

DOCKET NO. 606763

IN RE EID MOHD ALSHDAIFAT	§	BEFORE THE
D/B/A QUICK & EASY FOODS	§	
PERMIT/LICENSE NOS. BF501250,	§	
Q-501249	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-8609)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of December, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis W. Cranz. The hearing convened on October 8, 2004, and adjourned on October 8, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 18, 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 Respondent's permits be **SUSPENDED** for **thirty (30) days**.

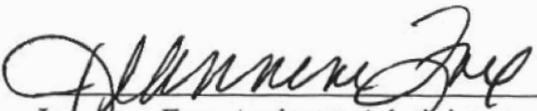
IT IS THEREFORE ORDERED that unless Respondent pays a civil penalty in the amount of **\$4,500.00** on or before the **16th day of February, 2005**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **thirty (30) days, beginning at 12:01 A.M. on the 23rd day of February, 2005**.

This Order will become final and enforceable on **January 3, 2005**, 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 13th day of December, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Phyllis W. Cranz
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Eid Mohd Alshdaifat
d/b/a Quick & Easy Foods
RESPONDENT
100 N. Riverside Drive
Fort Worth, TX 76111-3910
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1926 6120

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 606763

REGISTER NUMBER:

NAME: EID MOHD ALSHDAIFAT

TRADENAME: QUICK & EASY FOODS

ADDRESS: 100 N. RIVERSIDE DRIVE, FORT WORTH, TX 76111-3910

DATE DUE: February 16, 2005

PERMITS OR LICENSES: BF501250, Q-501249

AMOUNT OF PENALTY: \$4,500.00

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 16TH DAY OF FEBRUARY 2005, 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.

DOCKET NO. 458-04-8609**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**EID MOHD ALSHDAIFAT
D/B/A QUICK & EASY FOODS
TARRANT COUNTY, TEXAS
(TABC CASE NO. 606763)**§
§
§
§
§
§
§
§
§
§**BEFORE THE STATE OFFICE****OF****ADMINISTRATIVE HEARINGS****PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Eid Mohd Alshdaifat d/b/a Quick & Easy Foods (Respondent). Petitioner sought suspension of Respondent's permits, alleging Respondent sold a vinous liquor containing more than 17% alcohol by volume on a Sunday and possessed equipment used or designated for the administering of a narcotic. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends suspension of Respondent's permit and license.

I. PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 24.06, 24.07, and 104.01. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of jurisdiction or venue.

On September 1, 2004, Petitioner issued its Notice of Hearing, directed to Respondent's address of record, Eid Mohd Alshdaifat d/b/a Quick & Easy Foods, 100 North Riverside Drive, Fort Worth, Texas 76111-3910, via certified mail, return receipt requested.



SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 2

On October 8, 2004 a hearing convened before SOAH ALJ Phyllis Waldrep Cranz at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared in person. The record closed on October 8, 2004.

Notice and jurisdiction were not contested issues, and those matters are addressed only in the Findings of Fact and Conclusions of Law.

II. THE EVIDENCE

The TABC issued Respondent a Wine Only Package Store Permit, Q-501249 and a Beer Retailer's Off-Premise License, BF-501250 on September 27, 2001. The permit and license have been continuously renewed. The licensed premises is located at 100 North Riverside Drive, Fort Worth, Texas.

On Sunday, August 17, 2003, Bert Hammons, who was working as an undercover agent for the TABC, purchased a bottle of "Cisco Orange". "Cisco Orange" is a wine beverage that contains 17% alcohol by volume according to the label pursuant to 16 TEX. ADMIN. CODE §45.51(3)(A) (2003) (Tex. Alco. Bev. Comm'n, Standards for Identity of Wine). Once the purchase was made and was reported to him, Agent Scott Jones, who was waiting in the parking lot, entered the premises. As he waited to speak with the licensee's employee, a male who had a very youthful appearance attempted to purchase two "40's", alcoholic beverages from the licensee's employee. The employee asked for identification, and the male left without purchasing the alcoholic beverages. Agent William Feick, who was with Agent Jones, inspected the premises and found 67 glass tube "Fancy Pens" behind the counter next to scouring pads known as "Chor Boys" in their original packaging. Agent Feick testified the scouring pads are used with the glass tubes for crack smoking. Agent Feick further testified to observing the discarded pen parts from the glass tube pens in the parking lot of the premises. Agent Feick stated that the Respondent had been previously warned twice in writing about stocking and selling equipment used or designated for the

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 3

administering of a narcotic.

The Respondent testified that he had been warned previously about stocking and selling equipment used or designated for the administering of a narcotic (e.g. "Flower Pens"). He stated that he had disposed of the equipment when it was brought to his attention by TABC agents. However, he testified that aluminum foil from Walmart and other objects such as car antennas could be used for administering of a narcotic as well. Respondent said that he could not keep up with the various objects that might be used to administer a narcotic. The Respondent did not deny that the vinous alcoholic beverage had been sold on a Sunday. Respondent said that he knew the laws well and had never received a ticket.

Respondent has had multiple prior violations dating from December 2, 2001, and again in April and October of 2002 as listed in TABC Exhibit 4 which contained the Respondent's violation history.

III. DISCUSSION AND ANALYSIS

A. The Governing Law

Respondent violated § 24.07 of the Texas Alcoholic Beverage Code when he sold a vinous liquor containing more than 17% alcohol by volume on a Sunday.¹ Respondent violated § 104.01(9) of the Texas Alcoholic Beverage Code when the Respondent, and/or his agent, servant and/or employee, Khaldon Ali Shamdin, possessed equipment used or designated for the administering of a narcotic.² These violations

¹TEX. ALCO. BEV. CODE ANN. § 24.07 (Vernon 2004) (The Code) states: A holder of a wine only package store permit who also holds a retail dealer's off-premise license for the same location may remain open and sell ale, wine, vinous liquors, and beer, for off-premises consumption only, on any day during the same hours that the holder a wine and beer retailer's permit may sell ale, beer, and wine, except that he may not sell wine or vinous liquor containing more than 17 percent alcohol by volume on a Sunday or after 10 p.m. on any day.

²TEX. ALCO. BEV. CODE ANN. § 104.01(9) (Vernon 2004) states: "No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 4

pertain to both the license and the permit.³ The TABC's standard penalty chart⁴ allows a 30 day or longer suspension for violation of § 104.01 (9) and a 25 day suspension for violation of § 24.07.⁵ The standard penalty chart is not binding in a SOAH hearing, and any penalty recommended must be based on the record.⁶ Since the Respondent has violated the Code, the Respondent's permits are subject to suspension for as long as 60 days.⁷

The Respondent is entitled to an opportunity to pay a civil penalty rather than have his permit and license suspended. The civil penalty may not be less than \$150 nor more than \$25,000 for each day of suspension. The amount "must be appropriate for the nature and seriousness of the violation," and should reflect consideration of the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances, and the permittee's previous violations. The amount may not be based on the financial condition of the Respondent.⁸

premises to do so.

³ TEX. ALCO. BEV. CODE ANN. §24.06 (Vernon 2004) states: If a person holding a wine only package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both wine only package store permit and the retailer dealers' off-premise license for the premises where the violation was committed.

⁴ 16 TEX. ADMIN. CODE § 37.60(a) (Tex. Alco. Bev. Comm'n, Penalties).

⁵ *Id.*, § 37.60 (standard penalty chart).

⁶ *Id.*, § 37.60 (g).

⁷ TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) (Vernon 2004). The Staff did not request cancellation of the Respondent's permit or license. This proposal will consider a suspension only.

⁸ TEX. ALCO. BEV. CODE ANN. § 11.64 (Vernon 2004).

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 5

B. Parties' Arguments and Analysis**1. TABC**

The Staff requested a suspension of 60 days or a civil penalty of \$9000 for the violations of § 104.01(9) (35 days X \$150/day) and § 24.07 (25 days X \$150/day). The Staff based its recommendation on the standard penalty chart but acknowledged that the ALJ might reach a different conclusion based upon the statutory factors set out in § 11.64.

2. Respondent

Respondent stated his belief that the TABC agents were unfairly watching his premises in order to find something wrong and further argued that he could not afford the suspension or penalty. Respondent argued that these violations were not intentional and its permit and license should not be suspended and that the case should be dismissed.

3. Analysis

The "nature and seriousness"⁹ of the violations come into focus when considering the following:

- **Type of Permit and/or License Held.** Respondent holds a Wine Only Package Store Permit and a Beer Retailer's Off-Premise License wherein a violation of the permit is a ground for suspension of the off-premise license as well.
- **Type of Violation.** A violation of § 24.07 of the Code is a "Major Regulatory Violation", and

⁹ *Id.*, §11.64(a).

a violation of § 104.01(9) of the Code is a "Health, Safety and Welfare Violation."¹⁰

•Any Aggravating or Ameliorating Circumstances Concerning the Violations: Due Diligence.

Respondent's violations could reasonably have been prevented by the exercise of due diligence. Respondent was aware of the need to not stock equipment used or designated for the administering of a narcotic, as he had been warned on two previous occasions. But he persisted in restocking these items on his premises

- **Any Aggravating or Ameliorating Circumstances: Entrapment.** Neither Respondent nor his employee was coaxed to sell a vinous liquor on Sunday or to stock the glass pipe pens on his premises.
- **Any Aggravating or Ameliorating Circumstances: Code Violated Without the Knowledge of the Respondent.** Respondent stated he knew the rules and law very well but had been cited in the past for violating the rules and law.
- **Any Aggravating or Ameliorating Circumstances: Knowing Violation of the Code.** A person acts knowingly with respect to the nature of his conduct when he is aware of the nature of his conduct.¹¹ Respondent testified that he had been warned previously about the glass pipe pens and destroyed them. Furthermore, he testified about his familiarity with the law and cited instances where he did not violate it. Yet, the Respondent did restock the premises with the equipment used or designated for the administering of a narcotic and placed it behind the counter. Respondent did not deny that his employee sold the vinous liquor, nor did he indicate that this violative behavior

¹⁰ *Id.*, §11.64; 16 Tex. Admin Code §37.60 (2003) (Tex. Alco. Bev. Comm'n, Standard Penalty Chart).

¹¹ TEX. PEN. CODE ANN. § 6.03(b) (Vernon 2004).

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 7

would be remedied with actions such as additional training for the employees. Respondent's testimony led the ALJ to believe that future violations of this nature might occur.

- **Previous Violations.** Respondent has several prior violations that form a pattern of repeated disregard for the Texas Alcoholic Beverage Code and the TABC Rules. "A repeat violation by a licensee or permittee justifies the penalty for the a second or third violation if it is a health, safety and welfare violation and occurs within 36 months of the first violation¹²

After considering the testimony and evidence presented, the suspension of 60 days or a penalty of \$9000 as recommended by the Staff would be harsh for the Respondent. The Respondent stated that he is willing to perform such actions as to comply with the TABC rules and retain his permit and license. The Respondent does have a previous record of violations but was warned on those occasions. The two violations that occurred on August 17, 2003 warrant concern that the Respondent has not been including such measures as employee training and close scrutiny in merchandise stocking in his operations to prevent reoccurrence of violations. He has not heeded the previous warnings nor been attentive to complying with the relevant statutes and rules. His repeat violations and new violations do support a suspension or a penalty.

The ALJ recommends that Respondent's Wine Only Package Store Permit, Q-501249, and a Beer Retailer's Off-Premise License, BF-501250 be suspended for 30 days or a penalty of \$4,500 be paid.

IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Eid Mohd Alshdaifat d/b/a Quick & Easy Foods (Respondent) a Wine Only Package Store Permit, Q-501249, and a Beer Retailer's Off-Premise License, BF-501250 on September 27, 2001.

¹² 16 TEX. ADMIN. CODE 37.60 (b) (2003) (Tex. Alco. Bev. Comm'n, Standard Penalty Chart).

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 8

2. Respondent's premises are located on 100 North Riverside Drive, Fort Worth, Tarrant County, Texas.
3. On Sunday, August 17, 2003, TABC Agent Bert Hammons purchased from Respondent a vinous liquor containing more 17% alcohol by volume that being "Cisco" orange flavored wine with an alcohol content of 18% by volume as described on its label on Sunday, August 17, 2003.
4. Sunday, August 17, 2003 on the Respondent's premises, TABC Agent William Feick found 67 glass pipes sold under the name of "Fancy Pens", which are known as equipment used or designated for the administering of a narcotic, behind the counter.
5. The "Fancy Pens" which are glass tubes filled with ball point parts were next to "Chor Boys", an item used in glass tube crack pipes
6. Agent Feick also found the parking lot of premises littered with the pen portion of the "Fancy Pens" and no glass pipes in evidence.
7. Respondent had received warnings on two previous occasions concerning the glass pipe items.
8. Respondent has had multiple violations beginning in 2001 through 2003.
9. On October 8, 2004, a hearing convened before SOAH ALJ Phyllis Waldrep Cranz at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Eid Mohd Alshdaifat.

V. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.38 (e).
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received a notice of the hearing as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN., §§ 2001.051, 2001.052 (Vernon 2004).

SOAH DOCKET NO. 458-04-8609

PROPOSAL FOR DECISION

PAGE 9

4. Based upon the foregoing findings and conclusions, Respondent violated TEX. ALCO. BEV. CODE ANN. § 24.07 warranting the suspension of Respondent's permit.
5. Based upon the foregoing findings and conclusions, Respondent violated TEX. ALCO. BEV. CODE ANN. § 104.19, warranting the suspension of Respondent's license.
6. Based upon the foregoing findings and conclusions, several violations by Respondent within the past 24 months support enhancement.
7. Based on the foregoing findings, and considering the nature and seriousness of Respondent's violations, the ALJ recommends that the Commission suspend Respondent's permit and license for 30 days or allow Respondent to pay a civil penalty of \$4,500.

SIGNED November 18, 2004.



PHYLLIS W. CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: Eid Mohd Alshdaifat d/b/a Quick & Easy Foods
DOCKET NUMBER: 458-04-8609
AGENCY CASE NO: 606763

Timothy Griffith
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 972/547-5093

AGENCY COUNSEL
BY FAX

Betty Chatham
Fax: 512/206-3498

AGENCY LEGAL STAFF
BY FAX

Eid Mohd Alshdaifat
d/b/a Quick & Easy Foods
100 N. Riverside Drive
Fort Worth, Texas 76111-3910

RESPONDENT
BY MAIL

As of November 18, 2004