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DOCKET NO. 611048

IN RE ROY GAIL HICKMAN	§	BEFORE THE
D/B/A QUARTER MOON LIQUORS	§	
PERMIT/LICENSE NOS. P-552748,	§	
BF552749	§	TEXAS ALCOHOLIC
	§	
BURLESON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-4880)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 14th day of September, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on May 25, 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 July 28, 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. Exceptions were filed in this cause.

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.

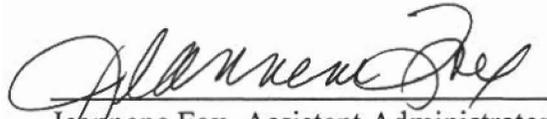
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and/or licenses are **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on October 5, 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 14th day of September, 2005

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CG/bc

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (254) 750-9380

Jim Hering
ATTORNEY FOR RESPONDENT
VIA FAX (254) 297-7301

Roy Gail Hickman
d/b/a Quarter Moon Liquors
RESPONDENT
PO Box 372
Lyons, Texas 77863
VIA CM/RRR NO. 7005 0390 0005 7550 2972

Christopher Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Waco District Office

the hearing was concluded the same day; however, at the request of the parties, the record was left open until June 22, 2005, for written argument. Findings regarding notice, jurisdiction, and venue are set out in the findings of fact and conclusions of law without further discussion here.

II. LEGAL STANDARDS AND APPLICABLE LAW

A. The Law

Pursuant to Code §11.61 (b)(4), 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 the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the Commission, its officers, or employees.

Pursuant to Code §11.61 (b)(17) 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 the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code.¹

¹ Pursuant to Code § 22.06(a) Except as otherwise provided in Section 102.05 of this code and in Subsection (b) of this section, no person who holds a package store permit or owns an interest in a package store may have a direct or indirect interest in any of the following: (1) a manufacturer's, retail dealer's on-premise, or general, branch, or local distributor's license; (2) a wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permit; or (3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this subsection. (b) A package store permit and a retail dealer's off-premise license may be issued to the same person.

Pursuant to Code § 24.05(a) No person who holds a wine only package store permit or owns an interest in a wine only package store may have a direct or indirect interest in any of the following: (1) a manufacturer's or general, branch, or local distributor's license; (2) the business of any of the licenses listed in Subdivision (1) of this subsection. (b) A person may hold both a wine only package store permit and a retail dealer's off-premise license. © A person may not hold a wine and beer retailer's or wine and beer retailer's off-premise permit at the same location where the person holds a wine only package store permit.

Pursuant to Code § 102.05, in regard to a hotel, multiple interests are authorized: A hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's permit, and retail dealer's license if the businesses are completely segregated from each other.

III. SUMMARY OF THE EVIDENCE

It was undisputed that the Respondent holds a Package Store Permit and a Beer Retailer's Off-Premise License, issued by the Commission, for the premises known as Quarter Moon Liquors, located at 12019 Rec Road 4, Somerville, Burleson County, Texas 77879. It was undisputed that Sharon Lee J. Putz d/b/a Half Moon Saloon holds a Wine and Beer Retailer's Permit, issued by the Commission, for the premises known as Half Moon Saloon, located at Park Road 4 North Side, 2.3 miles South FM 60, Somerville, Burleson County, Texas 77879. Sharon Lee J. Putz d/b/a Half Moon Saloon's permittee was Sharon Lee J. Putz, and the Respondent's permittee was Roy Gail Hickman. Finally, it was undisputed that alcoholic beverages were sold to the ultimate consumer from both permitted premises. The following is a summary of the most credible evidence in this case.²

- A. **Pursuant to Code §11.61 (b)(17) 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 the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code.**

Commission Agent Victor Kuykendoll testified that when he interviewed Mr. Hickman, he admitted that he lived "primarily" with Ms. Putz, but that he owned another house. At that time, Ms. Putz told the agent that she and Mr. Hickman had been "living together" for more than three years, since Thanksgiving 2003. Ms. Putz testified that both she and Mr. Hickman would have described their past and current circumstances as "living together." Ms. Putz stated that she and Mr. Hickman "shared" their two houses, and that, although they were not married, her relationship to Mr. Hickman was analogous to that of a spouse.³ Ms. Putz testified that no one stays in Mr. Hickman's house when he is not there. She stated that his elderly mother lives on his property and his presence there is often required because of his mother's poor health. She also testified that, after the permit

² Phrases from direct testimony are in quotation form.

When Mr. Hickman testified, he refused to answer, and asserted his constitutional right not to incriminate himself, when he was asked if he had been living with Ms. Putz.

was granted, she managed the Respondent's affairs during the day, while Mr. Hickman worked in the construction trade. Ms. Putz testified that Mr. Hickman's daughter got off the school bus at the Respondent's premises; the Mr. Hickman arrived at the Respondent's premises sometime after 4:00 p.m.; they had supper together; and, they worked together (at the Respondent's premises). Ms. Putz testified, "It's all done together in the evening."

Although Ms. Putz testified that she was the Respondent's "manager," she denied that she received any salary for her work there.⁴ She did it for free, "to help (Mr. Hickman)." She testified, "I get benefit out of it because I have a place where people can come and I do notary and accounting and paperwork for them, and appropriate office space for that work. I'm there to help him, but while I'm there I can do these other things, too. I moved my computer there, I enjoy it because in the afternoon I fix dinner. (Mr. Hickman's daughter) Samantha has something to eat when she gets off the bus. (Mr. Hickman) and I have dinner after she gets picked up by her mom. This is out in the country." Both assume the expense of their groceries. "Whoever is in town buys the groceries," according to Ms. Putz, and there is no expectation of repayment for such expenses. She assumes responsibility for the Mr. Hickman's daughter, if he is not there. Although she tried to emphasize Mr. Hickman's role in running the Respondent's business, describing him as the "sole owner," she stated that a joint checking account was established for the Respondent, in which both she and Mr. Hickman were signatories, because Mr. Hickman was often out of town, and they were anticipating that he would be gone for a month at a time for an "off-shore" construction job.

Staff's Exhibit No. 2, the Respondent's "Application for a Retailer's Permit of License" (application), "All Applicants" section, listed only Mr. Tom Browning as a person that had or would advance any money, that held any mortgage or encumbrance against the assets of the business, or that had signed or co-signed, guaranteed or financially assisted this business for which Mr. Hickman was seeking a permit and license. Attached to the application was a copy of a "Promissory Note" in the amount of \$8,000.00, as evidence of Mr. Browning's loan. Two signatures identify the borrowers as "R.S. Hickman" and "Sharon J. Putz." The note clearly states that the borrowers

⁴ Ms. Putz testified that she and Mr. Hickman "don't have that kind of a relationship," the kind that would require him to pay her a salary. She also testified that because she could not do the physical work required at the Half Moon Saloon, her work on the Respondent's premises did not keep her from working at the Half Moon Saloon.

“jointly and severally promise to (re)pay” Mr. Browning for the loan, plus interest, in monthly installments; and it states that the debt is payable in full, immediately, at the option of any holder, upon the failure to make any payment due within five days of its due date. Ms. Putz testified that this was “start up money” for the Respondent’s premises.

In the application, Mr. Hickman listed account number 25-660-9, at the Citizen’s Bank at Somerville, Texas, as the account to be used in connection with the Respondent. Staff’s Exhibit No. 3 is a signature card for account number 25-660-9, a personal checking account at the Citizen’s State Bank, for a multiple party account with a right of survivorship in the funds. The account owners are listed as “Roy G. Hickman or Sharon J. Putz.” According to the card, either signature is sufficient to make a withdrawal. The initial deposit for this new account, opened January 12, 2004, was \$8,000.00. Ms. Putz testified that she is responsible for writing the checks out of this account to pay the Respondent’s bills.

B. Pursuant to Code §11.61 (b)(4), 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 the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the Commission, its officers, or employees.

It was not contested that Mr. Hickman, as an individual, applied to the Commission for (and ultimately received) a beer retail dealer’s off-premise license and a package store permit in January 2004. The application was sworn to and signed by Mr. Hickman and notarized by Ms. Putz. Number three on the “Personal History Sheet,” filed with the Commission on January 21, 2004, asks the question, “Are you residentially domiciled with anyone at this time, other than your spouse and dependent minor children?” In his response Mr. Hickman checked “No.”

Ms. Putz testified that, although she and Mr. Hickman have “lived together” and shared their two homes since Thanksgiving of 2003, when they were filling out the application in 2004, they relied on a dictionary definition of “domicile” as a “legal residence” as a basis for their decision to deny that Mr. Hickman was residentially domiciled with anyone other than a spouse and dependent

minor child. After some discussion, they decided that Mr. Hickman's house, where he received his mail, was his "legal residence." Ms. Beverly Baber, an accounts examiner, who processes permits for the Commission, testified that she assisted Mr. Hickman and Ms. Putz, reviewing the application for them. She stated that she routinely explains that the definition of "residentially domiciled" means "living together,"⁵ but she does not have a specific memory of making this statement to Mr. Hickman or Ms. Putz. Ms. Putz testified that they were not told that these phrases were interchangeable. Ms. Baber recalled that both Ms. Putz and Mr. Hickman told her that they did not "live together."⁶

In the application, under question 10 J, in the "All Applicants" section, the Respondent listed only Mr. Tom Browning as a person that had or would advance any money, that held any mortgage or encumbrance against the assets of the business, or that had signed or co-signed, guaranteed or financially assisted this business for which the Respondent was seeking a permit and license. Attached to the application was a copy of a "Promissory Note," in the amount of \$8,000.00, as evidence of Mr. Browning's loan. Two signatures identify the borrowers as "R.S. Hickman" and "Sharon J. Putz." The note clearly states that the borrowers "jointly and severally promise to (re)pay" Mr. Browning for the loan, plus interest, in monthly installments; and it states that the debt is payable in full, immediately, at the option of any holder, upon the failure to make any payment due within five days of its due date. Ms. Putz testified that this was "start up" money for the Respondent.

The application explained that a person making a false statement in the application, commits a crime punishable by imprisonment for not less than two, and not more than ten, years. Based on this, Mr. Hickman relied upon his right not to incriminate himself, and refused to answer any questions about the application, his conversations with Ms. Baber and the Commission's agents, his residential domicile at the time, and about his relationship with Ms. Putz.

⁵ Ms. Baber testified that since the time of the Respondent's application, the phrase "residentially domiciled" had been replaced with the phrase, "do you live with anyone." She stated that this change was intended to help clarify the meaning of "residentially domiciled." Ms. Baber testified that it was her job to make sure the application was filled out, and that it had enough information in it for the final decision-maker to act. It was not her job to make sure the information entered would support the issuance of a license or permit, and it was not her job to reject a permit based on the applicant's information.

Ms. Putz testified that she accompanied Mr. Hickman to every application interview, and Ms. Baber did not ask if she and Mr. Hickman lived together.

Agent Kuykendoll testified that if Mr. Hickman had not lied on the application, the application would have been denied. As a result, he believed that the appropriate remedy in this case would be to suspend the Respondent's permits.

IV. ANALYSIS

- A. **Pursuant to Code §11.61 (b)(17) 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 the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code.**

Mr. Hickman was and is residentially domiciled with Ms. Putz, a person with a financial interest in an establishment engaged in the business of selling beer at retail, the Half Moon Saloon. They have been living together for several years. Ms. Putz works as a manager for the Respondent without compensation, because she and Mr. Hickman do not have what Ms. Putz described as the "kind of relationship" that requires payment under these circumstances. Ms. Putz testified that although they were not married, her relationship to Mr. Hickman is analogous to a spouse. According to her, they "share" their two houses. Mr. Hickman needs to keep the second house open because his elderly, ill mother lives on the property. Ms. Putz and Mr. Hickman have a daily routine and responsibilities to each other that are similar to many married couples. They both have a right of survivorship in the funds in the Respondent's personal checking account. They are both individually responsible to repay, with interest, the \$8,000.00 "start up" loan for the Respondent. This is the kind of interdependent relationship that defines "residential domicile" for the purpose of this Code section.

- B. **Pursuant to Code §11.61 (b)(4), the Texas Alcoholic Beverage Commission (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 the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the Commission, its officers, or employees.**

Mr. Hickman made at least two false or misleading statements in connection with his application. First, in number three on the "Personal History Sheet" of the application, filed with the Commission on January 21, 2004, Mr. Hickman denied that he was residentially domiciled with anyone other than a spouse and dependant minor child. In fact, Mr. Hickman was and is residentially domiciled with Ms. Putz. Although Ms. Putz stated that both she and Mr. Hickman would describe their relationship as "living together," in Ms. Baber's very credible testimony, she stated that both Ms. Putz and Mr. Hickman told her that they did not live together. Ms. Putz tried to justify Mr. Hickman's response on the application in her testimony that they tried to look the term up in the dictionary. She said that, based on what they found, they decided that Mr. Hickman's "legal residence," was not with Ms. Putz. When, and if, they looked in the dictionary for assistance, it is more likely that they were looking for a way to deny the truth. If they were truly concerned about the meaning of the term, they were in a position to have the term clarified by Ms. Baber, yet they did not ask for a clarification. Under the circumstances, if Ms. Baber did not volunteer that the term meant "living together," Mr. Hickman should have asked Ms. Baber for the meaning of the debatably questionable term. Instead, they asked no questions about this phrase. In fact, they deliberately deceived Ms. Baber in regard to their living arrangements when they were trying to obtain the Respondent's license and permit, and the denial on the application was a deliberate falsehood. Ms. Putz's testimony to the contrary was not credible, and Mr. Hickman refused to answer any questions regarding this allegation.

The Respondent focused its argument on the definitions of domicile, concentrating on the address or location function of the word. This application asks for the applicant's "residential address" in question number 7A, on the first page. The logical intent of question number 3, further into the application, on the application's Personal History Sheet, regarding "residential domicile" has almost nothing to do with the applicant's address, and almost everything to do with the persons living with the applicant, and the relationship between these people. It is clear that Mr. Hickman's home is with Ms. Putz, and has been with Ms. Putz for several years. Whether they are residing in his house, her house, or the Quarter Moon Liquor store, this critical relationship, that defines Mr. Hickman's home for the purpose of the application, is evident.

The second false or misleading statement made by Mr. Hickman, in connection with his application, was by his omission of Ms. Putz's name as a person that would advance any money, signed or co-signed, had guaranteed or financially assisted this business for which the Respondent was seeking a permit or license. By her signature on the \$8,000.00 note for "start up money" for the Respondent, Ms. Putz was guaranteeing or financially assisting the business for which the Respondent was seeking a permit or license. By the note's very terms, Ms. Putz would advance money for the Respondent's debt, as she was individually liable for the entire amount, plus interest.

In that Mr. Hickman's relationship with the permittee of the Half Moon Saloon is ongoing, and in that his application would not have been granted had he been honest in the application, the Respondent's permit and license should be canceled.

V. FINDINGS OF FACT

1. Roy Gail Hickman d/b/a Quarter Moon Liquors (the Respondent) holds a Package Store Permit and a Beer Retailer's Off-Premise License, issued by the Texas Alcoholic Beverage Commission (the Commission), for the premises known as Quarter Moon Liquors, located at 12019 Rec Road 4, Somerville, Burleson County, Texas 77879.
2. Sharon Lee J. Putz d/b/a Half Moon Saloon holds a Wine and Beer Retailer's Permit, issued by the Commission, for the premises known as Half Moon Saloon, located at Park Road 4 North Side, 2.3 miles South FM 60, Somerville, Burleson County, Texas 77879.
3. Sharon Lee J. Putz d/b/a Half Moon Saloon's permittee was Sharon Lee J. Putz.
4. The Respondent's permittee was Roy Gail Hickman.
5. Alcoholic beverages were sold to the ultimate consumer from both permitted premises.
6. The Staff's Amended Notice of Hearing informed the Respondent of the date, time, and place of the hearing; the factual allegations; the statutes and rules involved; and the legal authorities under which the hearing was to be held.
7. The hearing on the merits convened on May 25, 2005, in the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, in Waco, Texas. The Commission appeared by its attorney Christopher Gee. The Respondent appeared by its permittee and was represented by its attorney Jim Hering. After the taking of evidence, the hearing was concluded the same day; however, at the request of the parties, the record was left open until June 22, 2005, for written argument.

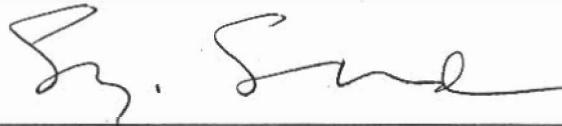
8. Roy Gail Hickman, the Respondent's permittee, is residentially domiciled with the Half Moon Saloon's permittee, in that he has been living with Sharon Putz since Thanksgiving 2003. Although they are not married, Ms. Putz's relationship with Mr. Hickman is analogous to that of a spouse, and Mr. Hickman's home has been with Ms. Putz, even though they have lived in multiple locations. This relationship is ongoing.
9. Mr. Hickman falsely denied that he was residentially domiciled with anyone other than a spouse and dependent minor child in the application, on the "Personal History Sheet," filed with the Commission on January 21, 2004.
10. Mr. Hickman omitted Ms. Putz's name from his application, as a person that would advance any money, signed or co-signed, guaranteed or financially assisted the business for which the Respondent was seeking a permit or license.
11. By her signature on the \$8,000.00 note for "start up money" for the Respondent, Ms. Putz was guaranteeing and financially assisting the business for which the Respondent was seeking a permit or license. Additionally, by the note's very terms, Ms. Putz would advance money for the Respondent's debt, in that she was individually liable for the entire amount of the note, plus interest.
12. Mr. Hickman's relationship with the permittee of the Half Moon Saloon is ongoing, and his application would not have been granted had he been honest in his application.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Ch. 5, Subch. B.
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. (Government Code) ch. 2003.
3. Based on Findings of Fact Nos. 6 and 7, proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, Government Code ch. 2001.
4. Based on Findings of Fact Nos. 8-12, in January 2004, Mr. Hickman, the Respondent's permittee, made a false or misleading statement in connection with his original or renewal application in violation of Code §11.61(b)(4).

5. Based on Findings of Fact Nos. 1-5 and 8, since Thanksgiving 2003, the Respondent's permittee has been residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, in violation of Code §11.61(b)(17).
6. Based on the foregoing findings and conclusions, the Respondent's permit and license should be canceled.

Signed July 28, 2005.



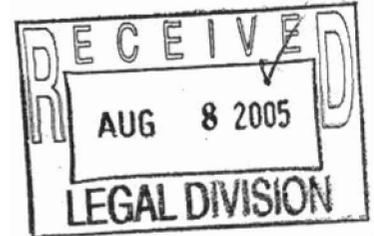
**SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings

8-12



Shelia Bailey Taylor
Chief Administrative Law Judge



July 29, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa
Austin, Texas 78731

REGULAR MAIL

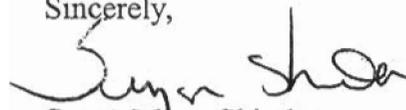
RE: Docket No. 458-05-4880, Quarter Moon Liquors, TABC Case No. 611048

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Suzan Moon Shinder
Administrative Law Judge

(by person)
ME

sms/me

Enclosure

xc: Christopher Gee, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - REGULAR MAIL
Jim Herring, Esquire, 801 Washington Avenue, Suite 800 Waco, Texas 76701-1289- REGULAR MAIL