

DOCKET NO. 585794

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| IN RE PETROKING L.L.C. ET AL | § | BEFORE THE |
| D/B/A PETROKING | § | |
| PERMIT NO. BQ441270 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| MONTGOMERY COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-00-1011) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 21st day of February, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened and adjourned on June 16, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 24, 2000. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, 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 Permit No. BQ441270 is herein **SUSPENDED**.

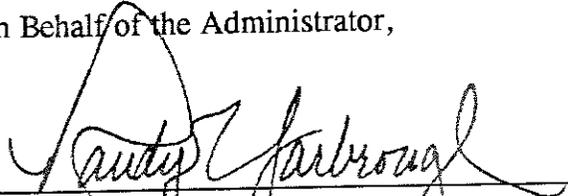
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$450.00** on or before the **18th day of April, 2001**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **three (3) days, beginning at 12:01 A.M. on the 25th day of April, 2001**.

This Order will become final and enforceable on March 14, 2001, 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 21st day of February, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE (713) 812-1001

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Joseph Piro, President
Petroking L.L.C. et al
d/b/a Petroking
RESPONDENT
18351 Kuykendahl, #275
Spring, Texas 77379
CERTIFIED MAIL NO. Z 280 626 997

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Beaumont District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 585794

REGISTER NUMBER:

NAME: PETROKING L.L.C. ET AL

TRADENAME: PETROKING

ADDRESS: 12310 Old Montgomery Road, Willis, Montgomery County, Texas 77378

DATE DUE: April 18, 2001

PERMITS OR LICENSES: BQ441270

AMOUNT OF PENALTY: \$450.00

Amount remitted \$ _____ Date remitted _____

If you wish to 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 18TH DAY OF APRIL, 2001, 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. 458-00-1011

| | | |
|--------------------------|---|-------------------------|
| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION | § | |
| | § | |
| VS. | § | OF |
| | § | |
| PETROKING L.L.C. ET AL | § | |
| D.B.A. PETROKING | § | |
| MONTGOMERY COUNTY, TEXAS | § | |
| (TABC Case No. 585794) | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this disciplinary action against Petroking, L.L.C. et al, Respondent, alleging one violation of the Texas Alcoholic Beverage Code. Staff alleged that Respondent's employee, with criminal negligence sold an alcoholic beverage to a minor in violation of the Texas Alcoholic Beverage Code (Code). Staff requested that Respondent's permit be suspended for a period of 7 days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$1050. The Administrative Law Judge (ALJ) recommends suspension of Respondent's permit for a period of 3 days. The ALJ further recommends that Respondent be given an opportunity to pay a civil penalty in lieu of a suspension in the amount of \$450.

I. PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here.

A hearing was held before Timothy J. Horan, Administrative Law Judge, on June 16, 2000, at the State Office of Administrative Hearings, Houston Office, 2020 North Loop West, Suite 111, Houston, Texas. Staff appeared and was represented by Christopher Burnett. Joseph Piro appeared on behalf of Respondent, Petroking L.L.C., Et Al. The record was closed on June 30, 2000, after the parties were allowed to submit proposed findings of fact and conclusions of law.

II. EVIDENCE

Respondent holds a Wine and Beer Retailer's Off-Premises Permit # BQ 441270, issued by the Texas Alcoholic Beverage Commission. Staff and Respondent stipulated to the facts and violation alleged in the notice of hearing that Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor in violation of Sec. 106.13 of the Code.

III. DISCUSSION

Respondent admitted the violation. He asserted that the employee was the manager of the yogurt station and was not authorized to sell alcohol. All of Respondent's employees had been TABC certified, with the exception of the one employee who sold the alcoholic beverage to the minor. The employee has since been fired. Respondent has a clean record with the Commission. Staff attorney concurs.

IV. CONCLUSION AND RECOMMENDATION

The Administrative Law Judge finds that on July 10, 1999, the Respondent's employee while on the licensed premises with criminal negligence sold, served or delivered an alcoholic beverage to a minor, in violation of Sec. 106.13 of the Code.

Particularly persuasive to the Administrative Law Judge were Respondent's admission of the allegation, the action taken after the incident (firing the employee), and his willingness to cooperate with Staff. Based on the foregoing, this proposal for decision recommends that Respondent's Wine and Beer Retailer's Off-Premises Permit be suspended for a period of 3 days. The ALJ further recommends that Respondent be given an opportunity to pay a civil penalty in lieu of the suspension in the amount of \$450.

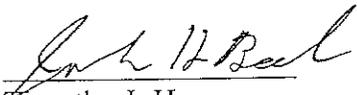
VI. PROPOSED FINDINGS OF FACT

1. On May 10, 2000, the Commission sent notice of hearing by certified mail, return receipt requested to Petroking, L.L.C. Et Al, Respondent. The notice of hearing informed the Respondent of the issues to be decided, the right to appear and be represented by counsel, the date and place of the hearing, and the statutes and rules involved. No challenges to the sufficiency of notice or jurisdiction were made.
2. A hearing in this case was held before Timothy J. Horan, Administrative Law Judge, on June 16, 2000 in the State Office Of Administrative Hearings, 2020 North Loop West, #111, Houston, Texas. Staff appeared and was represented by Christopher Burnett. Joseph Piro appeared on behalf of Respondent, Petroking L.L.C. Et Al.
3. Petroking L.L.C. Et Al, D.B.A. Petroking possesses a Wine and Beer Retailer's Off-Premises Permit, BQ-441270, issued by the Texas Alcoholic Beverage Commission.
4. On July 10, 1999, an employee of Respondent, on the licensed premises, sold an alcoholic beverage to a minor.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Ch. 5, Secs. 6.01 and 106.13 of the Texas Alcoholic Beverage Code (The Code).
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 pursuant to Tex. Gov't. Code Ann. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, Tex. Gov't. Ann. Sec. 2001.051 and 2001.052.
4. Based on finding of fact No. 4, an employee of Respondent violated Sec. 106.13 of the Code.
5. Based on the foregoing, Respondent's Wine and Beer Retailer's Off-Premises Permit No. BQ-441270 should be suspended for a period of 3 days, or in lieu of a suspension, to pay a civil penalty in the amount of \$450.

SIGNED this 24TH day of August, 2000.


for Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings