

**DOCKET NO. 615129**

IN RE HARPER UNLIMITED INC.	§	BEFORE THE
D/B/A JAVAMOTION	§	
PERMIT NO. MB-562101	§	
	§	TEXAS ALCOHOLIC
	§	
CALDWELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0909)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 10<sup>th</sup> day of July, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on February 23, 2006, and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 30, 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. On April 14, 2006, Petitioner filed Exceptions to the Proposal for Decision. Respondent did not file a response. On May 1, 2006, the Administrative Law Judge filed correspondence addressing Petitioner's Exceptions to the Proposal for Decision, and amended the PFD to reduce the ten (10) day suspension to a five (5) day suspension. On May 16, 2006, Petitioner filed Staff's Motions to Modify the Proposal for Decision and Enter Final Order.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Petitioner's Exceptions to the Proposal and Staff's Motions, adopts the Findings of Fact and Conclusions of Law which are contained in the Proposal For Decision and amending letter dated May 1, 2006, as if such were fully set out and separately stated herein, with the exception of the following:

1. **Conclusion of Law No. 4**, which cites Tex. Alco. Bev. Code §105.1, *et seq.*, is hereby amended to read Tex. Alco. Bev. Code §105.6. The legal basis for this change is that the violation committed by Respondent was not the sale of liquor during hours prohibited by §105.01. Respondent, which includes its agents, servants and employees pursuant to Tex. Alco. Bev. Code §1.04(11), possessed and consumed alcoholic beverages in public and on the licensed premises after legal hours, in violation of Tex. Alco. Bev. Code §§105.06(b) and 11.61(b)(2).

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2. **Conclusion of Law No. 6**, is hereby amended to read seven (7) days suspension, rather than five (5) days suspension. The reason for this penalty enhancement is that Robert Harper, the Vice President of Harper Unlimited, Inc., was present while the agents, servants and employees of Harper Unlimited, Inc., possessed and consumed the alcoholic beverages during illegal hours. The administrator adopts the reasons of the ALJ in her original PFD, concluding that this is an aggravating factor.

**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 Mixed Beverage Permit is hereby **SUSPENDED**.

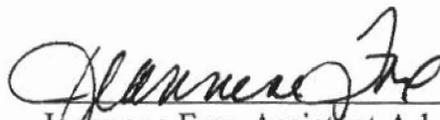
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,050.00** on or before the **9th** day of **August, 2006**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **seven (7) days**, beginning at **12:01 A.M.** on the **16th** day of **August, 2006**.

This Order will become final and enforceable on July 31, 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 10<sup>th</sup> day of July, 2006.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

WMC/bc

Sharon Cloninger  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
*VIA FACSIMILE: (713) 812-1001*

HARPER UNLIMITED INC.  
JAVAMOTION  
**RESPONDENT**  
119 E. San Antonio St.  
Lockhart, Texas 78644  
*CERTIFIED MAIL NO. 7001 2510 0000 7275 0524*  
*RETURN RECEIPT REQUESTED*

W. Michael Cady  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Austin District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCED

DOCKET NUMBER: 615129

REGISTER NUMBER:

NAME: Harper Unlimited Inc.

TRADENAME: Javamotion

ADDRESS: 119 E. San Antonio St., Lockhart, Texas 78644

DATE DUE: August 9, 2006

PERMITS OR LICENSES: MB-562101

AMOUNT OF PENALTY: \$1,050.00

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 9th DAY OF AUGUST, 2006, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

**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.

\_\_\_\_\_  
LEGAL

SOAH DOCKET NO. 458-06-0909

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner

V.

HARPER UNLIMITED, INC.,  
DBA JAVAMOTION,  
PERMIT NO. MB562101,  
CALDWELL COUNTY, TEXAS,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff, TABC) requested that, due to violations of Texas law, the mixed beverage permit of Harper Unlimited, Inc., dba Javamotion (Respondent) be suspended for 30 days, or that Respondent be assessed a civil penalty of \$9,000 in lieu of suspension. Staff alleges that Respondent violated the Texas Alcoholic Beverage Code on October 27, 2004, by (1) permitting possession and/or consumption of alcoholic beverages on the licensed premises during prohibited hours, and by (2) knowingly possessing or allowing to be possessed on the licensed premises any alcoholic beverage not covered by an invoice.

Respondent does not contest the allegation that after-hours consumption of alcoholic beverages occurred at Javamotion (the premises) on the date in question, but denies that Respondent's employee allowed beer not covered by an invoice to be brought onto the premises. The Administrative Law Judge (ALJ) finds Staff met its burden of proof as to the first allegation, but provided insufficient evidence to prevail on the second allegation. The ALJ recommends that TABC impose either a 10-day suspension, or a \$1,500 civil penalty in lieu of suspension, for the first violation.<sup>1</sup>



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<sup>1</sup> The recommendation represents the minimum penalty that TABC typically imposes under these circumstances, because Staff did not prove there were aggravating circumstances that would warrant enhancement.

## I. PROCEDURAL HISTORY AND JURISDICTION

There are no contested issues of notice or jurisdiction. Therefore these matters are set out below in the Findings of Fact and Conclusions of Law.

The hearing on the merits convened February 23, 2006, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas, before ALJ Sharon Cloninger. TABC was represented by W. Michael Cady, Staff Attorney. Respondent appeared through Dorothy A. Harper, its President and CEO. Evidence and argument were heard, and the record closed that same day.

## II. BACKGROUND

Respondent is the holder of a Mixed Beverage Permit (MB562101) issued by TABC for the premises known as Javamotion, located at 119 East San Antonio Street, Lockhart, Caldwell County, Texas. Under the permit, alcoholic beverages may not be sold on the premises after midnight on a weeknight.<sup>2</sup> In addition, alcoholic beverages may not be consumed on the premises after 12:15 a.m. on a weeknight.<sup>3</sup>

On Tuesday, October 26, 2004, Javamotion closed at 9 p.m. Employees cleaned the establishment until about 11 p.m., then held a going-away party for a fellow employee, Jill Notgrass, who would soon be leaving Texas. Non-employees also attended the party, which was held with the permission of Robert V. Harper, who is Respondent's vice-president, and who was also in attendance. During the party, which continued until police arrived at about 12:45 a.m. on October 27, 2004, several people consumed beer and alcoholic beverages on the premises. When the police arrived, employee Heather Stephens had a beer in her hand, and another person had a cold beer on the table in front of her.

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<sup>2</sup> TEX. ALCO. BEV. CODE ANN. § 105.03(a)(b).

<sup>3</sup> TEX. ALCO. BEV. CODE ANN. § 105.06(a)(2) and (b).

Prior to arrival of the police, one of the party guests, Derek Adams, had purchased a six-pack of Corona beer at the Exxon on Highway 183, and brought it in to Javamotion. There is conflicting evidence as to whether the beer was consumed at the party (in which case Mr. Harper and Javamotion employees would be aware that beer bought elsewhere was on the premises), or set aside by Mr. Adams for him to take to another party he would be attending with Ms. Stephens (in which case Respondent and employees would not necessarily be aware that Mr. Adams had brought the beer onto the premises).

As a result of the October 27, 2004 incident, Mr. Harper and TABC Agent Russell Moore signed an Agreement and Waiver of Hearing on March 15, 2004, under which either Respondent's permit would be suspended for 15 days beginning May 11, 2005, or a civil penalty of \$2,250 would be assessed in lieu of suspension, based on the violations at issue in this hearing. TABC issued an order on March 24, 2004,<sup>4</sup> presumably adopting the terms of the Agreement and Waiver of Hearing.

On April 14, 2005, Ms. Harper filed a Motion for Rehearing with TABC, which was granted on April 19, 2005, and culminated in the February 23, 2006 proceeding before SOAH.

### III. THE ALLEGATIONS AND APPLICABLE LAW

#### A. Allegations

##### 1. First allegation

Staff alleges that at 12:47 a.m. on Tuesday<sup>5</sup>, October 27, 2004, Respondent, or its agent, servant or employee permitted possession and/or consumption of an alcoholic beverage (beer) on the premises during prohibited hours, in violation of Texas law, including but not restricted to TEX. ALCO. BEV. CODE ANN. § 105.01, *et seq.*, and TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

##### 2. Second allegation

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<sup>4</sup> A copy of the order is not in evidence.

<sup>5</sup> October 27, 2004, was a Wednesday.

Staff further alleges that on October 27, 2004, Respondent or its agent, servant or employee knowingly possessed and/or permitted to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice, in violation of Texas law, including but not restricted to TEX. ALCO. BEV. CODE § 28.06.

#### **IV. EVIDENCE**

##### **A. Allegation No. 1**

Respondent's representative Ms. Harper stated on the record that she does not contest the allegation that after-hours consumption of alcoholic beverages occurred on the premises on October 27, 2004. She said Javamotion's manager had approved the going-away party, and had approved employees imbibing what they had bought from Javamotion before it closed at 9 p.m. Respondent and Staff stipulated on the record that the first alleged violation had occurred.

##### **B. Allegation No. 2**

###### **1. Testimony of Dorothy A. Harper**

Ms. Harper testified on Respondent's behalf that Javamotion's first sale of a liquor drink under its mixed beverages permit occurred on September 15, 2004. She described Javamotion as mainly a coffee shop and sit-down restaurant, with sandwiches, desserts, and pastries on the menu. She said alcoholic beverages represent less than 20 percent of the establishment's total sales. She said the venue hosts live music on Fridays and Saturdays, and has a pool table.

Ms. Harper said that although all employees had been certified as servers by TABC, it became clear to her after the October 27, 2004 going-away party that the employees were not taking the mixed beverages permit seriously. She said she met with TABC Agent Moore the day after the party and, at his suggestion, put up a fence and a sign advising that no alcoholic beverages are allowed in or out of the establishment.

Ms. Harper testified that on October 28, 2004, all employees were required to sign the Javamotion Alcohol Policies, which had previously been posted at the time clock and in the bar area, as a condition of continuing employment,<sup>6</sup> and that all new employees are required to sign the statement. She testified that Javamotion has not been the subject of any complaints since October 27, 2004.

## 2. Heather Lynn Stephens

Ms. Stephens, a former employee of Javamotion who attended the October 27, 2004 party, was called as a witness by TABC. She testified that she had asked Mr. Adams, who was not a Javamotion employee, to buy beer across the street—because it cost less than buying it at Javamotion—for them to take to a party elsewhere after attending the going-away party. She said she thought Mr. Adams had bought the beer and put it in her car, and only after police arrived at Javamotion did she learn that the beer was sitting next to the front counter. She said she did not see Mr. Adams bring the beer on to the premises.

When asked about her voluntary statement given on October 27, 2004,<sup>7</sup> Ms. Stephens clarified that the previous parties at Javamotion had been held after closing at 9 p.m., but not “after hours” at midnight or later, and that alcoholic beverages had not always been consumed at those parties. She did not testify as to whether the parties took place before or after Javamotion received its mixed beverages permit on July 29, 2004.

## 3. Sgt. Amando Valverde, Lockhart Police Department

Sgt. Amando Valverde, a Lockhart police officer who was called as a witness by TABC, testified that on October 27, 2004, he was on patrol after midnight when he spotted a man, later identified as Mr. Adams, leaning against a wall in the alley behind Lily’s Bar. He said he then saw

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<sup>6</sup> One of the policies is “No employee will allow the unauthorized sale or delivery of alcohol at Javamotion.” See Respondent’s Exhibit 1.

<sup>7</sup> TABC Exhibit 1.

Mr. Adams bolt into the area behind Javamotion. Officer Valverde said he followed Mr. Adams, and the back door of Javamotion was open, so he went inside, where he saw eight-to-ten people, but not Mr. Adams. He said he saw Ms. Stephens with a beer in her hand, and another person sitting at a table with a cold beer in front of her. He said he called for back-up, and continued to look for Mr. Adams. He said he came to a small "closet-type" room, where he found Mr. Adams hiding. He said Mr. Adams was argumentative, belligerent, and drunk, and threatened his job.

Officer Valverde said he does not remember seeing a six-pack of Corona on the premises.

#### **4. Officer Y. Torres, Lockhart Police Department**

Lockhart Police Officer Y. Torres, who was called as a witness by TABC, testified that he responded to Sgt. Valverde's call for back-up on October 27, 2004. He said that upon arrival at Javamotion, he saw Ms. Stephens standing outside. He said he saw Sgt. Valverde inside, and saw him have Mr. Adams come out of the small room.

Officer Torres said he met with Ms. Stephens and took her written statement. Although it is not in her voluntary statement, Officer Torres said Ms. Stephens told him they had bought Corona beer at the Exxon, and brought it back to Javamotion and put it with the rest of the alcoholic beverages in the cooler to keep it cold. Officer Torres testified he did not look inside the cooler, and could not say whether any Corona beer was found in the cooler. He said Ms. Stephens told him that most of the alcohol for the party was purchased during business hours from Javamotion, and the rest from other businesses. He said Ms. Stephens told him a couple of prior parties at Javamotion had occurred after midnight, with Mr. Harper's permission.

Officer Torres described Mr. Adams as highly belligerent and intoxicated. He said Mr. Adams kept saying either that he was the police chief of a town near Dallas, or that he was going to be the police chief of a town near Dallas, when in fact he works at a restaurant in Lockhart. Officer Torres said Mr. Adams had slurred speech, and was nearly falling. Officer Torres said Mr. Adams was a danger to himself.

## 5. Voluntary statements

### a. Ms. Stephens

Officer Torres took a voluntary statement from Ms. Stephens at 2:20 a.m. on October 27, 2004,<sup>8</sup> in which Ms. Stephens states:

Tonight was Jill Notgrass's last night of work @ Javamotion. After we closed @ 11:00, and had finished cleaning up the place, we were told it was ok to have a "party" down here for her, as she is leaving the state soon. I had Derek Adams buy me a six-pack of Corona @ Exxon on Hwy. 183 @ apx. 11:30 p.m. since I knew I wouldn't get off until after midnight. We all sat around and shot pool and finished the six-pack. When all this started we were all inside the building except for Derek Adams who was outside in the alley smoking a cigarette. It was around 12:10, 12:15 a.m. when we actually started drinking. We were inside Javamotion when the officers walked in. I have been employed here for almost 2 years (in March). This has happened maybe once or twice when I have been present.

### b. Michelle Robbins

Officer Torres took a voluntary statement from Michelle Robbins, a Javamotion employee, at 2:16 a.m. on October 27, 2004,<sup>9</sup> which says:

This evening I arrived at approximately 8:30-9 p.m. and consumed one beer, two White Russians. When the officer arrived I had just opened a beer that was given to me by Jill. She had purchased earlier in the evening. [sic] I was under the impression that as long as I was inside the building I could consume alcohol. I have been present approximately 3-5 times when there has been after hours consumption of alcohol. I have been employed here since around September 20 and my last day is this Friday. When I have been here after hours the employees have been drinking after they clock out at the end of the night. The manager has said no drinking outside after midnight

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<sup>8</sup> TABC Exhibit 1.

<sup>9</sup> TABC Exhibit 2.

and that we need to take it indoors. The liquor we had was also needed [sic] to be purchased before 11 p.m. when the establishment closed.

**C. Penalty enhancement**

TABC Agent Russell Moore testified that the penalty assessed in the Agreement and Waiver of Hearing signed March 15, 2004, included a 10-day suspension for the first allegation, and a five-day suspension for the second allegation, which is the minimum penalty for these violations under TABC policy. He said that at the time, he did not consider aggravating factors that would have led to an enhanced penalty.

Agent Moore testified that there were three aggravating factors related to the violations at issue in this proceeding that warrant enhancement of the minimum penalty. First, he said it is an offense for an intoxicated person, such as Mr. Adams, to be on the licensed premises, pursuant to TEX. ALCO. BEV. CODE ANN. § 104.01(5). Second, he said he considers it an aggravating factor that the October 27, 2004 after-hours party was not the first time employees had held an after-hours party on the premises. Last, he said it is an aggravating factor in his opinion that Mr. Harper, who is Respondent's vice-president, was on the premises when the violations occurred.

He recommended that Javamotion's permit be suspended for 20 days for the first alleged violation, and 10 days for the second alleged violation, for a total of 30 days, or that Javamotion be allowed to pay a \$300 per day civil penalty in lieu of suspension, for a total of \$9,000.

**2. TABC display screens<sup>10</sup>**

Respondent applied for its mixed beverages permit on July 27, 2004, and received it on July 30, 2004. Javamotion's renewed permit was issued July 30, 2005, and expires July 29, 2006.<sup>11</sup>

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<sup>10</sup> TABC Exhibit 5.

<sup>11</sup> TABC Exhibit 3.

TABC records indicate there has been one anonymous complaint against Respondent, which was resolved, and no violations other than the October 27, 2004 incident.

## V. ALJ'S ANALYSIS AND CONCLUSION

### A. First Allegation

Staff proved that alcoholic beverages were consumed on the premises after midnight on a weeknight in violation of Respondent's mixed beverages permit. Respondent admitted that Javamotion employees and guests held a party on the premises beginning after closing on Tuesday, October 26, 2004, and continuing past midnight on October 27, 2004. Respondent also admits that party-goers consumed alcoholic beverages on the premises past midnight, and that the party was sanctioned and attended by Mr. Harper, Respondent's vice-president.

### B. Second Allegation

Staff did not present sufficient evidence to prove that Respondent or its employee knowingly possessed or permitted to be possessed on the premises any alcoholic beverage not covered by an invoice. Neither of the police officers who testified saw a six-pack of Corona beer on the premises. Ms. Stephens' testimony regarding the presence of the Corona six-pack on the premises (that she thought Mr. Adams had put it in her car after buying it at the Exxon, and only after police arrived did she learn it was sitting next to the front counter) contradicts her voluntary statement (that the six-pack was finished by the party-goers). At the hearing, she did not seem to be sure of what had actually transpired on the night in question. While it is clear that Ms. Stephens asked Mr. Adams to purchase beer at the Exxon, it is not clear that she permitted him to bring it onto the licensed premises. There is no evidence that Respondent or any employee other than Ms. Stephens knew about Mr. Adams' purchase of the Corona beer, or permitted him to bring it onto the licensed premises. Therefore the ALJ finds the evidence regarding the second allegation to be insufficient to warrant a finding for TABC.

### C. Penalty

Staff asserts that although the minimum penalty for the alleged violations was assessed in the Agreement and Waiver of Hearing signed by Respondent's vice-president on March 15, 2005, there are aggravating circumstances that warrant enhancement. Staff states that the aggravating circumstances are that Mr. Harper, Respondent's vice-president, gave permission for and was present at the going-away party; that Mr. Adams, who was intoxicated, was on the licensed premises on October 27, 2004; and that after-hours parties with consumption of alcoholic beverages had been held on the licensed premises before October 27, 2004.

### **1. Mr. Harper's presence at the party**

It is uncontroverted that Mr. Harper gave employees permission to hold the going -away party on the premises, attended the party, and knew alcoholic beverages were being consumed on the premises after 12:15 a.m. in violation of the mixed beverages permit. The ALJ finds it particularly egregious that Mr. Harper was involved in the violation, because he is Respondent's vice-president and should not only be aware of after-hours requirements, but should be following the law. The ALJ finds Mr. Harper's participation in the violation to be an aggravating circumstance.

### **2. Intoxicated person on the premises**

It is also uncontroverted that Mr. Adams was intoxicated at the time police arrived at Javamotion, and that intoxicated persons are not allowed on the premises. However, there is no evidence that Mr. Adams was intoxicated on the premises prior to his fleeing the police officer and hiding in the "closet-type" room. The ALJ does not find flight from the police to be the kind of circumstance under which a permit holder should be liable for the presence of an intoxicated person on the premises. Therefore, the ALJ does not find Mr. Adams' presence on the premises to be an aggravating circumstance.

### **3. Prior parties on the premises**

While both Ms. Stephens and Ms. Robbins allude to previous parties in their voluntary statements, there is no evidence that the prior parties occurred after July 29, 2004, when Respondent obtained its mixed beverages permit, and before October 27, 2004, the date of the alleged violations. The ALJ finds that without evidence that the previous parties occurred while Respondent held the permit, there is no aggravating circumstance.

#### D. Conclusion

The ALJ is concerned that Staff seeks an enhancement based in part on Mr. Harper's participation in the party. Certainly Agent Moore was aware of Mr. Harper's role in the violation when the Agreement and Waiver was signed on March 15, 2005, yet a minimum penalty was assessed, and TABC apparently issued an order on March 24, 2005 adopting the minimum penalty. Respondent was granted a rehearing, and should not face a stiffer penalty, as a result of exercising due process rights, for information that was known to TABC on March 15, 2004. Therefore the ALJ recommends that the minimum penalty for the first violation be assessed, which is a 10-day suspension or a fine of \$1,500 in lieu of suspension.

### VI. FINDINGS OF FACT

1. Harper Unlimited, Inc., dba Javamotion (Respondent) is the holder of a mixed beverage permit (MB562101) issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 119 East San Antonio Street, Lockhart, Caldwell County, Texas.
2. A going-away party for one of Respondent's employees was held on the licensed premises beginning at about 11 p.m. on October 26, 2004, and continuing until about 12:47 a.m. on October 27, 2004, when a police officer arrived.
3. The police officer had followed Derek Adams, one of the party guests who was not Respondent's employee, from the alley behind Javamotion into the establishment, after Mr. Adams fled from him on foot.
4. Mr. Adams, who was intoxicated, hid from the police officer in a "closet-type" room on the licensed premises.
5. When the police officer entered the licensed premises, Respondent's employee Heather Stephens had a beer in her hand, and another person had a cold beer on the table in front of her.

6. The going-away party was held with the permission of Robert V. Harper, Respondent's vice-president, who was in attendance with other employees and their guests.
7. During the party, alcoholic beverages were consumed on the licensed premises after 12:15 a.m.
8. Some time between 11:30 p.m. on October 26, 2004, and 12:47 a.m. October 27, 2004, Mr. Adams brought a six pack of Corona beer that he had purchased across the street at Ms. Stephens' request onto the licensed premises, leaving the six pack, unopened, at the front counter, to be taken to another party later.
9. Neither Respondent nor any of Respondent's employees knew that Mr. Adams had brought the six pack of Corona beer onto the licensed premises.
10. On March 15, 2005, Mr. Harper and Russell Moore, TABC Agent, signed an Agreement and Waiver of Hearing related to the alleged violations at issue in this proceeding, in which a 15-day suspension of Respondent's permit, or a civil penalty of \$2,250 in lieu of suspension, was agreed upon.
11. On April 14, 2005, Dorothy A. Harper, Respondent's President and CEO, filed a motion for rehearing regarding the allegations at issue in this proceeding.
12. On April 19, 2005, TABC issued an order granting Respondent's motion for rehearing.
13. On February 9, 2006, TABC sent its Amended Notice of Hearing to Respondent.
14. The notice of hearing contained a statement of the location and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by TABC.
15. The hearing on the merits convened on February 23, 2006, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas, before Administrative Law Judge Sharon Cloninger. Respondent appeared through its President and CEO, Dorothy A. Harper. TABC appeared through W. Michael Cady, Staff Attorney. Evidence and argument were heard, and the record closed that same day.

**VII. CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01, 11.61, 61.71, and/or 32.01.
2. SOAH 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and 1 TEX. ADMIN. CODE (TAC) § 155.
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; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TAC § 155.55.
4. Based on the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE § 105.01, *et seq.*, by permitting possession and/or consumption of an alcoholic beverage (beer) on the premises during prohibited hours.
5. Based on the above Findings of Fact, Respondent or its agent, servant or employee did not knowingly possessed and/or permitted to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice, and therefore did not violate TEX. ALCO. BEV. CODE § 28.06.
6. Based on Conclusions of Law Nos. 4 and 5, and pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2), imposition of a 10-day suspension or a civil penalty of \$1,500 in lieu of suspension is warranted.

**SIGNED March 30, 2006.**



**SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**