

DOCKET NO. 606546

IN RE SNOW MOUNTAIN PRIVATE CLUB	§	BEFORE THE
D/B/A SNOW MOUNTAIN PRIVATE CLUB	§	
PERMIT/LICENSE NOS.N-507344, PE507345, FB507346	§	TEXAS ALCOHOLIC
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2342)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 14th day of June, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge. The hearing convened on March 25, 2004, and adjourned on March 25, 2004. The Administrative Law Judge Jerry Van Hamme made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 21, 2004. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 the above described permits and/or licenses are hereby **SUSPENDED** for fifteen days.

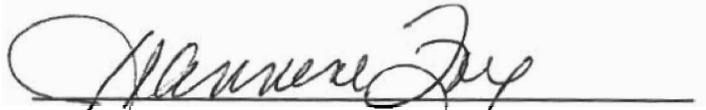
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$2,250.00 on or before the 11th day of August, 2004, all rights and privileges under the above described permits and/or licenses will be **SUSPENDED** for a period of fifteen (15) days, beginning at 12:01 A.M. on the 18th day of August, 2004.

This Order will become final and enforceable on July 5, 2004, 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.

SIGNED on this 14th day of June, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX NO. (214) 956-8611

**SNOW MOUNTAIN PRIVATE CLUB
RESPONDENT
4609 W Walnut St.
Garland, Texas 75042
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1903 4378**

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

DOCKET NO. 458-04-2342

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

v.

SNOW MOUNTAIN PRIVATE CLUB
DALLAS COUNTY, TEXAS
TABC NO. 606546

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) brought this disciplinary action against Snow Mountain Private Club (Respondent), alleging that on or about July 16, 2003, Respondent or its agent, servant, or employee In Ja Kang, permitted the possession of alcoholic beverages on Respondent's premises not covered by invoice and to which local distributor stamps were not affixed, and failed to properly maintain club records. The Administrative Law Judge (ALJ) finds that Staff has proven the allegations and recommends that Respondent's permits be suspended for fifteen days, or in lieu of suspension, that Respondent be permitted to pay a civil penalty of \$2,250.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On March 25, 2004, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings (SOAH), Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, attorney. In Ja Kang appeared *pro se* for Respondent. The record was closed on that date.



II. LEGAL STANDARDS AND APPLICABLE LAW

A. Invoice

A "permittee" includes the holder of a private club registration permit, and the agents, servants and employees of such permit holder. 16 TEX. ADMIN. CODE § 41.50(a)(3). A permittee shall not possess or permit to be possessed on his licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased by the permittee. Each invoice shall be kept on the licensed premises for a period of two years and shall be made available to a representative of the Texas Alcoholic Beverage Commission (Commission) upon reasonable request. 16 TEX. ADMIN. CODE § 41.50(h)(2).

"Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted. TEX. ALCO. BEV. CODE ANN. § 1.04(1).

B. Purchase from Holder of Local Distributor's Permit

All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's permit. TEX. ALCO. BEV. CODE ANN. § 32.08. "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them. TEX. ALCO. BEV. CODE ANN. § 1.04(3).

C. Private Club Records

No private club shall be qualified to hold a private club registration permit unless it keeps a well-bound book in which is shown the full name of each member, each initial membership number which shall be issued in sequence, the current complete address of each member, the date each member was admitted to membership, and the date each member was removed from membership. All

required books, records, and minutes shall be kept on the premises of such club and made available to any representative of the Commission upon reasonable notice. 16 TEX. ADMIN. CODE § 41.52(c)(1)(D) & (E), and TEX. ALCO. BEV. CODE ANN. § 32.13.

D. Sanctions

The Commission or Administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has violated or assisted, aided or abetted the violation of any provision of the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.17(a)(8).

III. EVIDENCE

A. Staff's Evidence and Contentions

Agent Anthony Keel, an investigator for the Commission, testified that he conducted an investigation of Respondent's establishment on July 16, 2003, and observed four bottles of distilled spirits on the premises, including two one-liter bottles of gin and one bottle of vodka, which did not have local distributor stamps affixed to them. The bottles were on a shelf in the bar area next to other bottles of alcoholic beverages and accessible to the public. Agent Keel requested invoices from Respondent's employee for these bottles, but the employee was unable to produce the invoices.

Agent Keel also requested to see Respondent's club records, including the club membership book, minutes of club meetings, and voting records for new members. Respondent's employee was unable to produce these records. The employee called In Ja Kang who spoke to Agent Keel by telephone, but the requested documents were neither located nor provided to Agent Keel.

B. Respondent's Evidence and Contentions

In Ja Kang testified that he did not act dishonestly towards either Respondent's patrons or the Commission, and that Respondent's employee who was present during Agent Keel's investigation was unable to produce the requested documents because the employee neither spoke nor understood English very well.

IV. ANALYSIS

As the holder of a private club registration, Respondent must purchase all distilled spirits from the holder of a local distributor's permit. Local distributor stamps are affixed to bottles to show that the bottles were purchased from the holder of such a permit. Four bottles on Respondent's premises failed to have local distributor stamps affixed to them. No explanation was presented explaining this failure. Accordingly, the evidence is sufficient to show that Respondent violated this regulation.

As a permittee, Respondent may not possess any alcoholic beverage on the licensed premises which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased. Each invoice must be kept on the licensed premises for a period of two years and the invoices must be made available to a representative of the Commission upon reasonable request.¹ Agent Keel requested to see the invoices for these four bottles, but the employee was unable to produce them. Respondent's failure to produce the invoices constitutes a violation of the regulations.

As a private club, Respondent is responsible to keep on its premises a well-bound membership book showing the full name of each member, the initial membership number, the current complete address of each member, the date each member was admitted to membership, and the date each member was removed from membership. Respondent must also make this book available to

¹Respondent was granted its permits and certificate on January 10, 2002. The investigation was conducted on July 16, 2003, well within two years of this date. Respondent was therefore obligated to have these documents on the premises at the time of the investigation.

representatives of the Commission, such as Agent Keel, upon reasonable notice. Agent Keel requested to see Respondent's club records, including the club membership book, minutes of club meetings, and voting records for new members, but Respondent's employee was unable to produce them. The evidence is sufficient to show that Respondent violated these regulations.

V. RECOMMENDATION

Staff requested that Respondent's permits be suspended for fifteen days, or in lieu of suspension, that Respondent be permitted to pay a civil penalty of \$2,250. Based on the evidence presented on the record, the ALJ agrees with Staff's request and recommends that Respondent's permits be suspended for fifteen days, or in lieu of suspension, that Respondent be permitted to pay a civil penalty of \$2,250.

VI. FINDINGS OF FACT

1. On January 10, 2002, the Texas Alcoholic Beverage Commission (Commission) issued Private Club Registration Permit, N-507344, Beverage Cartage Permit PE-507345, and Food and Beverage Certificate, FB-507346, to an unincorporated association of persons doing business as Snow Mountain Private Club, 4609 W. Walnut Street, Garland, Dallas County, Texas.
2. On July 16, 2003, four bottles of alcoholic beverages on a shelf behind Respondent's bar, including two one-liter bottles of gin and one bottle of vodka, did not have local distributor stamps affixed to them.
3. Respondent's employee was not able to produce invoices for these alcoholic beverages.
4. Respondent had distilled spirits for sale on the premises that had not been purchased from a holder of a local distributor's permit.
5. Respondent possessed alcoholic beverages on the licensed premises that were not covered by an invoice from the supplier from whom the alcoholic beverages were purchased.
6. Respondent failed to keep invoices on the licensed premises for a period of two years.

7. Respondent failed to make invoices available to a representative of the Commission upon reasonable request.
8. Respondent's employee was unable to produce the club membership book, minutes of club meetings, and voting records for new members.
9. Respondent failed to keep on its premises a well-bound membership book showing the full name of each member, initial membership number, current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership.
10. Respondent failed to make its membership book available to a representative of the Commission upon reasonable notice.
11. On January 28, 2004, Staff sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
12. The hearing on the merits convened March 25, 2004, at the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. Staff was represented by Timothy E. Griffith, attorney. In Ja Kang appeared *pro se* for Respondent. The record was closed on that date.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61(b)(2).
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. Respondent possessed distilled spirits on the premises for sale that had not been purchased from a holder of a local distributor's permit in violation of TEX. ALCO. BEV. CODE ANN. § 32.08.

5. Respondent possessed alcoholic beverages on its licensed premises that were not covered by an invoice from the supplier from whom the alcoholic beverages were purchased in violation of 16 TEX. ADMIN. CODE § 41.50(h)(2).
6. Respondent failed to keep invoices on the licensed premises for a period of two years in violation of 16 TEX. ADMIN. CODE § 41.50(h)(2).
7. Respondent failed to keep on Respondent's premises a well-bound membership book showing the full name of each member, initial membership number, current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership in violation of 16 TEX. ADMIN. CODE § 41.52(c)(1)(D) & (E).
8. Respondent failed to make its membership book available to a representative of the Commission upon reasonable notice in violation of 16 TEX. ADMIN. CODE § 41.52(c)(1)(D) & (E).
9. Based on the foregoing Findings and Conclusions, Respondent's permits should be suspended for fifteen days, or in lieu of suspension, Respondent should be permitted to pay a civil penalty of \$2,250.

SIGNED May 21, 2004.



JERRY VAN HAMME

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS