

DOCKET NO. 607313

IN RE SOUTHWEST CONVENIENCE. § BEFORE THE
STORES, INC §
D/B/A 7-ELEVEN #104 §
PERMIT NO. BQ-409907 § TEXAS ALCOHOLIC
§
ECTOR COUNTY, TEXAS §
(SOAH DOCKET NO. 458-05-0012) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of ^{June} May, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. On December 9, 2005, Respondent filed a Motion for Summary Disposition. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 10, 2006. 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, 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.

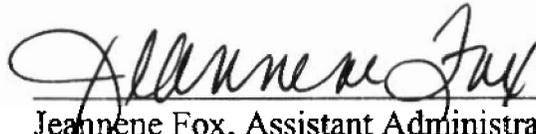
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the matter should be **DISMISSED**.

This Order will become final and enforceable on 26th day of June 2006, 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 5th day of May,
2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FACSIMILE: (817) 377-3706

Southwest Convenience Stores, Inc.
d/b/a 7-Eleven #104
RESPONDENT
P. O. Box 711
Odessa, Texas 79760
CERTIFIED MAIL NO. 7001 2510 0000 7275 0852
RETURN RECEIPT REQUESTED

E. Eugene Palmer
ATTORNEY FOR RESPONDENT
Austin, Texas
VIA FACSIMILE: (512) 454-6973

Patrick Gerald
ATTORNEY FOR RESPONDENTb
VIA FACSIMILE: (432) 687-1735

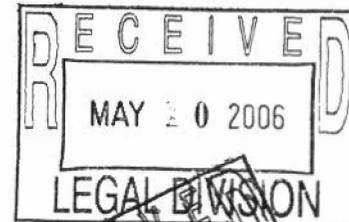
Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



May 10, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

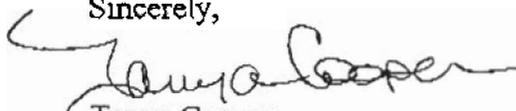
RE: Docket No. 458-05-0012; Texas Alcoholic Beverage Commission vs Southwest Convenience Stores, L.L.C. d/b/a 7-Eleven # 104, (TABC Case No. 607313)

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 Judith Kennison, attorney for Texas Alcoholic Beverage Commission, and to E. Eugene Palmer and Patrick Gerald, attorneys for the Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Southwest Convenience Stores L.L.C. d/b/a 7-Eleven #107 (Respondent), alleging that Respondent's agent, servant or employee, with criminal negligence sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (the Code). The Administrative Law Judge (ALJ) finds, upon a review of the pleadings and evidence in this cause, that there is no genuine issue of material facts, and that Respondent is entitled to a decision in its favor as a matter of law. Accordingly, the ALJ recommends that this case be dismissed.

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,


Tanya Cooper
Administrative Law Judge

TC/dd

Judith Kennison, TABC Staff Attorney, VIA FACSIMILE 512/206-3498
E. Eugene Palmer, Attorney for Respondent, Via Facsimile 512/454-6973
and Patrick Gerald, Attorney for Respondent, via Facsimile 432/687-1735

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
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Phone (817) 731-1733
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SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: Southwest Convenience Stores, LLC d/b/a 7-Eleven #104
DOCKET NUMBER: 458-05-0012
AGENCY CASE NO: 607313

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ATTORNEY FOR RESPONDENT
BY FAX

as of May 10, 2006

DOCKET NO. 458-05-0012

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

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BEFORE THE STATE OFFICE

V.

OF

SOUTHWEST CONVENIENCE
STORES L.L.C. D/B/A 7-ELEVEN #104,
Respondent
(TABC CASE NO. 607313)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action¹ against Southwest Convenience Stores L.L.C. d/b/a 7-Eleven #104 (Respondent), alleging that Respondent's agent, servant or employee, with criminal negligence sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (the Code).² The Administrative Law Judge (ALJ) finds, upon a review of the pleadings and evidence in this cause, that there is no genuine issue of material facts, and that Respondent is entitled to a decision in its favor as a matter of law. Accordingly, the ALJ recommends that this case be dismissed.

¹ 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 the permittee/retail dealer violated a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 61.71(a)(31).

* * * * *

Permittee means a person who holds a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE ANN. § 1.04(11)

Person means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any them. TEX. ALCO. BEV. CODE ANN. § 1.04(6).

² TEX. ALCO. BEV. CODE § 106.13(a).

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 26, and 61 and 16 TEX. ADMIN. CODE § 31.1 *et. seq.* (the Rules). 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 findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. chs. 2001 and 2003. There were no contested issues of notice or jurisdiction in this proceeding.

On December 9, 2005, Respondent filed a Motion for Summary Disposition³ in this matter asserting the Respondent was entitled to the "safe harbor" defense⁴ in relation to TABC Staff's alleged violation. TABC Staff opposed Respondent's Motion, but stipulated with Respondent to the material facts involved in this case in written documents and prehearing conferences that were held on December 21, 2005, and February 28, 2006. The parties were represented by counsel, Judith L. Kennison, for TABC Staff, and E. Eugene Palmer and Patrick Gerald for Respondent, during the prehearing conferences. A record was made during both prehearing conferences by the ALJ tape recording the conferences.

The parties requested a ruling on Respondent's Motion prior to any further proceedings in this case. In addition to the pleadings in this matter and the parties' stipulations made both in writing

³ In response to a party's motion..., the judge may issue a proposal for decision or final order resolving a contested case without evidentiary hearing, if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TEX. ADMIN. CODE § 155.57(a).

⁴ For purposes of Code violations associated with the sales, service, dispensing, or delivery of alcoholic beverages to a person who is...a minor,...the actions of an employee shall not be attributable to the employer if:

1. The employer requires its employees to attend a commission-approved seller training program;
2. The employer has actually attended such a training program; and
3. The employer has not directly or indirectly encouraged the employee to violate such law. TEX. ALCO. BEV. CODE ANN. § 106.14(a).

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and on the record during prehearing conferences, the ALJ admitted several documents into evidence.⁵

II. EVIDENCE

Respondent holds a Wine and Beer Retailer's Off-Premises Permit, BQ-409907, issued by TABC for Respondent's premises located at 5112 Dixie, Odessa, Ector County, Texas. This permit was initially issued on April 21, 1997, and has been continuously renewed since that date. Respondent's licensing history in relation to this permit reflects one "Restrained" entry in connection with the sale of alcoholic beverage to a minor by an employee, Raymundo M. Lujan, on June 18, 1997. The evidence in that situation determined that Mr. Lujan had attended a TABC-approved seller training program. However, insufficient evidence existed to indicate that Respondent directly or indirectly encouraged Mr. Lujan's apparent violation of the law; and accordingly, no administrative sanctions were sought against Respondent in relation to that incident. (See Respondent's Exhibit 2)

In this case, it is undisputed that Yajaira Galindo was Respondent's employee and working at the licensed premises on August 2, 2003. She was 19 years old at the time. While at work on that day, Ms. Galindo sold alcoholic beverage, two 20-pack cartons of Bud Light beer, to Brian Anthony Pando. Mr. Pando, who's birthday is March 7, 1983, was a minor under the age of 21 at the time of the sale. Mr. Pando and Ms. Galindo knew each other prior to August 2, 2003. They had attended junior high school together.

Before arriving at Respondent's premises, Mr. Pando and his fifteen-year-old relative each consumed alcoholic beverage, several beers. After having consumed all of the beer obtained from other sources, Mr. Pando approached Ms. Galindo by telephoning her at Respondent's licensed

⁵ The documents admitted into evidence in this matter are as follows: 1. Affidavit of Randy Yarbrough; 2. Respondent's permit and licensing history; 3. Written stipulation of admissibility with depositions of Brian Anthony Pando and Yajaira Galindo; and 4. Affidavit of Timothy Earl Russell.

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premises. Mr. Pando asked Ms. Galindo if she would sell beer to him. Ms. Galindo told Mr. Pando to come to Respondent's business. Upon Mr. Pando and his fifteen-year-old companion's arrival at Respondent's business, Ms. Galindo provided Mr. Pando with the requested beer. Ms. Galindo made this sale without checking Mr. Pando's identification (I.D.), although she had followed proper procedures for making alcoholic beverage sales just prior to the sale in question in this proceeding. In addition to making an unlawful sale to a minor, Ms. Galindo further sold this beer to Mr. Pando at a reduced cost, only charging Mr. Pando for a 30-pack carton of beer instead of the regular price for the two 20-pack cartons, which she provided to him.

In the early morning hours of August 3, 2003, after receiving this alcoholic beverage from Ms. Galindo, Mr. Pando was driving a motor vehicle and involved in a traffic accident. As a result of the accident, the driver of another motor vehicle involved in the accident was killed.

The evidence in this case shows that Ms. Galindo received required training on Respondent's policies concerning sales of alcoholic beverages, which stressed among other things, that sales of alcoholic beverages to minors were prohibited. Respondent further provided its employees, and specifically Ms. Galindo, with detailed steps that all employees were required to take when performing a transaction involving sales of alcoholic beverages. One of these steps included obtaining proper I.D. and verifying the correct age of any person appearing under the age of 21 prior to making a sale of alcoholic beverages to any person. Ms. Galindo acknowledged signing for written copies of Respondent's policies. She successfully completed a TABC-approved seller-server training course on December 9, 2002, which includes information concerning prohibited sales of alcoholic beverages to minors. Despite some of Ms. Galindo's conflicting comments in a deposition involving this incident, she appeared to be aware of proper procedures that were required for sales alcoholic beverage.

In Ms. Galindo's deposition, she discussed aspects of her employment at Respondent's licensed premises. Ms. Galindo said that Respondent's employees were evaluated on maintaining a specified level of gross sales, and that beer sales were a significant portion of the business at her

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store. According to Ms. Galindo, failing to maintain one's sales could result in disciplinary action being taken by Respondent, and she had been "written up" by her manager for lagging sales and items discovered missing after her shifts. Ms. Galindo said sales volume was important to her employer and that no limits were placed upon the number of units of beer sold, up to and including selling out the store's entire beer cooler. Ms. Galindo's stated that there were selected instances of lower sales performances questioned by her supervisor and that she had failed to exceed sales expectation. Nevertheless, she said that to her knowledge she had always met Respondent's overall sales volume expectations and had never knowingly made an alcoholic beverage sale that was in violation of the law prior to August 2, 2003.

Timothy Russell is a District Trainer for Respondent in the Midland-Odessa area. In Mr. Russell's affidavit, he described in great detail the TABC-approved seller/server training Respondent required its employees to attend, and the activities Respondent engages in to reinforce its policy of no sales of alcoholic beverages to minors or intoxicated persons. Mr. Russell was the instructor for the training class that Ms. Galindo successfully completed with a perfect score. He also stated that Respondent does not encourage its employees to violate the law with regard to alcohol sales. In fact, such sales are grounds for termination of employment as provided for pursuant to Respondent's Employee Policy Handbook.⁶ According to Mr. Russell, Ms. Galindo was immediately terminated by Respondent upon discovery of this policy violation involving Mr. Pando.

Mr. Russell stated that all stores operated by Respondent are equipped with video tape monitoring systems. These systems are installed mainly for security purposes, but also helped insure that the store employees were following Respondent's policies, specifically including policies relating to obtaining I.D.s from customers purchasing age-restricted items, such as alcoholic beverages and

⁶ Respondent's Employee Policy Handbook provides that all employees are "at will" and that there are some violations that can lead to immediate discharge. Listed examples include:

- A) Theft
- ...
- N) Selling alcohol or tobacco products to a minor. (See Exhibit G of Mr. Russell's Affidavit).

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cigarettes. The videos are checked by managers both randomly and when a problem is suspected. To deter employee policy violations, employees are made aware that the video system is in place and compliance with I.D. checks is monitored. A review of the video tape from the night this incident occurred showed that Ms. Galindo was checking I.D.s of other customers, but did not do so when dealing with her friend, Mr. Pando.

In further support of its Motion for Summary Disposition, Respondent provided the affidavit of Randy Yarbrough. Mr. Yarbrough is familiar with determinations for the TABC having been a TABC Staff member for over twenty-five years, fifteen years of which he served as the Assistant Administrator. Upon his review of relevant materials to this case, he opined that Respondent had met all the statutory requirements to ensure that its employees did not violate the law and did not directly or indirectly encourage its employees to sell alcoholic beverages to underage persons. (See Respondent's Exhibit 1).

III. DISCUSSION AND ANALYSIS

The only issue to be determined in this case is whether, as a matter of law, the "safe harbor" defense would preclude Respondent from responsibility of the unlawful actions of its employee, Ms. Galindo. The Code provides as follows:

For purposes of this chapter and any other provisions of this code relating to the sales, service, dispensing or delivery of alcoholic beverages to...a minor...the actions of an employee shall not be attributable to the employer if:

- (1) the employer requires its employees to attend a commission-approved seller training program;
- (2) the employee has actually attended such a training program; and
- (3) the employer has not directly or indirectly encouraged the employee to violate such law. TEX. ALCO. BEV. CODE ANN. § 106.14(a).

The parties have agreed that Respondent required its employees (including Ms. Galindo) to

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attend a TABC-approved training program and that Ms. Galindo had actually attended such a training program. The only matter in dispute is whether Respondent had directly or indirectly encouraged Ms. Galindo to violate the Code in making prohibited sales of alcoholic beverages.

The Code further directs TABC Staff to adopt rules for meeting the requirements of the above-listed Code provision.⁷ TABC Staff, in compliance with this Code provision adopted rules concerning a licensee or permittee claiming an exemption from administrative action resulting from the unlawful conduct of its employee. TABC Rule Section 50.10(c) and (d) address prima facie evidence of direct and indirect encouragement on the part of a licensee or permittee.⁸

⁷ TEX. ALCO. BEV. CODE ANN. § 106.14(b).

⁸ 16 TEX. ADMIN. CODE § 50.10 provides as follows:

(a) The Commission shall require each licensee/permittee who claims exemption from administrative action under the Texas Alcoholic Beverage Code § 106.14(a), to produce evidence by affidavit indicating that the licensee/permittee met the three criteria outlines in § 106.14(a).

(b) The licensee/permittee shall not be deemed to require its employees to attend a commission approved seller-server training program unless employees are required to attend such program within 30 days of their initial employment and each employee's certification has not expired, been suspended or revoked. The administrator or administrator's designee may relax the requirements of this paragraph in individual cases for good cause shown by the licensee/permittee claiming exemption.

(c) Proof by the commission that an employee or agent of a licensee/permittee sold, delivered or served alcoholic beverages to a minor or intoxicated person, . . . more than twice within a 12-month period, shall constitute prima facie evidence that the licensee/permittee has directly or indirectly encouraged violation of the relevant laws.

(d) The following practices constitute prima facie evidence of indirect encouragement of law within the meaning of § 106.14(a)(3) of the Alcoholic Beverage Code:

(1) subject to the provisions of (b) above, the licensee/permittee fails to insure that all employees possess currently valid certificates of training issued and maintained in conformity with this chapter;

(2) the licensee/permittee fails to adopt, and post within view of its employees, policies and procedures designed to prevent the sale, service or consumption of alcoholic beverages by or to minors and intoxicated persons, and that express a strong commitment by the licensee/permittee to prohibit such sales, service or consumption;

(3) the licensee/permittee fails to insure that employees have read and understood the licensee/permittee's policies and procedures regarding sales, service or consumption of alcoholic

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Respondent's licensing history reveals only one alleged violation: a sale to a minor charge on June 18, 1997, by its employee, Raymundo J. Lujan. However, Respondent received no sanctions against it by TABC because the evidence was insufficient to establish that Respondent had directly or indirectly encouraged Mr. Lujan's law violation. As a result, Respondent's licensing history fails to support a prima facie instance of Respondent's directly or indirectly encouraging a violation of relevant laws pursuant to 16 TEX. ADMIN. CODE § 50.10(c).

Further, the evidence in this case does not support that Respondent directly or indirectly encouraged employees, and specifically Ms. Galindo, to violate the law and sell to an underage person pursuant to 16 TEX. ADMIN. CODE § 50.10(d). In addition to required training received by Ms. Galindo and discussed above, Respondent's work place prominently displayed reminders concerning its position on prohibiting underage alcoholic beverage sales and had documented procedures in place for checking I.D.s on persons having the appearance of being under 27 years of age for all sales of alcoholic beverages. Ms. Galindo was aware of these policies and procedures; and in fact, she employed Respondent's stated practices on August 2, 2003, with all customers except her friend, Mr. Pando. Ms. Galindo also stated that she had never knowingly made a sale of alcoholic beverage to an underage individual in violation of the law prior to August 2, 2003.

While Respondent was interested in maximizing sales and monitored the sales productivity of its employees, the ALJ does not believe that business goal and activities in support of achieving that goal is indicia of Respondent's directly or indirectly encouraging its employees to violate the law by making illegal sales of alcoholic beverage. In Ms. Galindo's situation, it appears that her supervisors were likely more concerned with her failure to correctly ring up her sales. An improper practice that she engaged in when she undercharged Mr. Pando for the beer she sold to him on August 2, 2003.

The evidence associated with that sale shows that Ms. Galindo participated in a theft from

beverages by or to minors or intoxicated persons.

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Respondent. This is a practice one could hardly imagine that Respondent would condone or encourage, and was not in keeping with direct or indirect encouragement by Respondent to increase sales of alcoholic beverages in prohibited situations. Ms. Galindo's actions, theft and committing an illegal sale of alcoholic beverage, resulted in her termination from Respondent's employment, which was in keeping with Respondent's general practices. This practice was widely communicated to Respondent's employees as demonstrated in Ms. Galindo's testimony from having seen a sheet of names listing employees terminated by Respondent for selling beer to minors and intoxicated persons. (See Ms. Galindo's deposition (Respondent's Exhibit 3) page 91, lines 11-15). Accordingly, Respondent made numerous efforts to communicate to its employees that sales of alcoholic beverages in violation of the law would not be tolerated, and thus, did not directly or indirectly encourage employees to engage in said lawful activities.

IV. RECOMMENDATION

For the reasons discussed above, the ALJ concludes that Respondent is entitled to the "safe harbor" defense in relation to sale of an alcoholic beverage to a minor, and the ALJ finds that Respondent's Motion for Summary Disposition should be granted. Accordingly, the ALJ further recommends that no enforcement action be taken against Respondent's permit in relation to this incident, and that this matter be dismissed.

V. FINDINGS OF FACT

1. Southwest Convenience Stores d/b/a 7-Eleven #104 (Respondent) holds a Wine and Beer Retailer's Off-Premises Permit, BQ-409907 issued on April 21, 1997, by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 5112 Dixie, Odessa, Ector County, Texas, and said permit has been continuously renewed since that time.
2. Respondent's licensing history, as maintained by TABC Staff, reflects a prior violation of the Texas Alcoholic Beverage Code (the Code): a sale to a minor by Respondent's employee, Raymundo J. Lujan on June 18, 1997. This prior enforcement action against Respondent is categorized as "Retrained," and no sanctions were imposed against Respondent as a result of said violation because the evidence was insufficient to establish

that Respondent had directly or indirectly encouraged this law violation.

3. On August 2, 2003, Respondent's employee, Yajaira Galindo, sold alcoholic beverage to a childhood acquaintance, Anthony Pando, and in making this sale, Ms. Galindo intentionally failed to charge Mr. Pando the price Respondent had established for this product's sale at its licensed premises.
4. Mr. Pando was not 21 year of age at the time of this sale.
5. Ms. Galindo was aware of Mr. Pando's actual age and did not check Mr. Pando's I.D. as required by Respondent's policies when selling alcoholic beverages to any person who appeared to be under the age of 27.
6. Ms. Galindo attended TABC-approved seller/server training as required of all Respondent's employees, and at the end of the training session, she scored a perfect score on the training course's exam.
7. Respondent posted numerous flyers and posters advising of policies against sales to underage individuals.
8. Respondent's employees were provided with detailed procedures for making sales of alcoholic beverages to avoid making a sale of alcoholic beverage an underage person.
9. Petitioner was aware of Respondent's policies and that employees who failed to observe Respondent's practices were terminated from employment with Respondent.
10. Ms. Galindo disregarded Respondent's established policies by selling alcoholic beverage to Mr. Pando, a person she knew to be underage at the time of the sale, and she was terminated for her conduct because she violated Respondent's policies and relevant laws concerning sale of alcoholic beverage to underage persons.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, 26, and 61 and § 106.13.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. chs. 2001 and 2003.
3. Respondent received adequate notice of the proceedings as required by TEX. GOV'T CODE

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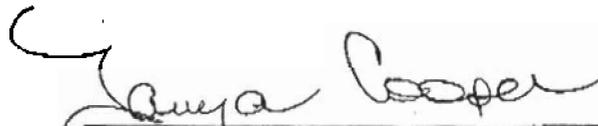
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ANN. §§ 2001.051 and 2001.052.

4. Based upon the foregoing Findings of Fact and Conclusions of Law, summary disposition of this contested case is proper because there is no genuine issue as to any material fact in the case and Respondent is entitled to a decision as a matter of law. 1 TEX. ADMIN. CODE § 155.57(a).
5. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent did not violate TEX. ALCO. BEV. CODE ANN. § 106.13(a) because it is entitled to the "safe harbor" defense in relation the unlawful conduct of its employee, Yajaira Galindo. TEX. ALCO. BEV. CODE ANN. § 106.14(a) and 16 TEX. ADMIN. CODE § 50.10.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent has not violated any provisions of the Code or TABC Rules; no enforcement action should be taken against Respondent; and the matter should be dismissed. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.71(a)(31), 106.13(a) and 106.14(a) and 16 TEX. ADMIN. CODE § 50.10.

SIGNED May 10, 2006.



TANYA COOPER, Administrative Law Judge
State Office of Administrative Hearings