

DOCKET NO. 594214

IN RE BOBBY RAY BROWN	§	BEFORE THE
D/B/A QUARTER HORSE SALOON	§	
PERMIT NOS. MB451502, LB451503,	§	
PE451504	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3731)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 12TH day of December 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on October 3, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 15, 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.

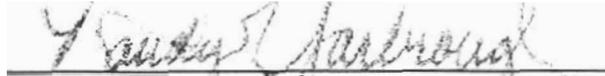
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB451502, LB451503, and PE451504 are herein **CANCELED FOR CAUSE**.

This Order will become final and enforceable on January 2, 2002, 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 12th day of December 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Bobby Ray Brown
d/b/a Quarter Horse Saloon
RESPONDENT
129 N. Las Vegas Trail
Fort Worth, Texas 76108-2127
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 0774

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-01-3731

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
	§	OF
v.	§	
	§	
BOBBY RAY BROWN	§	ADMINISTRATIVE HEARINGS
d/b/a QUARTER HORSE SALOON,		
Respondent		
(TABC CASE NO. 594214)		

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Commission) brought this action against Bobby Ray Brown d/b/a Quarter Horse Saloon (Respondent) alleging the following: (1) Respondent possessed or permitted others to possess an unauthorized alcoholic beverage on the licensed premises, (2) Respondent possessed or permitted another to possess on the premises distilled spirits¹ in a container not bearing a serially numbered identification stamp, (3) Respondent failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits, and (4) Respondent refilled a container that contained distilled spirits on which tax had been paid. The Staff requested cancellation of Respondent's permits in this case. Respondent did not appear at the hearing and was not represented by counsel. This Proposal for Decision recommends that Respondent's permits be canceled for cause.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter under Chapter 5, and §§ 6.01, 11.61, 28.01, 28.07, 28.08, 28.09, 28.15, 29.01, 29.03, 44.01, 44.03, 61.71, 69.09, 71.05 TEX. ALCO. BEV. CODE ANN. ("the Code"), and TABC rule, 16 TEX. ADMIN. CODE § 31.1 *et seq.* The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN § 2003.021. There were no contested issues of notice or jurisdiction on this proceeding.

A hearing commenced on October 3, 2001, at the SOAH offices in Fort Worth, Tarrant County, Texas. After the taking of evidence, the hearing was concluded. Commission's Staff was

¹Distilled spirits includes alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation. TEX. ALCO. BEV. CODE ANN. § 1.04(3).

represented by its attorney, Timothy E. Griffith. Respondent, although notified of the hearing, did not appear and was not represented by counsel.

EVIDENCE

The Commission's Staff presented several exhibits. These included the Notice of Hearing provided to Respondent in this case, Respondent's permits issued by the Commission, Respondent's previous violation history, Staff's Requests for Admissions, Interrogatories, and Requests for Production served on Respondent on August 16, 2001, and a Texas Alcoholic Beverage Commission Incident Report dated March 8, 2001. In addition to its documentary evidence, Staff also presented testimony from Nathan Curry, an agent for the Texas Alcoholic Beverage Commission.

Respondent is the holder of a Mixed Beverage Permit, MB-351502, Mixed Beverage Late Hours Permit, LB-351503, and Beverage Cartage Permit, PE-451504 issued for the premises, Quarter Horse Saloon, located 13325 Highway 287/81, Haslet, Tarrant County, Texas. On March 7, 2001, Agent Nathan Curry inspected the Quarter Horse Saloon. Agent Curry testified that he was at the premises investigating a complaint that Respondent was illegally purchasing distilled spirits and illegally refilling bottles of spirits that had tax stamps on them. Respondent was present during Agent Curry's inspection.

Agent Curry stated that while in the bar area of the premises, he observed a one-liter bottle of Jose Cuervo tequila that was on display with other liquor stock. This bottle was approximately 7/8 full with a pour spout in place. The bottle had a local distributor's tax identification stamp affixed. However, the stamp, as well as the bottle's label, had been scratched deeply and repeatedly making the stamp number difficult to read. Nevertheless, Agent Curry was able to make out the number on the stamp as "R63827977." From his training and experience, he stated that the bottle appeared to have been emptied of its original contents and the stamp mutilated as required, but had then been illegally refilled.

Next, Agent Curry looked inside a cooler behind the bar. Inside the cooler, Agent Curry observed a sealed 750-ml bottle of Jeagermeister liqueur and an open 750-ml bottle of DeKuyper's peach schnapps, which was nearly empty. Of these bottles, neither had a local distributor's stamp affixed, nor was there evidence that the required stamps had ever been affixed to the bottles. Agent Curry testified that when he asked Respondent about the lack of stamps on these bottles, Respondent replied that the stamps on bottles stored in the cooler sometimes fell off. Agent Curry observed that all other bottles in the cooler had stamps properly affixed and no errant stamps were located inside the cooler from having fallen from their bottles.

While inspecting the premises' storeroom, Agent Curry observed two liquor boxes stacked on top of each other. The top box was empty except for one bottle. This bottle was an empty Jose Cuervo tequila bottle with a local distributor's stamp "T51321643." The stamp had not been properly obliterated when the bottle was emptied. The bottom box also held an empty bottle of Jack

Daniels whiskey which did not have a local distributor's stamp affixed to it or evidence that such a stamp had ever been affixed to the bottle.

Agent Curry asked to view Respondent's liquor invoices, but was never provided with these records. He did examine two spiral notebooks that contained dates in chronological order and notes for amounts paid to vendors and individuals. Some receipts were stapled into these notebooks.

On a page bearing the date "2-2-01," Agent Curry saw a receipt from Plaza Liquor for two transactions. At 8:15 p.m. on February 2, 2001, \$40.25 was paid to purchase bottles of Captain Morgan's rum and Midori 7 liqueur. At 8:18 p.m., a bottle of Crown Royal was purchased. Cash was paid for these items. In the same notebook, another transaction was found on the date "2-10-01." This transaction occurred on February 20, 2001, at 8:46 p.m., with a bottle of DeKuyppers peach schnapps and six 6-packs of Bud Light being purchased for \$38.28 in cash.

Agent Curry asked if Respondent's vehicle was at the premises. Respondent said that it was and accompanied Agent Curry while he inspected the vehicle's contents. Inside the vehicle's trunk, Agent Curry found several bottles of liquor. The following bottles were open with contents inside of them, but the bottles did not have a local distributor's stamp affixed:

- a 1-liter bottle of Juarez tequila;
- a 1.75-liter bottle of Kamora liqueur;
- a 1.75-liter bottle of Skol vodka;
- a 1.75-liter bottle of W.L. Weller whiskey;
- a 1.75-liter bottle of Seagram's Seven whiskey; and
- a 1.75-liter bottle of Carolan's liqueur.

According to Agent Curry, citations were issued to Respondent for several violations. Criminal charges were pursued against Respondent by the Tarrant County District Attorney's office in connection with possession of alcoholic beverage without invoices. Agent Curry stated it was his understanding that Respondent had pled guilty to these charges.

Staff, in support of its position, also offered evidence of matters deemed admitted by Respondent, pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2). Exhibit 3 contains the requests for admissions served on Respondent on August 16, 2001. No responses were made to the requests for admissions and are admitted as follows:

1. Bobby Ray Brown d/b/a Quarter Horse Saloon, Respondent, is the holder of a Mixed Beverage Permit, MB 451502, Mixed Beverage Late Hours Permit, LB 451503, and Beverage Cartage Permit, PE 451504, issued by the Petitioner, the Texas Alcoholic Beverage Commission, for the licensed premises known as Quarter Horse Saloon, which is located at 1332⁵ Highway 287/81, Haslet, Tarrant County, Texas 76052-9543.

2. The permits referenced in request 1 are currently in effect and were in effect on all the dates relevant to the original, supplemental or amended Notice of Hearing.
3. The State Office of Administrative Hearings has jurisdiction over this matter.
4. Petitioner has jurisdiction over this matter.
5. Respondent received adequate notice of this hearing.
6. Respondent, on or around March 7, 2001, possessed or permitted others to possess an unauthorized alcoholic beverage in violation of § 11.61(b)(15) of the Texas Alcoholic Beverage Code.
7. Respondent, on or around March 7, 2001, possessed or permitted another to possess on the premises distilled spirits in a container not bearing a serially numbered identification stamp in violation of §§11.61(b)(2) and 28.15(a) of the Texas Alcoholic Beverage Code.
8. Respondent, on or around March 7, 2001, failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits in violation of §§ 11.61(b)(2) and § 41.72 of the Texas Alcoholic Beverage Commission Rules.
9. Respondent, on or around March 7, 2001, refilled a container that contained distilled spirits on which tax had been paid in violation of §§ 11.61(b)(2) and 28.03(a) of the Texas Alcoholic Beverage Code.
10. Respondent, on or around March 7, 2001, acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder in violation of §§ 11.61(b)(2), 61.71(a)(20), 69.09, 71.05 and/or 28.07 of the Texas Alcoholic Beverage Code.

ANALYSIS

Based upon Respondent's failure to respond to requests for admissions served upon him by the Commission's Staff and his failure to appear at the hearing to controvert any evidence presented by Staff, the ALJ finds that Respondent has violated several provisions of the Texas Alcoholic Beverage Code (the Code) and Commission Rules as alleged by the Commission's Staff. The Commission or its administrator is authorized to cancel a permit or suspend it for not more than 60 days if a permittee violates a provision of the Code or a Commission Rule. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2). The Code also provides that it is a violation to possess an alcoholic beverage on the licensed premises that a permittee is not authorized by his permit to purchase or sell. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(15).

Section 28.08 of the Code provides that no holder of a mixed beverage permit may refill with any substance a container which contained distilled spirits on which the tax prescribed in § 201.03 of the Code has been paid. TEX. ALCO. BEV. CODE ANN. § 28.08. A mixed beverage permittee also may not possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the Commission or other identification approved by the Commission. TEX. ALCO. BEV. CODE ANN. § 28.15(a). The holder of a mixed beverage permit who empties a bottle containing distilled spirits on which the tax prescribed in § 201.03 of the Code has been paid, shall immediately after emptying the bottle invalidate² the identification stamp on the bottle in a manner prescribed by the Commission's Rules. TEX. ALCO. BEV. CODE ANN. § 28.09(a). Any purchases of distilled spirits sold by a holder of a mixed beverage permit must be purchased from a holder of a local distributor's permit in the county in which the premises of a mixed beverage permittee is located. TEX. ALCO. BEV. CODE ANN. § 28.07(a).

It is undisputed that Respondent had refilled an empty bottle of alcoholic beverage. A bottle of tequila behind the bar was 7/8 full, but the tax identification stamp was obliterated in the manner required upon emptying a bottle of distilled spirits.

Full and empty bottles of alcoholic beverages were observed on the premises without local distributor's stamps being affixed to the bottles. Respondent's explanation that the stamps often fell off in the bar's cooler was not substantiated by Agent Curry's inspection of the inside of the cooler for errant stamps.

An empty bottle of tequila was found in the premises' storeroom. This bottle's local distributor's stamp had not been obliterated upon being emptied as required.

Receipts for purchases of alcoholic beverages in Respondent's records were examined during Agent Curry's inspection. These receipts show that on two occasions, Respondent had purchased alcoholic beverage, Captain Morgan's rum, Midori 7 liqueur, Crown Royal whiskey, DeKuyper's peach schnapps and Bud Light beer, from Plaza Liquor for cash. These receipts indicate that Plaza Liquor was a retail permit or license holder, and not a wholesale distributor authorized to sell alcoholic beverages for resale purposes. Further, numerous other bottles of alcoholic beverages,

²Commission Rules provide as follows:

- (a) The invalidation of identification stamps required by § 28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp.
- (b) As used in this section, "mutilate" means to scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.
- (c) The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.
- (d) No permittee shall possess or permit any person to possess on the permittee's licensed premises any distilled spirits in any container bearing an identification stamp which has been mutilated or otherwise damaged or marked to a substantial degree. 16 TEX. ADMIN. CODE § 41.72.

tequila, whiskey, vodka, and other liquors, were found on the premises and did not bear a local distributor's stamp.

Based upon this evidence, the ALJ believes that Respondent possessed unauthorized alcoholic beverages on the licensed premises. Bottles of distilled spirits without serially numbered identification stamps were on the premises. The presence of the bottles, along with Respondent's records, indicated that purchases of alcoholic beverages for resale was being made from other retail permit or license holders. Respondent possessed an empty bottle without mutilating its identification stamp and possessed a bottle with liquid contents in it that had its identification stamp mutilated. These bottles indicated that Respondent was refilling empty bottles on which tax had been paid.

Respondent's licensing history shows a prior 10-day suspension for possession of a drug, marijuana, on the premises by an employee. That violation, in conjunction with the five violations proven by the Commission's Staff in this case involving numerous bottles of alcoholic beverages on the premises, leads the ALJ to recommend that Respondent's permits be canceled for cause.

FINDINGS OF FACT

1. Bobby Ray Brown d/b/a Quarter Horse Saloon (Respondent) is the holder of a Mixed Beverage Permit, MB 451502, Mixed Beverage Late Hours Permit, LB 451503, and a Beverage Cartage Permit, PE 451504, issued by the Texas Alcoholic Beverage Commission (Commission), for the licensed premises known as Quarter Horse Saloon which is located at 13325 Highway 287/S1, Haslet, Tarrant County, Texas.
2. A notice of hearing and requests for admissions, interrogatories and requests for production were sent to Respondent on August 13, 2001, by the Commission's Staff; these documents were received by Respondent on August 16, 2001.
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 of the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.
4. The hearing was convened on October 3, 2001, at the offices of the State Office of Administrative Hearings in Fort Worth, Tarrant County, Texas. Timothy E. Griffith, the Commission's Staff Attorney represented the Commission's Staff. Respondent did not appear and was not represented at the hearing. The record was closed on that date.
5. On May 7, 2001, an inspection of Respondent's premises was made by the Commission's Agent, Nathan Curry.
6. During the inspection, numerous containers of unauthorized alcoholic beverage were located on

the premises.

7. On that day, a bottle of Jaegermeister liqueur and a bottle of DeKuyper's peach schnapps were inside the bar cooler; a local distributor's identification stamp was not affixed to either bottle.

8. Bottles of tequila, liqueur, vodka, and whiskey were in the trunk of Respondent's car, which was parked outside the bar, and did not have local distributor stamps affixed to them.

9. An empty Jose Cuervo tequila bottle was on the premises and its local distributor's stamp was not mutilated.

10. A bottle of Jose Cuervo tequila was behind the bar. The bottle was 7/8 full, but the local distributor's stamp had been obliterated by a deep scratch in the manner required upon emptying any bottle of distilled spirits on a licensed premises.

11. Respondent purchased alcoholic beverages, rum, whiskey, liquor, and beer, from another retail dealer, Plaza Liquor, for resale.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN, Chapter 5 and §§ 6.01 and 11.61, and 61.71.

2. 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 facts and conclusions of law pursuant to TEX. GOV'T CODE ANN, Chapter 2001.

3. Service of proper and timely notice of the hearing was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN, Chapter 2001 and 1 TEX. ADMIN. CODE Chapter 155.

4. Based on Findings of Fact Nos. 7 and 8, Respondent possessed distilled spirits in a container not bearing a serially numbered identification stamp in violation of TEX. ALCO. BEV. CODE ANN, §§ 11.61(b)(2) and 28.15(a).

5. Based on Finding of Fact No. 9, Respondent failed to immediately mutilate the identification stamp on an empty bottle that contained distilled spirits in violation of TEX. ALCO. BEV. CODE ANN, §§ 11.61(b)(2) and 28.09(a) and 16 TEX. ADMIN. CODE § 41.72.

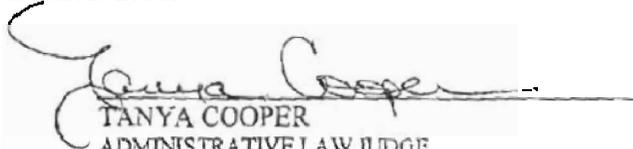
6. Based on Finding of Fact No. 10, Respondent refilled a container that contained distilled spirits on which tax had been paid in violation of TEX. ALCO. BEV. CODE ANN, § 11.61(b)(2) and 28.08(a).

7. Based on Findings of Fact Nos. 7 and 11, Respondent acquired alcoholic beverages for the purpose of resale from another retail permit or license holder in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 28.07.

8. Based on Findings of Fact Nos. 7 - 11, Respondent possessed unauthorized alcoholic beverages on the license premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(15).

9. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should be canceled for cause.

SIGNED on the 15th day of November 2001.



TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS