

9-16-05 ✓

DOCKET NO. 607113

IN RE GOOD BROTHERS INC.	§	BEFORE THE
D/B/A ZOOM-IN FOOD MART #5	§	
PERMIT/LICENSE NOS. Q-535826,	§	
BF535827	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-7090)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 15th day of September, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on July 21, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 25, 2005. 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 **NO ACTION** be taken against Respondent's permits/licenses.

This Order will become final and enforceable on October 6, 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 this 15th day of September, 2005

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 731-1964

GOOD BROTHERS INC.
d/b/a ZOOM-IN FOOD MART #5
RESPONDENT
700 W. SEMINARY DR.
FORT WORTH, TX 76115-1340
VIA CM/RRR NO.7005 0390 0005 7550 3269

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

DOCKET NO. 458-05-7090

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

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BEFORE THE STATE OFFICE

VS.

**GOOD BROTHERS INC. D/B/A
ZOOM-IN FOOD MART #5
A/K/A MR. LOUIS FOOD MART
TARRANT COUNTY, TEXAS
(TABC CASE NO. 607113)**

ADMINISTRATIVE HEARINGS



PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspensions of the license and permit held by Good Brothers Inc. d/b/a Zoom-In Food Mart #5 a/k/a Mr. Louis Food Mart (Respondent). The Staff alleged Respondent violated the Texas Alcoholic Beverage Code (the Code) when its employees offered to engage or agreed to engage in sexual conduct for a fee while on the permitted premises. This proposal finds that Respondent did not violate the Code as the Staff alleged. The Administrative Law Judge (ALJ) recommends that no action be taken against Respondent.

I. PROCEDURAL HISTORY

On July 21, 2005, a public hearing was convened before ALJ Robert F. Jones Jr. at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Respondent appeared through its vice-president, Shah Wafayfe. The record was closed on July 21, 2005.

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

EXHIBIT



II. THE EVIDENCE

The TABC issued Respondent wine only package store permit Q535826 and beer retailer's off premise license BF535827. Respondent's premises are located at 1201 Country Club Lane, Fort Worth, Tarrant County, Texas. The premises had the physical structure of a typical convenience store. It is a single story glass fronted building. The area in the front and to one side of the building contained gasoline pumps.

On July 11, 2003, at approximately 1:25 a.m., Fort Worth police officer Joan Gray was working a vice sting in the 1200 block of Country Club Lane. The community had suffered a prostitution problem in the area. Officer Gray had assumed the role of a prostitute seeking to solicit business on the sidewalk in front of the licensed premises. The sidewalk Officer Gray was walking was adjacent to Country Club Lane, the gasoline pumps between her and the front door of the premises. Respondent's premises were closed for the night. Shah Wafayfe, Draz M. Wali, and Jaffer Amin were working in the store. Mr. Wafayfe was working in his office and Mr. Wali and Mr. Amin were working in the retail area of the premises. The store had security cameras sited outside providing views of the gasoline pumps and street.

The workers inside noted Officer Gray's presence and also a number of cars filled with men driving in the area.¹ Mr. Wali testified that he and Mr. Amin were concerned for Officer Gray's safety since they considered the neighborhood to be unsafe. They summoned Mr. Wafayfe who spoke better English than they. Mr. Wafayfe knocked on the front door to capture Officer Gray's attention and motioned her to approach. Officer Gray did so and a conversation of sorts took place. The glass front door remained closed and locked throughout.

Officer Gray testified that she was summoned to the front door of the premises. She spoke to Mr. Wafayfe first. According to Officer Gray, Mr. Wafayfe asked her what she was doing; she replied she was trying to get a ride and some money. Mr. Wafayfe asked how much money she was

¹ The ALJ surmises that the men were police officers providing security for Officer Gray.

Docket No. 458-05-7090

Proposal for Decision

Page 3

trying to get; Officer Gray responded \$ 20.00. Mr. Wafayfe asked, "What for?" Officer Gray responded with description of a sex act. Mr. Wafayfe said "\$ 10.00." Officer Gray responded "\$ 10.00" to perform the act. According to Officer Gray, Mr. Wafayfe nodded, walked away, returned, and told her he was not interested. After Mr. Wafayfe walked away, Officer Gray testified that Mr. Amin approached the door and said or asked, "\$ 10.00." Officer Gray asked him if he wanted her to perform the act; Mr. Amin nodded. She asked "\$ 10.00?" Mr. Amin nodded again.

A few minutes later both Mr. Wafayfe and Mr. Amin were arrested for soliciting prostitution, a violation of § 43.02(a)(1) of the Penal Code.²

Mr. Wafayfe testified that he did not at first understand the idiom Officer Gray used to describe the sex act, and that when he did he told Officer Gray to go away. Both Mr. Wafayfe and Mr. Wali testified that Mr. Amin spoke less English than Mr. Wafayfe and did not understand what Officer Gray was saying or offering. The Tarrant County district attorney declined to prosecute and the charges against Mr. Wafayfe and Mr. Amin were dropped.

Respondent has not prior violations of the Code.

III. DISCUSSION AND ANALYSIS

A. The Governing Law

The Staff alleged that the place or manner in which Respondent conducts its business warrants the suspension of Respondent's permit and license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.³ The Commission's rules

² "A person commits an offense if he knowingly offers to engage, agrees to engage, or engages in sexual conduct for a fee." TEX. PEN. CODE ANN. § 43.02(a)(1)(Vernon 2005).

³ See TEX. ALCO. BEV. CODE ANN. § 11.61.(b)(7)(Vernon 2005)(the Code): 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 the place or manner in which the permittee conducts his business warrants the

Docket No. 458-05-7090

Proposal for Decision

Page 4

provide that a violation of § 43.02(a)(1) of the Penal Code is a violation of §§ 61.71(a)(17) and 11.61(b)(7) of the Code⁴ if the offense is committed by the licensee or permittee in the course of conducting its business,⁵ which would include Mr. Wafayfe and Mr. Amin.⁶

B. Analysis

To violate § 43.02(a)(1) of the Penal Code, Mr. Wafayfe and Mr. Amin had to “knowingly” offer to engage or agree to engage in sexual conduct for a fee.⁷ A person acts knowingly “with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist.”⁸ There is no evidence that Mr. Amin ever acted “knowingly” with respect to Officer Gray’s offer of sex for money, that is, the evidence shows that Mr. Amin was not aware of the nature of the conversation he had with Officer Gray. The evidence shows that when Mr. Wafayfe understood the nature of Officer Gray’s offer he told Officer Gray he was not interested. Further, Mr. Wafayfe and Mr. Amin were not prosecuted as a result of the incident.

The ALJ recommends that the Commission not suspend Respondent’s permit or license.

cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; and § 61.71(a)(17) of the Code: The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer’s on- or off-premise license if it is found, after notice and hearing, that the licensee conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people.

⁴ 16 TEX. ADMIN. CODE § 35.31(a) & (c).

⁵ 16 TEX. ADMIN. CODE § 35.31(b).

⁶ “Permittee” means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person. § 1.04(11) of the Code. “Licensee” means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person. § 1.04(16) of the Code.

⁷ TEX. PEN. CODE ANN. § 43.02(a)(1).

⁸ TEX. PEN. CODE ANN. § 6.03(b).

IV. FINDINGS OF FACT

1. The Commission issued Respondent Good Brothers Inc. d/b/a Zoom-In Food Mart #5 a/k/a Mr. Louis Food Mart wine only package store permit Q535826 and beer retailer's off premise license BF535827.
2. Respondent's premises are located at 1201 Country Club Lane, Fort Worth, Tarrant County, Texas.
3. On July 11, 2003, at approximately 1:25 a.m., Fort Worth police officer Joan Gray was working a vice sting in the 1200 block of Country Club Lane.
4. Officer Gray had assumed the role of a prostitute seeking to solicit business on the sidewalk in front of the licensed premises.
5. Respondent's premises were closed for the night. Shah Wafayfe, Draz M. Wali, and Jaffer Amin were working in the store.
6. As a result of an interaction between Officer Gray and Mr. Wafayfe and Mr. Amin, Mr. Wafayfe and Mr. Amin were arrested for violation of the Penal Code.
7. Mr. Wafayfe and Mr. Amin did not knowingly violate the Penal Code.
8. On June 16, 2005, Staff issued a notice of hearing notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
9. On July 21, 2005, a public hearing was convened before ALJ Robert F. Jones Jr. at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Respondent appeared through its vice-president, Shah Wafayfe. The record was closed on July 21, 2005.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this

Docket No. 458-05-7090

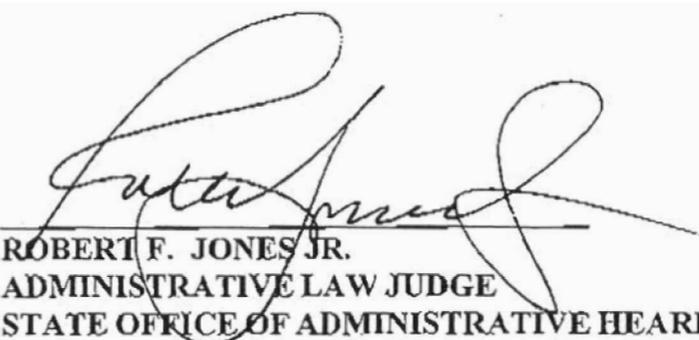
Proposal for Decision

Page 6

proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2004).

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2004).
4. Based on the foregoing findings concerning the July 11, 2004 incident, the place or manner in which Respondent conducts its business does not warrant the suspension of Respondent's permit and license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. §§ 61.71(a)(17) and 11.61(b)(7) of the Code.
5. Based on the foregoing findings, Respondent's permit and license are not subject to suspension.

SIGNED August 25, 2005.



ROBERT F. JONES JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

9/12

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



August 25, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Good Brothers Inc.
d/b/a Zoom-In Food Mart #5
a/k/a Mr. Louis Food Mart
700 W. Seminary Drive
Fort Worth, Texas 76115-1340

VIA REGULAR MAIL

RE: **Docket No. 458-05-7090; Texas Alcoholic Beverage Commission vs Good Brothers Inc.
d/b/a Zoom-In Food Mart #5, a/k/a Mr. Louis Food Mart (TABC Case No. 607113)**

Dear Mr. Steen:

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 Mr. Shah Wafayfe, Respondent. The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspensions of the license and permit held by Good Brothers Inc. D/b/a Zoom-In Food Mart # k a/k/a Mr. Louis Food Mart (Respondent). The Staff alleged Respondent violated the Texas Alcoholic Beverage Code (the Code) when its employees offered to engage or agreed to engage in sexual conduct for a fee while on the permitted premises. This proposal finds that Respondent did not violate the Code as the Staff alleged. The Administrative Law Judge (ALJ) recommends that no action be taken against Respondent.

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Robert F. Jones, Jr.
Administrative Law Judge