

DOCKET NO. 590057

IN RE MCGILL ENTERPRISES, INC.
D/B/A HE'S NOT HERE SALOON
PERMIT NOS. MB416582, LB416583,
PE416584

LUBBOCK COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-0094)

§
§
§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 27th day of March, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened and adjourned on February 12, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 5, 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 Nos. MB416582, LB416583 and PE416584 are herein **SUSPENDED**.

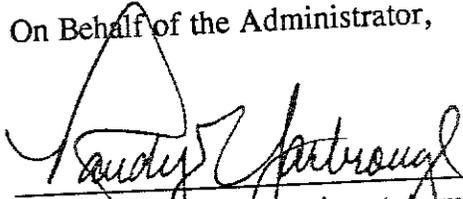
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,100.00** on or before the **28th day of June, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of fourteen (14) days, beginning at **12:01 A.M.** on the **5th day of July, 2001**.

This Order will become final and enforceable on **April 18, 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 27th day of March, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (806) 792-0149

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

Chuck Lanchart
ATTORNEY FOR RESPONDENT
1217 Avenue K
Lubbock, Texas 79401
VIA FACSIMILE (806) 765-8150 AND
CERTIFIED MAIL NO. 7000 0520 0024 8847 2049

McGill Enterprises, Inc.
D/b/a He's Not Here Saloon
RESPONDENT
3703 Ave Q 'B'
Lubbock, Texas 79412-1241
CERTIFIED MAIL NO. 7000 0520 0024 8847 2056

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Lubbock District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 590057

REGISTER NUMBER:

NAME: McGILL ENTERPRISES, INC. TRADENAME: HE'S NOT HERE SALOON

ADDRESS: 3703 Ave Q 'B', Lubbock, Texas 79412-1241

DATE DUE: June 28, 2001

PERMITS OR LICENSES: MB416582, LB416583 and PE416584

AMOUNT OF PENALTY: \$2,100.00

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 28TH DAY OF JUNE 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. 458-01-0094

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
MCGILL ENTERPRISES, INC.	§	
D/B/A HE'S NOT HERE SALOON	§	
PERMIT NOS. MB416582, LB416583	§	
& PE416584	§	
LUBBOCK COUNTY, TEXAS	§	
(TABC CASE NO. 590057)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action against McGill Enterprises, dba He's Not Here Saloon (Respondent) for allegedly selling or delivering an alcoholic beverage to an intoxicated person. Staff recommended Respondent's permits be suspended for fourteen days or that a civil penalty of one hundred and fifty dollars per day be assessed against Petitioner. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner did prove by a preponderance of the evidence that Respondent sold or delivered an alcoholic beverage to intoxicated persons. Respondent's permits should be suspended accordingly or the civil penalty be paid.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The hearing on this matter convened on February 12, 2001, before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Staff was represented by Christopher Burnett, Assistant Attorney General. Respondent appeared and was represented by attorney David Lanehart. The record closed on February 12, 2001.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. DISCUSSION

A. Testimony.

Bill Bates, Lubbock Police Department. Officer Bates initiated a standard inspection of the licensed premises on June 26, 2000 and observed Susan Puckett, a bartender, sell beer to two intoxicated persons. Bates observed the first intoxicated individual as he entered onto the license premises and that the individual swayed, had difficulty walking and was speaking louder than normal. He then observed Susan Puckett behind the bar in close proximity to this individual and that she asked him what he wanted to drink. She then served him a beer and took his money in payment. Bates also observed the second intoxicated individual as he entered and that he was swaying. Susan Puckett was within twelve inches of this individual when she asked him what he wanted. Bates administered field sobriety tasks to this individual and observed the following results: (1) alphabet recital: he left out two letters, had slurred speech and a strong odor of an alcoholic beverage on his breath; (2) one leg stand: he put his foot down, used his arms for balance and would not follow directions; (3) walk and turn: he would not follow directions and gave sufficient clues to show that he was intoxicated. Officer Tracy Taylor administered field sobriety tasks to the first intoxicated patron, and both patrons were arrested for public intoxication.

Gwen McGill, principal in McGill Enterprises, owner of He's Not Here Saloon. Ms. McGill testified that all of the bartenders employed on the licensed premises were TABC certified, including Susan Puckett. Puckett was a new employee who had only worked for McGill Enterprises for a few days before her arrest for serving alcohol to an intoxicated person on the licensed premises and she never returned to work there.

B. Analysis.

Staff alleged that Respondent's employee, Susan Puckett, served an alcoholic beverage to two intoxicated persons on June 26, 2000. Pursuant to TEX. ALCO. BEV. CODE §11.61(b)(14), the Commission may suspend or cancel a permit if it finds that the permittee sold or delivered an alcoholic beverage to an intoxicated person. Section 1.04(11) defines a "Permittee" as a person who is the holder of the permit or an agent, servant, or employee of that person.

In this case, there is no dispute that Susan Puckett was an employee of the Permittee or that she sold an alcoholic beverage to the two allegedly intoxicated patrons. The only evidence offered clearly shows that the two patrons were intoxicated and that Puckett was in close enough proximity to them to observed their

obvious intoxication. Staff clearly proved that Puckett, as Respondent's employee, served alcoholic beverages to these two intoxicated persons.

III. FINDINGS OF FACT

1. On July 24, 1997, the Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit No. MB-416582, a Mixed Beverage Late Hours Permit No. LB-416583 and a Beverage Cartage Permit No. PE-416584, which have been continuously renewed, to Respondent for the premises known as He's Not Here Saloon, 3703 Avenue Q 'B", Lubbock, Lubbock County, Texas.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated September 20, 2000. The hearing was continued and reset by the Court for February 12, 2001.
3. The hearing was convened on February 12, 2001, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent appeared and was represented by attorney David Lanehart. Christopher Burnett, Assistant Attorney General, represented Staff.
4. On June 26, 2000, Susan Puckett was employed by Respondent as a bartender at the licensed premises.
5. On that date, an individual who swayed, had difficulty walking and talked louder than normal entered the licensed premises and approached Puckett, who asked what he wanted to drink.
6. On the same day, a second individual who swayed entered the licensed premises and was also asked by Puckett what he wanted to drink.
7. Officer Bill Bates of the Lubbock Police Department was on the licensed premises and observed that both individuals were obviously intoxicated and were served alcoholic beverages by Puckett.
8. Both individuals were arrested for public intoxication after they were given field sobriety tasks to determine that they were intoxicated.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61 (Vernon 2000).

2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).
4. Based upon Finding of Facts Nos. 4-8, Respondent's employee sold an alcoholic beverage to an intoxicated person.
5. Based on the foregoing, suspension of Respondent's Mixed Beverage Permit No. MB-416582, Mixed Beverage Late Hours Permit No. LB-416583 and Beverage Cartage Permit No. PE-416584 for a period of fourteen days is warranted.
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of one hundred and fifty dollars for each day that the permits would be suspended.

SIGNED this 5th day of March, 2001.



B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS