

DOCKET NO. 589170

IN RE CHAK CHEUNG TSANG	§	BEFORE THE
D/B/A CONFUCIUS CHINESE RESTAURANT	§	
PERMIT NOS. BG446190, FB446192	§	
LICENSE NO. BL446191	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2022)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of October 2001, the abovestyled 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 January 4, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 25, 2001. 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. BG446190, FB446192 and License No. BL446191 shall be **SUSPENDED**.

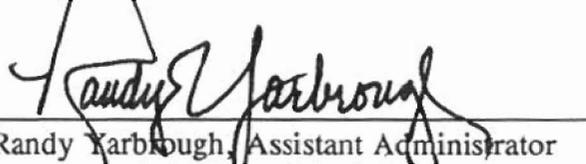
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the 15th day of January 2002, all rights and privileges under the above described permits and license will be **SUSPENDED for a period of three (3) days, beginning at 12:01 A.M. on the 22nd day of January 2002.**

This Order will become final and enforceable on November 19, 2001, 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 22nd day of October 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE (713) 812-1001

Chak Cheung Tsang
d/b/a Confucius Chinese Restaurant
RESPONDENT
4316 Lula
Houston, Texas 77401-5222
CERTIFIED MAIL NO. 7000 1530 0003 1927 6945

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Harris District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 589170

REGISTER NUMBER:

NAME: CHAK CHEUNG TSANG

TRADENAME: CONFUCIUS CHINESE RESTAURANT

ADDRESS: 8880 Bellaire 'J', Houston, Harris County, Texas 77036-4621

DATE DUE: January 15, 2002

PERMITS OR LICENSES: BG446190, BL446191, FB446192

AMOUNT OF PENALTY: \$450.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 15TH, DAY OF JANUARY 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

SOAH DOCKET NO. 458-00-2022

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
CHAK CHEUNG TSANG	§	
D/B/A CONFUCIUS CHINESE RESTAURANT, PERMIT NOS. BG446190, FB446192, LICENSE NO. BL446191	§	
HARRIS COUNTY, TEXAS (TABC CASE NO. 589170)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Commission) brought this action against Respondent, a licensee of the commission, alleging that the licensee possessed or permitted others to possess an unauthorized alcoholic beverage. The Staff recommended that the Respondent's license be suspended for five days and that for each day of suspension payment of a fine in lieu of suspension be allowed. The ALJ having found sufficient evidence that the licensee possessed or permitted others to possess an unauthorized alcoholic beverage recommends that the license be suspended for 3 days and that in lieu of such suspension payment of a fine of \$450.00 be permitted.

I. Procedural History

By Notice of Hearing dated on July 28, 2000 and by Amended Notice of Hearing dated September 12, 2000 the Staff of the Texas Alcoholic Beverage Commission (the Staff), notified Chak Cheung Tsang d/b/a Confucius Chinese Restaurant (Respondent) that the Staff would seek disciplinary action against the Respondent's permit because the Respondent possessed or permitted others to possess an unauthorized alcoholic beverage on the premises. The Staff asserted that such act constituted grounds for suspension or cancellation of the Respondent's Wine and Beer Retailer's Off Premise Permit.

On January 4, 2001 the hearing commenced, pursuant to the Amended Notice of Hearing, in the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Harris County, Texas. The Staff was represented by Christopher Burnett, of the TABC Legal Division. The Respondent, Chak Cheung Tsang d/b/a Confucius Chinese Restaurant appeared *pro se*.

II. Jurisdiction and Notice

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (The Code) "6.01 and 61.71. 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.

The Respondent is the holder of Wine and Beer Retailer's Permit, BG-446190, Retail Dealer's On-Premise Late Hours License, BL-446191, and Food and Beverage Certificate, FB-446192 and was the holder of such permits and licenses on the date of the alleged violation. The Amended Notice of Hearing in this matter was mailed to the Respondent on September 12, 2000 pursuant to TEX. GOV'T CODE ANN. Chapter 2001.

III. Statutory Criteria

1. Texas Alcoholic Beverage Code Section 11.61 (b) A 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) the permittee violated a provision of this code or a rule of the commission."
2. Texas Alcoholic Beverage Code Section 61.71(a)(9) "(a) 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 the licensee: . . . (9) possessed on the premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant or employee to do so..."
3. Texas Alcoholic Beverage Code Section 25.01 "The holder of a wine and beer retailer's permit may sell:
 - (1) for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume and not more than 14 percent by volume; and
 - (2) for consumption on the premises traditional port or sherry containing alcohol in excess of one-half of one percent by volume and not more than 24 percent by volume."

IV. Evidence

From the Staff:

Documentary Evidence:

TABC Exhibit 1: Affidavit of Licensing Department Director for the Texas Alcoholic Beverage Commission regarding the Wine and Beer Retailer's Permit, BG-446190, Retail Dealer's On-Premise Late Hours License, BL- 446191 and Food and Beverage Certificate, FB-446192 held by Chak Cheung Tsang d/b/a Confucius Chinese Restaurant.

This exhibit was offered and accepted without objection.

Testimony:

Miles Santo

Mr. Santo testified that, on May 4, 2000, he was an agent of the Texas Alcoholic Beverage Commission assigned to the Houston District Office. On that same date he made a routine inspection of the Confucius Chinese Restaurant. In the course of that inspection he discovered two bottles of rice wine with labels indicating an alcohol content of 18% by volume. One partially full bottle was in the beverage cooler. The other bottle was in its box and on a shelf near the front of the restaurant. Mr. Santo confirmed that the licensee had invoices for the purchase of these two bottles. The witness noted that these invoices failed to reflect the alcohol content of the wine.

From Respondent:

No Documentary Evidence was offered.

Testimony:

Chak Cheung Tsang

The Respondent testified that it was true that on May 4, 2000 he was in possession of two bottles of rice wine having an alcohol content of 18% by volume. He stated that this wine was used only for cooking. The witness further testified that while the wine was not offered for sale to customers it would sometimes be taken to the table to add to soup or so

the customer could see what wine was being used in the cooking. Mr. Tsang testified that it was a mistake on the part of a waiter who placed the wine bottle in the cooler rather than returning it to the kitchen. The witness further testified that the bottle of wine still in its box was placed on a shelf near the front of the restaurant merely as decoration . That box was multicolored and bore gold colored seals and bold Chinese lettering. Mr. Tsang testified that it was his mistake that he was using wine for cooking with an alcohol content in excess of the permitted amount.

V. Analysis

It is undisputed that Mr. Santo did find the Respondent, Mr. Tsang , in possession of of an unauthorized alcoholic beverage. Respondent offered testimony that it was not his intent to sell the alcoholic beverage to any customer but rather to use the wine in cooking. The fact that one bottle was displayed in the front area of the restaurant while an open bottle was in the beverage cooler was explained by Mr. Tsang. The ALJ finds this explanation reasonable and convincing. The question here, however, is merely of whether Respondent possessed the unauthorized alcoholic beverage and not what the beverage was to be used for. The Respondent testified that it was his mistake that a rice wine with an alcohol by volume in excess of that permitted was purchased for use at his restaurant.

PROPOSED FINDINGS OF FACT

1. On May 4, 2000, Wine and Beer Retailer's Permit, BG-446190, Retail Dealer's On-Premise Late Hours License, BL-446191 and Food and Beverage Certificate, FB- 446192 were held by Chak Cheung Tsang, doing business as Confucius Chinese Restaurant.
2. On May 4, 2000 the Respondent was in possession of two bottles of rice wine seized by the agent of the Texas Alcoholic Beverage Commission.
3. On May 4, 2000 an agent of the Texas Alcoholic Beverage Commission inspected Confucius Chinese Restaurant and each of these two bottles of rice wine had labels indicating for each an alcohol content of 18%.by volume.

PROPOSED CONCLUSIONS OF LAW

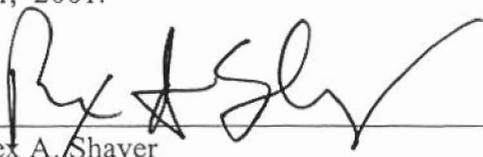
1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Sections 106.13 and 11.61 (b) 2 of the TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction in matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed conclusions of law pursuant to TEX. GOV'T. CODE ANN. Chapter 2003.

3. Service of proper and timely notice of the hearing was given to Respondent pursuant to the Administrative Procedure Act, TEX GOV'T CODE ANN., Chapter 2001 and 1 TEX. ADMIN. CODE, Chapter 155.
4. On May 4, 2000 the Chak Cheung Tsang was in possession of an unauthorized alcoholic beverage in violation of the TEX. ALCOH. BEVERAGE CODE Sections 61.71(a) (9) and 25.01.

RECOMMENDATION

The ALJ having found sufficient evidence that the licensee possessed or permitted others to possess an unauthorized alcoholic beverage on the premises recommends that the license be suspended for three days or in lieu of such suspension make the payment of a fine of \$150.00 for each day of suspension for a total of \$450.00.

Signed this 23rd day of September, 2001.



Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS