DOCKET NO. 611616

IN RE I GOTCHA INC.	§	BEFORE THE
D/B/A ILLUSIONS	§	
PERMIT/LICENSE NOS. MB158142,	§	
LB158143	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-3249)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on March 4, 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 March 18, 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 have been 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 be **SUSPENDED**.

IT IS THEREFORE ORDERED that unless Respondent pays a civil penalty in the amount of **$750.00** on or before the **20th** day of **July, 2005**, all rights and privileges under the above described permits will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 27th day of July, 2005.**

This Order will become final and enforceable on July 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 on this 15th day of June, 2005.

On Behalf of the Administrator,

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

John Gamboa
ATTORNEY FOR RESPONDENT
Via Fax (817) 885-8504

I Gotcha Inc.
d/b/a Illusions
RESPONDENT
7405 Camp Bowie West
Fort Worth, Texas 76116
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 8053

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 611616 **REGISTER NUMBER:**

NAME: I GOTCHA INC. **TRADENAME: ILLUSIONS**

ADDRESS: 7405 Campo Bowie West, Fort Worth, Tarrant County, Texas 76116.

DATE DUE: July 20, 2005

PERMITS OR LICENSES: MB158142, LB158143

AMOUNT OF PENALTY: $750.00

Amount remitted $_____ Date remitted _____

If you wish to a 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 20TH DAY OF JULY 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. 458-05-3249

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
I GOTCHA, INC. D/B/A ILLUSIONS, Respondent TARRANT COUNTY, TEXAS (TABC CASE NO. 611616)	§	**ADMINISTRATIVE HEARING**

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against I Gotcha, Inc. d/b/a Illusions (Respondent), alleging four violations of the Texas Alcoholic Beverage Code (the Code).[1] In TABC Staff's notice of hearing, it alleged that Respondent's agent or employee, Francis "Barbie" Adams, or some other person was intoxicated on the licensed premises on June 23, 2004. TABC Staff also alleged that on the same day, Respondent allowed a breach of the peace on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of persons on the premises, namely Francis "Barbie" Adams, because Ms. Adams was belligerent, intoxicated, refused to follow police instructions, refused to exit from the premises, and resisted

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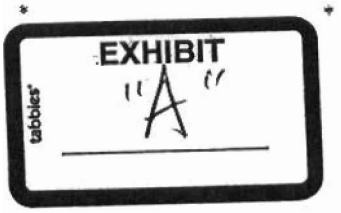
TABC Staff alleged Respondent's permits should be canceled based on general welfare, health, peace, morals, and safety concerns and, further alleged that an employee solicited a person to buy drinks for her. However, those allegations were withdrawn by TABC Staff at the beginning of the hearing in this case. Therefore, those points are not discussed further in this Proposal for Decision.

[2] 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)(1).

* * * *

All provisions of the Code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit. TEX. ALCO. BEV. CODE ANN. § 29.03.

* * * *



TABC Staff sought a ten-day suspension of Respondent's permits, or a $1,500 civil penalty in lieu of suspension,[3] in relation to the allegation concerning an intoxicated employee, agent, or other person on the licensed premises. Additionally, TABC Staff requested a thirty-day suspension of Respondent's permits, or a $4,500 civil penalty in lieu of suspension, in relation to its allegation that Respondent allowed a breach of the peace on the licensed premises.

The ALJ finds the evidence was sufficient to establish that Francis "Barbie" Adam was intoxicated on the licensed premises, however, due to mitigating circumstances shown during the hearing, the ALJ recommends a lesser penalty than the penalty requested by TABC Staff. The ALJ recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension of Respondent's permits that Respondent pay a civil penalty in the amount of $750.

The ALJ further finds that the evidence was insufficient to establish that Respondent allowed a breach of the peace to occur on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of person on the premises. Accordingly, the ALJ recommends that no suspension of Respondent's permits should occur in relation to that alleged violation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 11, 29, 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

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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)

[3] When the Texas Alcoholic Beverage Commission is authorized to cancel or suspend a permit, a civil penalty may be authorized to be not less than $150 or more than $25,000 for each day the permit was to have been suspended. TEX. ALCO. BEV. CODE ANN. § 11.64(a).

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 March 4, 2005, a hearing convened before ALJ Tanya Cooper, at the SOAH offices located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Waldron "Walt" Duncan, and was represented by John Gamboa, attorney at law. The hearing concluded and the record closed on that same day.

II. EVIDENCE

Respondent holds a Mixed Beverage Permit, MB158142, and a Mixed Beverage Late Hours Permit, LB158143, issued by TABC for Respondent's premises, I Gotcha, Inc., d/b/a Illusions, located at 7405 Camp Bowie West, Fort Worth, Texas. Respondent's permits were initially issued on December 16, 1983, and have been continuously renewed since that date. Mr. Duncan, Richard Milan, Kristene McDonald, Candy McDonald, and Felicia Walker testified at the hearing.

TABC Staff presented no testimony in support of its allegations. The only evidence offered and admitted in support of its position consisted of Respondent's responses to TABC Staff's request for admissions and interrogatories. Contained within Respondent's reply to TABC Staff's request for admissions, Response 8 admits as follows: "Respondent and/or its agent, servant or employee, Francis "Barbie" Adams and/or some other person, on or about June 23, 2004, was intoxicated on the licensed premises." Further, Response 9 of Respondent's reply states as follows: "On or about June 23, 2004, Respondent's employee, agent, or servant, Francis "Barbie" Adams and/or some other person, was belligerent, intoxicated, assaulted police officers, yelled, cursed, flung her arms and legs, resisted arrest, refused to follow police instructions, and/or refused to exit the premises."

A. Walt Duncan's Testimony.

During Mr. Duncan's testimony, several records, referred to as Incident Reports, maintained by Respondent were produced concerning the incident involving Ms. Adams on June 23, 2004. These records described Ms. Adams' demeanor and steps undertaken to deal with Ms. Adams' conduct prior to police officers escorting her from the premises.

B. Richard Milan's Testimony.

Richard Milan, a manager at Illusions, testified that he was present at the licensed premises during this incident with Ms. Adams. Mr. Milan said that Ms. Adams, a dancer at Illusions, arrived for work and did not appear normal. According to Mr. Milan, Ms. Adams appeared intoxicated, but on something other than alcohol. Mr. Milan noticed Ms. Adams' impairment during her first performance because her demeanor was aggressive toward others as she danced onto stages where other dancers were performing. After a heated verbal exchange between Ms. Adams and another dancer occurred, Mr. Milan said he called Ms. Adams over to him and told her that she was not working anymore that night. Ms. Adams was belligerent with him and refused to leave from the premises after she was told she was done for the evening.

Mr. Milan testified that she was baiting him, attempting to get him to place his hands on her and physically remove her. Rather than engaging in further discussion or physically removing her, Mr. Milan said he told Ms. Adams to sit down, which she did. After Ms. Adams was seated, she called the police. According to Mr. Milan, Ms. Adams remained quiet during the time between when she was seated at a table and the police officers' arrival.

When the police officers arrived, Mr. Milan said he met them at the door of the premises and directed them to Ms. Adams. The officers spoke to Ms. Adams. Mr. Milan said he did not hear all of this conversation, but heard one officer tell Ms. Adams to "stand up." Ms. Adams did not do as requested,

so the officers pulled her up and wrestled her outside to their patrol car. Mr. Milan saw Ms. Adams take a swing with her fist at one officer, and saw that she was "maced" before the officers were able to place her in their car. Mr. Milan was advised by one officer that Ms. Adams was going to jail, so Mr. Milan retrieved Ms. Adams' personal belongings and gave them to the officer

Mr. Milan said he did not know about Ms. Adams' habits concerning whether she used drugs or alcohol. Mr. Milan acknowledged that dancers are allowed to drink alcoholic beverages at the licensed premises, but they were not permitted to do so while on stage. Mr. Milan stated he did not see Ms. Adams being served any alcoholic beverages while at the premises before this incident. Mr. Milan agreed that Ms. Adams' behavior suggested that she might have been intoxicated, but he did not believe her conduct was due to consuming alcohol because of her aggressive demeanor. He further testified that he had been close to Ms. Adams during their conversation about her conduct, but he did not smell any odor of alcohol on her breath. Mr. Milan said he did not see the police officers perform any type of field sobriety testing with Ms. Adams prior to taking her into custody and did not know what she was being charged with when the officers handcuffed her and took her away.

C. Kristene McDonald's Testimony.

Kristene McDonald testified that she was the only bartender on duty that night. She stated that no alcoholic beverages were sold or served to Ms. Adams prior to this incident. Ms. McDonald said that she was not watching the stages but did see Mr. Milan sit Ms. Adams down at a chair after she came off one stage. According to Ms. McDonald, Ms. Adams refused to leave when asked to do so by Mr. Milan, but she was not being disruptive. Ms. McDonald said she was aware that Ms. Adams called the police. According to Ms. McDonald, Ms. Adams' was acting irrationally because she essentially called the police on herself.

Approximately five minutes passed between Ms. Adams' call and the police officers' arrival. Ms.

McDonald said that Ms. Adams became aggressive with the officers; and at that point, the officers escorted her outside. Ms. McDonald said that she did not see any type of field sobriety tasks administered to Ms. Adams by either officer at any point.

D. Candy McDonald's Testimony.

Candy McDonald testified next. She was working at the door on the night of this incident. Her duties were to sign the dancers in for work prior to their performances, collect house fees, check identification, and other tasks. From her work station, she could see the stages. Ms. McDonald said she observed a verbal confrontation between Ms. Adams and another dancer, but there had been no physical altercation between the two dancers. When Ms. Adams came down from the stage, Ms. McDonald saw Mr. Milan speak to her and saw the two of them go around a corner where they were out of her view. Shortly thereafter, Mr. Milan came to her work station and said that Ms. Adams had called the police. When the police officers arrived, Ms. McDonald said that she did not see them conduct any field sobriety tasks with Ms. Adams but was present at the door as Ms. Adams was forcibly removed from the premises by the officers.

Ms. McDonald said that Ms. Adams had not been working at the licensed premises very long, but that she had observed Ms. Adams acting irrationally before this incident. She stated that on occasion Ms. Adams talked to herself and was belligerent with others. According to Ms. McDonald, Ms. Adams' behavior was consistent with a person with a mental disorder or, possibly, on drugs.

E. Felicia Walker's Testimony.

Felicia Walker, another dancer at the licensed premises, testified next. She was present at the licensed premises that night and was seated at the bar when she saw Ms. Adams in an argument with

another dancer. The music was loud, and it was difficult to hear unless one was shouting. Ms. Walker said that she saw Mr. Milan speaking to Ms. Adams, but there was no physical altercations between anyone until the police officers arrived. Ms. Walker said that the officers did not perform any field sobriety tests with Ms. Adams but, instead, physically escorted Ms. Adams from the building.

According to Ms. Walker, Ms. Adams did not display any usual signs of an intoxicated person. There was no odor of alcoholic beverage on her breath when she and Ms. Adams were in contact with each other. Ms. Adams' speech was not slurred as she spoke. Ms. Adams was dancing fast as she performed and had no difficulty walking.

Ms. Walker testified that she had seen Ms. Adams on three or four previous occasions. In her opinion, Ms. Adams did not seem normal on any of these occasions either. Ms. Walker cited instances of Ms. Adams talking to her herself and displaying a belligerent behavior toward a customer as the basis for her opinion about Ms. Adams.

III. ANALYSIS

A. Employee/Agent/Other Person Intoxicated on the Licensed Premises.

It is undisputed the Ms. Adams was intoxicated on the licensed premises on June 23, 2004 based upon Respondent's response to TABC Staff's request for admissions.[4] (*See* TABC Exhibit #3, Response No. 8). Respondent's licensing history, which is incorporated into TABC Exhibit # 2, shows this is the first violation of the type committed by Respondent. Accordingly, TABC Staff requested the minimum penalty for this violation as provided pursuant to 16 TEX. ADMIN. CODE § 37.06, a 10-day permit suspension. In the alternative, TABC Staff requested that Respondent be allowed to pay a civil penalty

[4] TEX. ALCO. BEV. CODE ANN. § 104.01(5) provides that no retail dealer, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including but not limited to, being intoxicated on the licensed premises.

in lieu of suspension of $150 for each day Respondent's permit is to be suspended.

After considering the evidence in this instance, the ALJ believes that the evidence shows there are mitigating circumstances that should factor into the assessment of any penalty for this violation. First, Ms. Adams had not worked at Respondent's licensed premises for very long. As a result, her personal habits were not well known to Respondent or Respondent's managerial staff. While some individuals working at Respondent's premises had observed instances of this type of conduct by Ms. Adams, there was no evidence to show this information had been reported to Respondent or its managers. The evidence suggests that Ms. Adams was intoxicated when she arrived for work at Respondent's premise; this was a situation that Respondent could not foresee or control. Ms. Adams did not become intoxicated from ingesting alcoholic beverages at Respondent's premises since she was neither sold, nor served, any alcoholic beverages while she was there. Lastly, Ms. Adams was not allowed to continue working when her level of intoxication caused her to become aggressive and belligerent with other co-workers. She was dismissed from work that night by Respondent's manager, Mr. Milan, as a result of her unacceptable behavior. Mr. Milan acted quickly when he first became aware of Ms. Adams' condition. For these reasons, the ALJ finds that Respondent's permits should be suspended for a period of five days, or in lieu of any suspension, that Respondent should be allowed to pay a civil penalty in the amount of $750.

B. Breach of the Peace on the Licensed Premises:

The issues to be determined concerning this alleged violation are:

1. Whether a breach of the peace occurred on Respondent's licensed premises;[5] and

2. If so, whether the breach of the peace was not beyond the control of Respondent and resulted from Respondent's improper supervision of persons permitted to be on the

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[5] Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person. TEX. ALCO. BEV. CODE ANN. § 11.49(a). *See* also TEX. ALCO. BEV. CODE ANN. § 1.04(19).

licensed premises or on a premises under his control. TEX. ALCO. BEV. CODE ANN. § 69.13.[6]

It is undisputed that on June 23, 2004, Respondent's employee, agent, or some other person, Ms. Adams, was belligerent, intoxicated, assaulted a police officer, yelled, cursed, flung her arms and legs, resisted arrest, refused to follow police instructions, and refused to exit the premises. (*See* TABC Exhibit #3, Respondent's Response to Petitioner's Request for Admissions No. 9). As a result, the evidence presented in this matter established that a breach of the peace occurred on Respondent's licensed premises on June 23, 2004. "Breach of the peace," is not defined by the Code or TABC Rules. However, it has been judicially defined in case law as an act that disturbs or threatens to disturb "the tranquility enjoyed by the citizens" and includes actual or threatened violence as an essential element. Woods v. State, 213 S.W.2nd 685 (Tex.Crim.App.1948).

After assessing the evidence presented in this matter, the ALJ believes that Ms. Adams, a dancer working at Respondent's licensed premises, was belligerent and aggressive toward her co-workers due to her intoxication. As a result of her unacceptable conduct, she was dismissed from work by Respondent's manager and asked to leave the premises. Ms. Adams refused this request. After refusing to leave, Ms. Adams sat down and called the police from her cell phone.

When police officers arrived, Mr. Milan directed them over to speak with Ms. Adams where she was seated. After a short conversation with Ms. Adams, one police officer asked her to stand up. Ms. Adams refused the request from the police officer. The officers took Ms. Adams by her arms and physically removed her from the premises. Ms. Adams was yelling and struggled with the officers, resisting the officers' efforts to escort her from the premises. She struck one officer with her fist before mace was used by the officers to control Ms. Adams, handcuffs were placed on her, and she was put into the officers' patrol car. The threat of violence and actual violence instigated by Ms. Adams toward both her

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[6] *See* also TEX. ALCO. BEV. CODE ANN. § 71.09.

co-workers and police officers was a breach of the peace.

Nevertheless, Respondent, the holder of TABC-issued permits, is not responsible for the actions of Ms. Adams while she was on the licensed premises because this breach of the peace was not within the control of Respondent. Further, the breach of the peace did not result from Respondent's improper supervision of persons under Respondent's control on the premises. Factors in the record supporting the ALJ's opinion are set forth below.

Ms. Adams arrived for work at Respondent's licensed premises when she was already intoxicated. Her actions and demeanor suggested she was possibly intoxicated from something other than alcoholic beverages. Ms. Adams' condition was not created or controlled by Respondent, but most likely were the result of activities engaged in by Ms. Adams' prior to reporting for work.

Respondent's manager, Mr. Milan, was supervising persons properly on the premises and acted quickly as soon as Ms. Adams' impairment became apparent to him. He took steps reasonably necessary to control the situation by terminating Ms. Adams' employment and quietly requesting that she leave the premises; however, Ms. Adams continued to be difficult and refused to leave as Mr. Milan requested. Mr. Milan took additional steps designed to reasonably defuse the confrontation with Ms. Adams by asking her to sit down. Ms. Adams called the police into the situation, and then continued to act irrationally by refusing to comply with the police officers' requests that she leave the premises.

At that point, a physical struggle ensued between Ms. Adams and the police officers as the officers were attempting to escort Ms. Adams from the premises. Ms. Adams was ultimately placed under arrest for her actions toward the police officers as they attempted to carry out their duties. This activity was clearly not under the control of Respondent or resulting from Respondent's failure to supervise its personnel or others on the premises.

Based upon factors cited within this section, the ALJ finds that the evidence presented does not support the allegation regarding a breach of the peace on the premises. The incident was beyond Respondent's control and did not result from Respondent's improper supervision of persons on the premises. Accordingly, no penalty should be imposed against Respondent in relationship to this alleged violation.

IV. RECOMMENDATION

The ALJ recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of $750 based upon an employee, agent, or other person being intoxicated on Respondent's licensed premises. No penalty should be assessed against Respondent for the alleged violation of allowing a breach of the peace on the licensed premises because the evidence was insufficient to support TABC Staff's burden of proof.

V. PROPOSED FINDINGS OF FACT

1. I Gotcha Inc. d/b/a Illusions (Respondent) holds a Mixed Beverage Permit, MB 158142, and a Mixed Beverage Late Hours Permit, LB158143, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 7405 Camp Bowie West, Fort Worth, Tarrant County, Texas.

2. On June 23, 2004, Francis "Barbie" Adams was a dancer at Respondent's premises described in Finding of Fact No. 1.

3. On that day, Ms. Adams arrived at work and was intoxicated.

4. Shortly after Ms. Adams began performing with other dancers at the licensed premises, she exhibited a belligerent, aggressive demeanor toward her co-workers.

5. Respondent's manager, Richard Milan, observed Ms. Adams' conduct.

6. As soon as was practical after she completed her performance, Mr. Milan called Ms. Adams over,

terminated her as a result of her actions, and requested that she leave the licensed premises.

7. Ms. Adams refused to leave, sat down at a table, and called the police to the licensed premises.

8. Upon the arrival of two police officers at the licensed premises, Mr. Milan met them at the door and pointed out Ms. Adams to them.

9. The officers spoke briefly to Ms. Adams before asking her to stand up; Ms. Adams refused to stand, so the officers pulled her up by her arms and escorted her out to their patrol unit, which was parked outside the licensed premises.

10. Ms. Adams yelled and struggled with the officers; she struck one officer with her fist before she was sprayed with maced, placed under arrest, handcuffed, and put into the patrol unit by the officers.

11. Respondent's licensing history shows a few miscellaneous violations, but the violation described in Findings of Fact Nos. 1-3 is the first instance involving an infraction for an intoxicated employee, agent, or other person on the premises.

12. A hearing in this matter was conducted on March 4, 2005, at the State Office of Administrative Hearings, 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. ALJ Tanya Cooper presided. TABC Staff was represented by TABC Staff Attorney, Timothy Griffith. Respondent was represented by John Gamboa, attorney at law. The hearing concluded and the record closed on that day.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5 and 26, §§ 6.01, 11.61, 24.11, 61.71, 69.13, 71.09, and 104.01 and 16 TEX. ADMIN. CODE § 31.1 *et. seq.*

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 and hearing as required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Based upon Proposed Findings of Fact Nos. 1 - 3, an employee, agent or other person was intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b), 61.71(a)(11), and 104.01(5).

5. Based upon Proposed Findings of Fact Nos. 1 - 10 a breach of the peace occurred on the licensed premises, but said breach of the peace was beyond Respondent's control and did not result from improper supervision of a person permitted to be on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.71(a)(1), 69.13 and 71.09.

6. Based on the foregoing Proposed Findings of Fact Nos. 1 - 3 and 11 and Conclusion of Law No. 4, Respondent's Mixed Beverage Permit, MB158142, and Mixed Beverage Late Hours Permit, LB158143, issued by TABC should be suspended for a period of five days, or in lieu of any suspension, Respondent should be allowed to pay a civil penalty in the amount of $750.00.

SIGNED March 18, 2005.

TANYA COOPER, 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: I Gotcha Inc. d/b/a Illusions

DOCKET NUMBER: 458-05-3249

AGENCY CASE NO: 611616

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

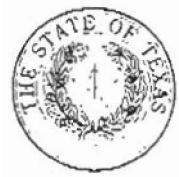
AGENCY COUNSEL
BY FAX

John Gamboa
Attorney at Law
817/885-8504

ATTORNEY FOR RESPONDENT
BY FAX

As of March 18, 2005

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

MAR 18 2005

March 18, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Docket No. 458-05-3249; Texas Alcoholic Beverage Commission vs I Gotcha, Inc. d/b/a Illusions (TABC Case No. 611616)

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 John Gamboa, Attorney for the Respondent. The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this disciplinary action against I Gotcha, Inc. d/b/a Illusions (Respondent), alleging four violations of the Texas Alcoholic Beverage Code (the Code). In TABC Staff's notice of hearing, it alleged that Respondent's agent or employee, Francis "Barbie" Adams, or some other person was intoxicated on the licensed premises on June 23, 2004. TABC Staff also alleged that on the same day, Respondent allowed a breach of the peace on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of persons on the premises namely Francis "Barbie" Adams, because Ms. Adams was belligerent, intoxicated, refused to follow police instructions, refused to exit from the premises, and resisted arrest.

TABC Staff sought a ten-day suspension of Respondent's permits, or a $1,500 civil penalty in lieu of suspension, in relation to the allegation concerning an intoxicated employee, agent, or other person on the licensed premises. Additionally, TABC Staff requested a thirty-day suspension of Respondent's permits, or a $4,500 civil penalty in lieu of suspension, in relation to its allegation that Respondent allowed a breach of the peace on the licensed premises.

The ALJ finds the evidencewas sufficient to establish that Ms. Adams was intoxicated on the licensed premises, however, due to mitigating circumstances shown during the hearing, the ALJ recommends a lesser penalty than the penalty requested by TABC Staff. The ALJ recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension of Respondent's permits that Respondent pay a civil penalty in the amount of $750.

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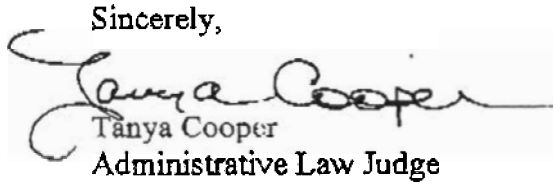
The ALJ further finds that the evidence was insufficient to establish that Respondent allowed a breach of the peace to occur on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of person on the premises. Accordingly, the ALJ recommends that no suspension of Respondent's permits should occur in relation to that alleged violation.

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/ds
attachments

John Gamboa, Attorney for Respondent, VIA FACSIMILE 817/885-8504
Timothy Griffith, TABC Staff Attorney, VIA FACSIMILE 972/547-5093