

DOCKET NO. 588338

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

AMBALAL KANDAS PATEL
D/B/A TWENTY FOOD STORE
PERMIT NO. BQ-423514
DALLAS COUNTY, TEXAS
(SOAH Docket No. 458-01-1286)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 5th day of June, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Mark S. Richards. The hearing convened on March 7, 2001, 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 May 7, 2001. 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.

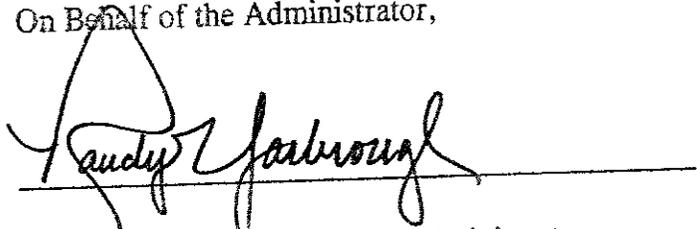
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BQ-423514 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on June 26, 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 5th day of June, 2001.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", is written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Mark S. Richards
Administrative Law Judge
State Office of Administrative Hearings
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Texas Alcoholic Beverage Commission
Legal Division

Dallas District Office
Licensing Division

DOCKET NO.458-01-1286

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

BEFORE THE STATE OFFICE

VS.

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DALLAS COUNTY, TEXAS
(TABC CASE NO. 588338)

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OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this enforcement action against Ambalal Kandas Patel D/B/A Twenty Food Store (Respondent) alleging that Respondent, its agent, servant or employee, with criminal negligence sold, served or delivered an alcoholic beverage to a minor. Staff recommended that Respondent's permit be canceled. Respondent appeared at the hearing representing himself and presented no evidence. This proposal for decision is in agreement with Staff's recommendation and recommends that the permit be canceled.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

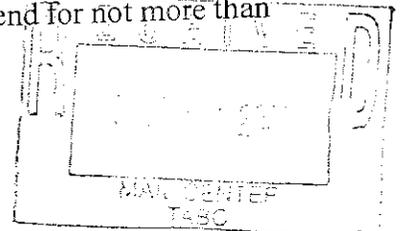
There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened on March 7, 2001, at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. The Staff of the Commission (Staff) was represented by its counsel, Dewey Brackin. The Respondent appeared representing himself; he was assisted by his associate, Rohan Paul, whom he requested be allowed to assist him due to Respondent's somewhat limited command of the English language. Staff agreed to this arrangement and Mr. Paul was allowed to assist after being administered an interpreter's oath.

II. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

There were two allegations in this proceeding, asserting that on August 18, 1999, and again on January 8, 2000, the Respondent or his agent, servant, or employee with criminal negligence sold, served or delivered an alcoholic beverage to a minor, in violation of the Texas Alcoholic Beverage Code ("the Code") §106.03(a) (Vernon 1995 and Supp. 2000). This section of the Code states:

...the commission or administrator may cancel or suspend for not more than



60 days a retail license or permit . . . if it is found, on notice and hearing, that the licensee or permittee with criminal negligence served, sold, dispensed, or delivered an alcoholic beverage to a minor in violation of this code . . .

Section 106.13 (b) of the Code states that for a second offense, the commission or administrator may cancel or suspend a license or permit for not more than three months, and "For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

Minor is defined at §106.01 of the Code as "a person under 21 years of age."

Section 106.03(a) of the Code states that "A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor."

Criminal negligence is defined at TEX. PENAL CODE ANN. §6.03(D) (Vernon 1994) as follows:

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 or care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

III. DISCUSSION

A. Evidence

1. License

Respondent's Wine and Beer Retailer's Off-Premise Permit Number BQ-423514 was issued by the Texas Alcoholic Beverage Commission to Ambalal Kandas Patel, doing business as Twenty Food Store, on November 25, 1997, and since that date has been continuously renewed.

2. Staff's Evidence

Staff's documentary evidence consisted of three exhibits. The first contained Respondent's Permit, a previous Waiver of Hearing dated August 17, 1999 executed by Respondent and agreeing to a suspension or payment of civil penalty for a Sale to Minor violation which took place on April 20, 1999, and a "Violation History" for Respondent's place of business reflecting, among other violations, sales to minors on April 20, 1999, August 18, 1999, and January 8, 2000. The second

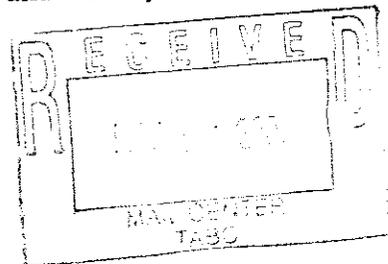


exhibit was a copy of a Driver's License issued to Crystal Lee Hollywood which expired on 1/31/00 and reflecting a date of birth (DOB) of 1/31/83, together with a full length photograph of Ms. Hollywood, (the photo on the License being unclear). The third exhibit was a copy of a Driver's License issued to Ms. Hollywood with an expiration date of 1/31/01, the same DOB, and a more legible photo of Ms. Hollywood.

Staff elicited testimony from Michael McGee, a detective in the vice section of Dallas Police Department, and Michael Mendez, a Dallas Police officer who works in the vice section.

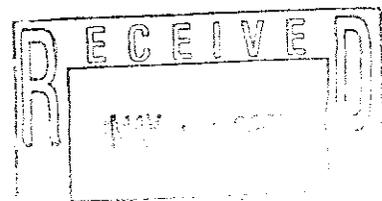
Detective McGee testified he was present during the August 18, 1999 incident. This was a "minor sting operation," in which a minor is sent into a place of business under supervision of an officer and instructed to attempt to purchase an alcoholic beverage. The minor carries a valid driver's license which is shown to the clerk upon request. The minor was a 16-year-old female named Crystal Hollywood whose date of birth, as listed on her driver's license, is January 31, 1983. Detective McGee identified TABC Exhibits 2 and 3 as being accurate likenesses of Ms. Hollywood on the date of the sting. Ms. Hollywood went to the store's cooler, picked up a six pack of Coors Lite Beer, took it to the counter and paid \$5.19 for it. Mr. Paul was the clerk who made the sale. She was not asked for identification, and she walked out and gave the beer to Detective McGee.

Officer Mendez was present during the January 8, 2000, incident, another minor sting operation at Respondent's premises utilizing the same minor, Ms. Hollywood. The clerk at this time was Eharat Patel. Officer Mendez stated that under the Dallas Police Department Vice Section guidelines, he is required to utilize a minor under the age of 18. Ms. Hollywood was still 16 at this time. Ms. Hollywood again went to the cooler, got a six pack of Coors Lite Beer, took it to the counter and paid \$5.40 for it. She was again not asked for any identification and she walked outside and handed the beer to Mendez. He identified TABC Exhibits 2 and 3 as accurate likenesses of Ms. Hollywood on the date of the sting and stated that the full-length photograph on Exhibit 2 had been taken on that date. He felt that Respondent had grossly deviated from the standard of care utilized by an ordinary person by not requesting identification from a customer who had such an obviously youthful appearance.

3. Respondent presented no evidence. The only testimony he elicited on cross-examination was from Detective McGee, who testified that the officer in charge of the sting does "not necessarily" go into the store immediately after the transaction occurs

B. Analysis

In this case, Respondent presented no documentary evidence and declined to present oral testimony when given the opportunity. While the Code, in Sections 106.13 (c) and 106.14, authorizes, but does not mandate, easing the sanctions against a retailer under certain conditions, none of those mitigating conditions are present here. In final argument, Respondent stated that after



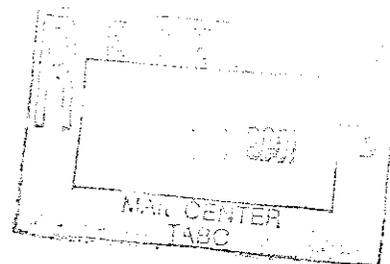
the second offense occurred, Respondent's employees had started checking ID's "pretty tight" and didn't accept out of state identifications anymore. Since there was no admissible evidence in the record to substantiate those claims, they couldn't be considered for anything more than an indication that Respondent was aware of the problem and perhaps was willing to try to do something about it. The main crux of the argument was that Respondent simply asked the ALJ to "give us another chance."

Both Mr. Patel and Mr. Paul were courteous and likeable gentlemen, and they made no attempt to mislead the Court or invent an excuse for their illegal conduct. Under these circumstances, if there was a way to be assured of future compliance with the law, the ALJ would be receptive to extending yet another opportunity to Respondent to prove he could run his business in a safe and responsible manner. However, the actions here were egregious. Not only did the employees sell alcohol to an obviously underage customer, but they failed to request identification.. Moreover, the offense was repeated three times in less than ten months, far less than the "36 consecutive months" addressed by the Code.

Even if the ALJ were allowed to consider the facts related by Respondent in closing argument to the effect that efforts were made to tighten security after the second offense, the fact is that some four months after the second offense, a third occurred, and this involved a sale to the same youthful-appearing minor involved in the second.

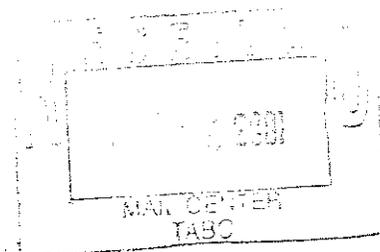
In view of the above, it appears that Respondent is, if not unwilling, unable to grasp the severity of this offense. Even adults are involved in tragedies and deaths resulting from alcohol consumption, and when a minor is provided with the unsupervised opportunity to consume, the combination may well become lethal. It is inevitable that such consumption will, sooner or later, lead to dire consequences, whether it be in the form of an automobile accident, drowning, violence, or some other unintentional and possibly well-meant result. Moreover, in some cases a predisposition to excessive drinking or alcoholism may lead to the ruin of a potentially productive life. In short, these are not mere technical violations.

Under these circumstances, the ALJ feels compelled to agree with Staff's contention that Respondent has failed in his duty to the public, and to cancel Respondent's Permit. There was simply no evidence of any decision or plan to stop these sales to minors if the license were permitted to remain in force; to the contrary it seems likely that more violations would occur.



IV. PROPOSED FINDINGS OF FACT

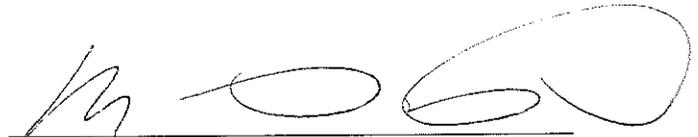
1. Ambalal Kanda Patel, d/b/a Twenty Food Store, holds Wine and Beer Retailers Off-Premise Permit No. BQ-423514 for the premises known as Twenty Food Store, located at 1914 Skillman Street, Dallas, Dallas County, Texas
2. On January 30, 2001, the Staff sent the Amended Notice of Hearing to Respondent by certified mail, return receipt requested, and all parties appeared.
3. The hearing on the merits was held on March 7, 2001 at the offices of the State Offices of Administrative Hearings, Dallas, Dallas County, Texas. The Staff was represented by Mr. Dewy Brackin. Respondent was represented by Mr. Ambalal Kandas Patel and Mr. Rohan Paul.
4. On August 18, 1999, Respondent's employee sold a six-pack of Coors Light Beer to Crystal Lee Hollywood.
5. On August 18, 1999, Crystal Lee Hollywood was sixteen years of age.
6. On August 18, 1999, Crystal Lee Hollywood appear to be under 21 years of age..
7. On January 8, 2000, Respondent's employee sold another six-pack of Coors Light Beer to Crystal Lee Hollywood.
8. On January 8, 2000, Crystal Lee Hollywood was sixteen years of age.
9. On January 2, 2000, Crystal Lee Hollywood appeared to be under 21 years of age.
10. Neither on August 18, 1999, nor on January 2, 2000 did Respondent's employees request any identification prior to consummating the sale.
11. On March 20, 1999, Respondent's employee sold an alcoholic beverage to a minor.
12. On August 17, 1999, Respondent waived a hearing and agreed to pay a civil penalty as a result of the March 20, 1999 violation.



V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to Chapter 5, §§ 6.01 and 106.13 of the Code (Vernon 1995).
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOVT. CODE ANN. , Chapter 2003 (Vernon Supp.1995).
3. Proper notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOVT CODE ANN, §2001.051 and §2001.052 (Vernon Supp. 1995).
4. Based on Finding of Fact Numbers 4 - 10, Respondent sold an alcoholic beverage to a minor in violation of TEX. ALCO. BEV.CODE ANN. §106.13 (Vernon 1995), on August 18, 1999 and again on January 8, 2000.
5. Based on Finding of Fact Numbers 4-11, Respondent sold alcoholic beverages to minors on at least three separate occasions between March 20, 1999 and January 8, 2000.
6. Based on the foregoing, CANCELLATION of Respondent's permit is warranted.

SIGNED THIS 7 day of May 2001.



Mark S. Richards
Administrative Law Judge
State Office of Administrative Hearings

