed to Hien Vinh Mai d/b/a Mayfield Food Store, 1913 W. Mayfield Road, Arlington, Texas, 76015-2837, via certified mail, return receipt requested. On April 11, 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. Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Staff offered evidence that its notice of hearing, sent to Respondent's address of record on March 8, 2000, was returned "UNCLAIMED" by the United States Postal Service. After presentation of evidence, the record was closed on April 11, 2000.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized to cancel a license, pursuant to § 106.13 of the Code, if a licensee, 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.

DISCUSSION

Staff presented evidence relating to the factual allegation presented in the notice of hearing. The evidence established that Minh Y-Thi Nguyen was working as a clerk at Mayfield Food Store on December 4, 1999. On that date, Ms. Nguyen sold beer to Erin D. Little, an eighteen year old female who was youthful in appearance. Ms. Little could not have reasonably been mistaken for an individual of legal drinking age. In selling beer to this minor, Ms. Nguyen was criminally negligent.

After presentation of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE § 155.55 (1999). The ALJ finds that Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 (1999) and § 11.63 of the Code. Therefore, Staff's motion for default judgment should be granted. Pursuant to 1 TEX. ADMIN. CODE § 155.55 (1999), the allegation presented in the notice of hearing is deemed admitted as true. Accordingly, the ALJ has incorporated this allegation into the Findings of Fact below.

FINDINGS OF FACT

1. Respondent, Hien Vinh Mai d/b/a Mayfield Food Store, holds a Beer Retailer's Off-Premise License, BF-456604, for the premises located at 1913 W. Mayfield Road, Arlington, Tarrant County, Texas.
2. On March 8, 2000, Staff issued its notice of hearing to Respondent, via certified mail, return receipt requested, at Respondent's last known address of record. The United States Postal Service returned Respondent's notice of hearing as "UNCLAIMED".

3. The notice of hearing contained a statement of the time, place and 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 matters asserted.
4. The notice of hearing also contained the following language in at least 10-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing was convened before Monica Branch, an Administrative Law Judge with the State Office of Administrative Hearings, on April 11, 2000. Respondent did not appear and was not represented at the hearing.
6. Evidence was presented at the hearing and the record was closed on April 11, 2000.
7. Staff moved for entry of a default judgment.
8. The notice of hearing contained the following allegation:

On or about [the] 4th day of December, 1999, the Respondent, his agent, servant, or employee, did then and there on the licensed premises with criminal negligence sell, serve or deliver an alcoholic beverage to a minor, in violation of § 106.13 of the Code.

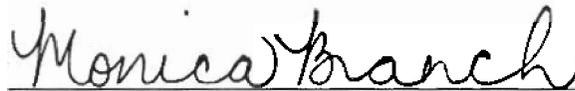
CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 61.71 and 106.13 (Vernon 1999).
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. Based upon Findings of Fact Nos. 2-4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 (1999) and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based on Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55 (1999).
5. The allegation contained in the notice of hearing, set out in Finding of Fact No. 8, is deemed

admitted as true pursuant to 1 TEX. ADMIN. CODE § 155.55 (1999) and constitutes a violation of § 106.13 of the Code.

6. Based on Finding of Fact No. 8 and Conclusion of Law No. 5, Respondent's license should be canceled.

SIGNED on this the 30th day of May, 2000.



MONICA BRANCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS