

**DOCKET NO. 589907**

IN RE TOOLZA L.P.	§	BEFORE THE
D/B/A TEAZER	§	
PERMIT NOS. MB471195, LB471196,	§	
PE471197	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-0838)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 4th day of May 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened and adjourned on March 21, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 10, 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 Respondent's Permit Nos. MB471195, LB471196 and PE471197 are herein **SUSPENDED**.

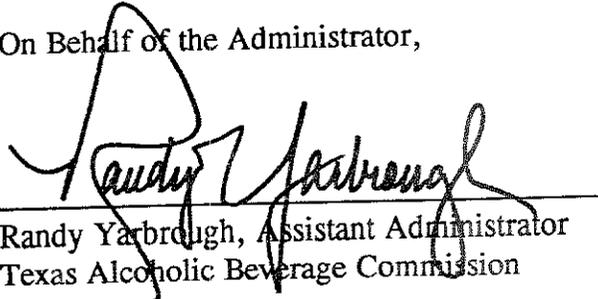
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$2,100.00** on or before the **8th** day of **August, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **fourteen (14) days, beginning at 12:01 A.M. on the 15th day of August, 2001.**

**This Order will become final and enforceable on May 25, 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 4th day of May, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
VIA FACSIMILE (713) 812-1001

Paul Decuir  
**ATTORNEY FOR RESPONDENT**  
P.O. Box 9687  
Houston, Texas 77213  
**CERTIFIED MAIL NO. 7000 1530 0003 1927 4101**

Toolza L.P.  
d/b/a Teazer  
**RESPONDANT**  
7002 Wild Violet Dr.  
Humble, Texas 77346-2066  
**CERTIFIED MAIL NO. 7000 1530 0003 1927 4118**

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office

DOCKET NO. 458-01-0838

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE  
COMMISSION §  
§  
VS. §  
§ OF  
§  
TOOLZA LP §  
D/B/A TEAZER §  
PERMIT NOS. MB-471195; LB-471196; §  
PE-471197, HARRIS COUNTY, TEXAS §  
(TABC CASE NO. 589907) § ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this action seeking a fourteen-day suspension on the permits held by Toolza LP d/b/a Teazer (Respondent). Respondent is a non-registered sexually oriented business. TABC alleged that Respondent violated TEX. ALCO. BEV. CODE ANN. (the Code) Section 11.61 (b) (13) on June 10, 2000 by allowing an intoxicated employee to be on the premises. The Respondent argued that the intoxicated person was not an employee. The Administrative Law Judge (ALJ) finds that the intoxicated person was an employee of respondent and recommends a fourteen-day suspension, or in lieu of suspension, a \$2,100.00 civil penalty.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are discussed only in the proposed findings of fact and conclusions of law.

On March 21, 2001, a public hearing was convened before Don Smith, ALJ, at the State Office of Administrative Hearings offices at 2020 North Loop West, Houston, Texas. Staff was represented by its attorney, Christopher Burnett. Respondent was represented by counsel, Paul Decuir. Evidence was received from both parties on that date. The record was closed on March 21, 2001.

**II. LEGAL STANDARDS AND APPLICABLE LAW**

TABC is authorized under Section 11.61 (b) (13) of the Code to cancel or suspend for not more than 60 days a permit if it is found that the permittee was intoxicated on the licensed premises. Section 1.04 (11) defines "Permittee" to include the holder of a permit, or an agent, servant, or employee of that person.

### III. EVIDENCE PRESENTED

Agent Kasmiroski and Agent Carr are TABC officers in the Houston District. On June 10, 2000, they went to investigate a complaint that Teazer was conducting a sexually oriented business illegally without a license. Teazer is a non-registered sexually oriented business, but operates legally by the dancers having latex painted or sprayed over their nipples.

After a thorough investigation, it was found that all the dancers had the latex on, but the investigation also found one of the dancers to be highly intoxicated. When Agent Kasmiroski presented his identification to the bartender at Teazer, a scantily clad woman walked up. Agent Kasmiroski and Agent Carr observed that the woman had a strong odor of an alcoholic beverage about her person, had red bloodshot eyes, was hard to understand because of her extremely slurred speech, had poor uncoordinated balance, and was swaying a lot, even after she took off her high heels. Agent Kasmiroski ask the woman to perform field sobriety tests. The woman could not do the Walk and Turn test, she could not do the One Leg Stand test, and she had all six clues of intoxication on the HGN test. She also admitted that she had consumed several drinks, mixing her drinks between a "mind eraser, a long island ice tea, and beer."

When the agents asked her if she was an employee of Respondent, she replied that she was an employee. She told the agents that "she was dancing tonight, but normally she waited tables." She was informed that she was being arrested and charged with "intoxicated employee on premises." Agent Carr (a female) took the woman to the dressing room so that she could change into her street clothes. The woman had a difficult time with the combination lock on the locker but managed to undo the lock. She put on her clothes and was escorted to jail.

It was the agents' opinion that the woman was an employee of Respondent because she said she worked for Respondent; she was dressed like a dancer; and she was provided a locker in the dressing room. The agents never saw the woman dance and never saw her take a drink. The agents did testify that the woman was polite and pleasant, but intoxicated and laughing a lot.

### IV. ANALYSIS

On June 10, 2000, Agent Kasmiroski and Agent Carr walked into Teazer, looked around, and went up to the bar. An extremely intoxicated dancer approached Agent Kasmiroski. There was one bartender on duty. The bartender must have known the dancer was extremely intoxicated because he was the only one making drinks.

The ALJ finds the woman was an employee of Teazer because she was not only a dancer for Respondent but was also a waitress. Although some dancers may be considered independent contractors, waitresses are not independent contractors. The woman was a dancer for Respondent because she was dressed in a bikini bottom, had latex covering the nipples on her breasts, and was scantily clad in a print dress. Further, Respondent provided the woman with her individual locker in the dressing room. And the woman stated she was an employee of Respondent who waited tables and danced occasionally. Respondent offered no proof that the woman was not an employee of Teazer.

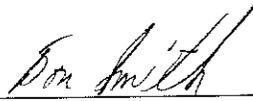
## V. FINDINGS OF FACT

1. Toolza LP holds Mixed Beverage Permit MB-471195, Mixed Beverage Late Hours Permit LB-471196, and Beverage Cartage Permit, PE-471197 for the premises known as Teazer located at 3301 Tidwell, Houston, Harris County, Texas.
2. On November 6, 2000, the Texas Alcoholic Beverage Commission (TABC) Staff sent notice of hearing to Toolza LP d/b/a Teazer (Respondent).
3. On March 21, 2001, a public hearing was convened at the State Office of Administrative Hearings, 2020 North Loop West, Houston, Texas. TABC attorney, Christopher Burnett represented Staff, and attorney Paul Decuir represented the Respondent. The hearing concluded, and the record closed on the day of the hearing, March 21, 2001.
4. Respondent is a non-registered sexually oriented business.
5. On June 10, 2000, an intoxicated woman was on the premises of Respondent.
6. The intoxicated woman was employed by Respondent as a dancer on June 10, 2000.
7. Respondent allowed the employee to become intoxicated on the premises on June 10, 2000, while performing services for the employer.

## VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters relating 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. § 2003.
3. The Respondent received proper and timely notice of the hearing, pursuant to TEX. GOV'T. CODE ANN. §§ 2001.051, 2001.052, and 2001.054 (c).
4. Based upon Finding of Facts 4-7, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (13) on June 10, 2000, by allowing an intoxicated employee to be on the premises.
5. The Respondent's permits should be suspended for fourteen days for knowingly allowing an intoxicated employee to be on the premises.
6. As provided in TEX. ALCO. BEV. CODE Ann. § 11.64, the Respondent should be allowed to pay a civil penalty of \$2,100.00 in lieu of suspension of the permits for fourteen days.

SIGNED this 10 day of April, 2001.



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Don Smith  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS