

DOCKET NO. 615042

IN RE NAVEED MOHAMMAD	§	BEFORE THE
D/B/A KORNER STOP FOOD MART	§	
PERMIT NO. BG-439685	§	
	§	TEXAS ALCOHOLIC
	§	
HAYS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0978)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 11th day of July, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on April 12, 2006, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 12, 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.

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.

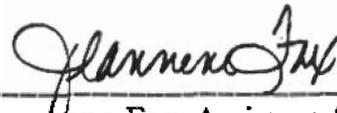
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the allegations are hereby **DISMISSED with prejudice**.

This Order will become final and enforceable on August 1, 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 11th day of July, 2006.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings,
VIA FACSIMILE: (512) 475-4774

Naveed Mohammad
d/b/a/ Korner Stop Food Mart
RESPONDENT
705 Aquarena Springs Drive
San Marcos, Tx. 78666
CERTIFIED MAIL NO. 7001 2510 0000 7275 0425

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office

SOAH DOCKET NO. 458-06-0978

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
PETITIONER

V.

NAVEED MOHAMMAD
D/B/A KORNER STOP FOOD MART
HAYS COUNTY, TEXAS
(TABC CASE NO. 615042),
RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this disciplinary action against Naveed Mohammad, d/b/a Korner Stop Food Mart (Respondent), alleging that Respondent's employee sold alcoholic beverages to a minor. Because the evidence does not support the allegation, the Administrative Law Judge (ALJ) recommends no action be taken against Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Neither party challenged notice or jurisdiction, and those matters are addressed only in the Findings of Fact and Conclusions of Law. On April 12, 2006, a hearing was convened before ALJ John H. Beeler, at the State Office of Administrative Hearings in Austin, Texas. Respondent represented himself, and attorney Judith L. Kennison represented the Staff. The record closed the same day.

II. EVIDENCE

A. Licenses Held

Since September 21, 1998, Respondent has held a Wine and Beer Retailer's Permit, BQ-439685 for the premises located at 705 Loop 82 North, San Marcos, Hays County, Texas.

B. Testimony

1. Agent Russell Moore

Russell Moore, a TABC Agent, testified that he went to Korner Stop Food Mart on January 29, 2005, to conduct a minor sting operation. His intention was to have a minor enter the premises and attempt to purchase alcohol. On arrival, however, he observed another youthful looking male purchase beer. He contacted the male, Clayton Saliba, outside of the store and determined that he was 20 years old. Mr. Saliba was in possession of a fake ID, but told Agent Moore that he did not present it while making the purchase. While Agent Moore was interacting with Mr. Saliba, the minor working with TABC entered the store, attempted to purchase beer, and was asked for proof of age. The purchase was refused by the same individual who had just sold beer to Mr. Saliba. Agent Moore believes that the employee must have observed his interaction with Mr. Saliba and realized that TABC was present.

The employee was charged with making alcohol available to a minor but, was found not guilty at trial.

2. Respondent's Testimony

Mr. Mohammad admitted that his employee sold alcohol to Mr. Saliba on the date in question and that the employee did not ask for proof of age. However, Mr. Saliba had purchased beer at the store several times in the weeks just prior to the date in question and had presented an ID showing him to be of legal age. Since the employee had recently seen proof of age, no ID was

requested on this occasion. The credit card receipts for these purchases were presented at the employee's criminal trial, which resulted in a not guilty verdict. Customers who are known by the store employees to be 21 years of age or older are not required to produce ID to purchase alcohol.

III. ANALYSIS

TABC alleges that Respondent's employee, with criminal negligence, sold alcohol to a minor. A person acts with criminal negligence, or is criminally negligent . . . :

with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. TEX. PEN. CODE ANN. §6.03 (d).

Based on the evidence, the ALJ finds that Respondent's employee did not act with criminal negligence. Respondent's testimony is consistent with the events as described by Agent Moore. Mr. Saliba had purchased beer several times in the weeks prior to January 29, 2005, and was in possession of a fake ID when contacted by Agent Moore. There was no evidence offered that the ID did not appear to be authentic and it would be unusual for the same employee to ask the same person for ID after recently seeing it.

When an unknown youthful appearing individual tried to purchase beer, he was asked for ID. Although Agent Moore assumes that the employee declined to sell to the minor brought to the store by TABC because the employee realized TABC was present, it is more likely that asking for proof of age is the normal practice of the business.

The employee's actions on January 29, 2005, were not a gross deviation from the standard of care of an ordinary person in a similar situation. Therefore, no violation occurred.

IV. FINDINGS OF FACT

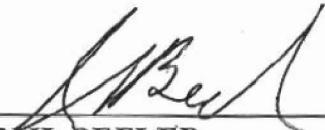
1. Since September 21, 1998, Naveed Mohammad d/b/a Korner Stop Food Mart (Respondent) has a held Wine and Beer Retailer's Permit, BQ-439685 for the premises located at 705 Loop 82 North, San Marcos, Hays County, Texas.
2. On January 29, 2005, Respondent's employee sold alcohol to a minor.
3. The minor had purchased alcohol from the employee several times in the weeks prior to January 29, 2005, and had presented an ID showing him to be of legal age.
4. The minor was in possession of a fake ID on January 29, 2005.
5. The employee's actions were not a gross deviation from the standard of care of an ordinary person in a similar situation.
6. On January 11, 2006, Staff issued a notice of hearing that included the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
7. On April 12, 2006, a hearing was convened before Administrative Law Judge John H. Beeler, at the State Office of Administrative Hearings in Austin, Texas. Respondent represented himself, and attorney Judith L. Kennison represented the Staff. The record closed the same day.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. (Code) §6.01 (Vernon 1995 and Supp. 2006).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. §§2003.021(b) and 2003.042(5).
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052; Code §11.63; and 1 TEX. ADMIN. CODE (TAC) §155.55.

4. Respondent's employee did not sell an alcoholic beverage to a minor, with criminal negligence, as defined in TEX. PENAL CODE ANN. § 6.03(d), thereby violating TEX. ALCO. BEV. CODE §106.03.
5. Based on the Findings of Fact and Conclusions of Law, no action should be taken against Respondent's Permit.

SIGNED June 12, 2006



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS