

DOCKET NO. 595737

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|----------------------------------|---|---------------------|
| IN RE SUNG YONG CHOI | § | BEFORE THE |
| D/B/A JACKPOT SUSHI SPORTS GRILL | § | |
| PERMIT NO. MB-486893 & LB-486894 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| EL PASO COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-02-1546) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 14th day of May, 2002 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis Lopez. The hearing convened on March 21, 2002, 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 April 15, 2002. 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/License Nos. MB-486893 & LB-486894 are hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$3,000.00 on or before the 24th day of July, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of twenty (20) days, beginning at 12:01 A.M. on the 31st day of July, 2002.

This Order will become final and enforceable on June 4, 2002, 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 14th day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Sung Yong Choi
d/b/a Jackpot Sushi Sports Grill

RESPONDENT

9009 Galena Dr.

El Paso, Texas 79904-1012

CERTIFIED MAIL NO. 7001 2510 0000 7278 7704

G. Danny Mena

ATTORNEY FOR RESPONDENT

3233 N. Piedras Street

El Paso, Texas 79930

VIA FACSIMILE: (915) 564-1390

Administrative Law Judge

State Office of Administrative Hearings

El Paso, Texas

VIA FACSIMILE: (915) 834-5657

Dewey A. Brackin

ATTORNEY FOR PETITIONER

Texas Alcoholic Beverage Commission

Legal Division

El Paso District Office

Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595737

REGISTER NUMBER:

NAME: Sung Yong Choi

TRADENAME: Jackpot Sushi Sports Grill

ADDRESS: 9487 Dyer Street, El Paso, El Paso County, Texas

DATE DUE: July 24, 2002

PERMITS OR LICENSES: MB-486893 & LB-486894

AMOUNT OF PENALTY: \$3,000.00

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 24TH DAY OF JULY, 2002, 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.

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| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE STATE OFFICE |
| | § | |
| | § | |
| VS. | § | |
| | § | OF |
| | § | |
| SUNG YONG CHOI | § | |
| D/B/A JACKPOT SUSHI SPORTS GRILL | § | |
| MB-486893, LB-486894 | § | ADMINISTRATIVE HEARINGS |
| EL PASO COUNTY, TEXAS | § | |
| TABC NO. 595737 | § | |

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Staff) brought this action against Sung Yong Choi (Respondent), doing business as Jackpot Sushi Sports Grill. The Staff alleged that Respondent committed a violation of the Texas Alcoholic Beverage Code (the Code) and requested a suspension of Respondent's permits for 60 days with a civil penalty of \$150 per day. This proposal recommends that Respondent's permits be suspended for 20 days with a civil penalty of \$150 per day.

The hearing on the merits began on March 21, 2002, at the State Office of Administrative Hearings, 401 East Franklin Avenue, Suite 580, El Paso, Texas. The Staff appeared through attorney Dewey Brackin. Respondent appeared through attorney Daniel Mena. Administrative Law Judge Louis Lopez presided. The record was closed on that day.

Since there were no contested issues related to jurisdiction or notice, those matters are set out below in the Findings of Fact and Conclusions of Law.

I. LEGAL PROVISIONS

The following provisions are relevant to this case:

Code Section 28.11 (Vernon 1995 and Supp 2001). **BREACH OF PEACE.** The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his

improper supervision of persons permitted to be on the licensed premises or on premises under his control.

CODE §11.64(a) (Vernon 2001). **ALTERNATIVES TO SUSPENSION, CANCELLATION.** (a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section . . . 28.11 . . . , in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules addressing when suspension may be imposed pursuant to this section without the opportunity to pay a civil penalty. In adopting rules under this subsection, the commission shall consider the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances concerning the violation, and any past violations of this code by permittee or licensee. In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may be not less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended.

.....

16 TEXAS ADMINISTRATIVE CODE (TAC) §37.61 (West 2001).
Suspensions.

.....

(b) In determining whether to deny a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator shall consider:

- (1) the type of permit or license held by the violating licensee or permittee and whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;
- (2) the type of violation or violations charged;
- (3) the licensee's or permittee's record of past violations; and
- (4) any aggravating or ameliorating circumstances.

(c) Aggravating or ameliorating circumstances may include but are not limited to:

- (1) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;

- (2) the number, kind and frequency of violations of the Alcoholic Beverage Code and rules of the commission committed by the licensee or permittee;
- (3) whether the violation caused the serious bodily injury or death of another; and/or
- (4) whether the character and nature of the licensee's or permittee's operation are reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission.

II. EVIDENCE

The only exhibit introduced into evidence by the Staff was a set of documents related to Respondent's permits. Respondent introduced three documents: two Texas district court orders dismissing criminal charges and a letter of representation from an attorney stating he was representing Sammy Jeong in a claim for personal injuries. The Staff called two witnesses: Sammy Jeong and El Paso Police Detective Pat Castillo. Respondent called two witnesses: Hunny Battle and herself. All exhibits were admitted without objection. The basis for this case was a claim by Sammy Jeong that he was assaulted in the Jackpot Sushi Sports Grill (the Jackpot). There was conflicting testimony in connection with the assault and with what happened in the next few hours.

Sammy Jeong

Sammy Jeong testified that about 10:30 p.m. on Saturday, April 28, 2001, he went to have dinner with two friends at the restaurant of the Jackpot. The Jackpot consists of a restaurant and a bar which are located in different parts of the ValuLodge Motel. Young Choi and Kevin Baek were seated at a nearby table. Mr. Choi is the husband of Respondent, and Mr. Baek appeared to be the manager. Mr. Jeong said he never saw Respondent at the Jackpot at any time that night. Mr. Jeong and Mr. Choi were very good, long-time friends. About 11:30, Respondent's brother, Mr. Yong, came into the restaurant and brought a full bottle of whiskey for all to drink. He got into a heated argument with Mr. Jeong over a trademark question related to Mr. Yong's downtown business. Mr. Choi joined in the argument. According to Mr. Jeong, Mr. Choi tended to become argumentative and even violent after drinking alcohol. They eventually went outside to argue, but Mr. Jeong was not clear on where they were exactly--outside the building or outside the restaurant and in the bar. Mr. Jeong eventually went into the bar, and Mr. Yong went home. Mr. Jeong's two friends who had come to eat with him also went home.

Mr. Baek offered Mr. Jeong a Miller Lite beer, which he accepted. At one point, he said no one else was in the bar and at another point he said about 20 people were in the bar. In conversation at a table in the bar, Mr. Jeong called Mr. Choi, "*Tang chin.*" This is translated into English as something like "hey, you." Mr. Jeong said he meant no offense by the phrase, but Mr. Choi was offended and asked why he had called him that. Mr. Jeong testified that Mr. Baek then started asking him why he had said *tang chin* to him. Mr. Jeong was not clear on whether Mr. Baek was mad because Mr. Jeong had called him *tang chin* or whether he was mad because he had called Mr. Choi *tang chin*. Mr. Baek

slapped him on the back of the head over the *tang chin* reference. Mr. Jeong put his hand up to stop any more slaps and got up.

At this point in Mr. Jeong's testimony, Mr. Brackin had to prod him twice to go on to describe how the fight had taken place. He said Mr. Baek picked him up by the lapels of his coat and threw him on the floor, judo-style. Mr. Baek picked him up again by his coat lapels and threw him on the floor. He then started kicking him in all parts of the body while Mr. Jeong lay on the floor. At that point, Mr. Choi also started kicking him. Mr. Jeong said he could not remember what exactly happened then. He thought he remembered being put on a table. He thought black people had been involved in picking him up, taking him to the door of the building, and throwing him through the air like a trash can onto the concrete sidewalk. Mr. Jeong thought the assault continued for five minutes.

Mr. Jeong lay on the sidewalk for a long time. Eventually, Mr. Choi came out and offered to take him home. He apologized to Mr. Jeong for what had happened. Mr. Jeong accepted a ride home and invited Mr. Choi to come in to his house. It was about 2:00 a.m. They drank and talked for 40 minutes, according to Mr. Jeong. He did not complain or even mention to Mr. Choi about being beat up at the Jackpot. He said he didn't complain because the two were very good friends. About 7 a.m. Mr. Jeong called a friend because he was hurting very badly. He said he could not walk well enough to even get to the bathroom. His friend then called an ambulance. Mr. Jeong spent 11 hours at the hospital. It was discovered the same foot had been broken that had been broken two years previously in an automobile accident. He also had abrasions and bruises on his torso, back, and face.

Pat Castillo

El Paso Police Detective Pat Castillo testified that she investigated the assault after Mr. Jeong filed a complaint. She interviewed him four days after the assault on Wednesday, May 2nd. Mr. Jeong came with crutches and a cast on his lower leg. She observed that he had scratches and abrasions on his arms, chest, legs, neck, and face. It was only after Mr. Brackin asked her if she had seen any bruises that she mentioned seeing bruises around some of the abrasions. Detective Castillo received information over the telephone from the hospital Mr. Jeong had entered, but she never tried to obtain any records. No hospital records were introduced into evidence at the hearing. Her testimony did not mention that Mr. Jeong claimed being picked up by his coat lapels by Mr. Baek. She said Mr. Jeong had told her Mr. Baek had hit him behind the head. Mr. Jeong had gotten up to fend the blow, they had struggled, and Mr. Baek punched him. Mr. Choi had started arguing with Mr. Jeong at this point, but Mr. Jeong was not clear on what the argument was about. Both Mr. Choi and Mr. Baek had then proceeded to punch and kick him. Two black men had then thrown him out of the building onto the sidewalk. Detective Castillo said she found Mr. Jeong very credible when she interviewed him and so did not go to the Jackpot to try to talk to anyone.

Hunny Battle

Hunny Battle, a security guard employed by the ValuLodge, was called to testify by Respondent. He said he helped Georg, a promoter working for the bar, escort Mr. Jeong from the bar to the outside. Mr. Battle said he never even touched Mr. Jeong while walking him out, which he thought happened about 1:30 a.m. Georg was German and Mr. Battle black. Mr. Baek asked Mr. Battle to take a glass of water to Mr. Jeong. Mr. Jeong was sitting outside when Mr. Battle gave him the glass of water, and he immediately threw it down on the pavement. Mr. Battle thought Mr. Jeong was drunk.

Respondent

Respondent testified that Mr. Jeong and his family hated her family. They wanted to ruin her business, and consequently, Mr. Jeong was fabricating the story that he had been assaulted at the Jackpot. He had taken several steps to hurt her, including the filing of criminal complaints against her husband and Kevin Baek, the threatened filing of a personal injury lawsuit, and a complaint with the Staff which brought this cause of action. She said that *tang chin* was not necessarily a gentle phrase but could be used in an offensive manner. She was at the Jackpot around 7 p.m. on the night in question but soon left and was not present at any time that Mr. Jeong was there. She also remembered talking to her husband on his cell phone at 4:10 a.m., at which time he said he was at Mr. Jeong's house. During that call, Mr. Jeong got on the phone and talked to her. He told her she had a very nice husband. Mr. Choi did not get home until 5 a.m. and had come directly from Mr. Choi's house. The two homes are near each other.

Respondent had two orders from the 210th District Court of El Paso County, Texas admitted into evidence. They dismissed cases involving criminal charges of aggravated assault against Young Choi and Kevin Baek. The date of the orders was September 21, 2001. The reason for the dismissal that was checked off in the form order was "Other," but no explanation was given.

Respondent had a retail apparel business in another part of town. Several months before the hearing her husband had gone to manage the retail business and she had started to manage the Jackpot. This was done because he was drinking too much at the bar, as was his old friend, Mr. Baek. The Chois had then become involved in a divorce, and Mr. Choi no longer had anything to do with the Jackpot. She feared she could not trust him to testify truthfully in this case and so did not contact him to be a witness. He was also in bed convalescing from a serious traffic accident. Mr. Baek was reportedly in Los Angeles and could not be contacted. Respondent claimed Mr. Baek had not been a manager or an employee. Mr. Choi sometimes provided him a free room at the hotel. She said there had never been any fights at the Jackpot and that employees were instructed to treat customers courteously.

Respondent testified that she did not earn much income from her business. She thought the penalties proposed by the Staff--the suspension of her business for 60 days

or the alternative civil penalty of \$9,000--would force her to close down her business permanently.

III. DISCUSSION

Violation

The evidence showed that Kevin Baek and Young Choi assaulted Sammy Jeong at the Jackpot, but it was not as severe as Mr. Jeong claimed. There were a number of significant contradictions in the testimony. Several of Mr. Jeong's allegations were not believable and, in contrast several of the opposing assertions of Hunny Battle, the security guard, and of Respondent were credible. In observing Mr. Jeong testify, it appeared he had trouble remembering several of the details of the assault.

Mr. Jeong was not clear on whether Mr. Choi was present during the time that he was talking with Mr. Baek in the bar right before the assault took place. He said at one point in his testimony that he was and in another he seemed to say that he was not. He testified, after prodding, that Mr. Baek had twice picked him up by the lapels of his coat and thrown him on the floor, but it is hard to see how Mr. Baek could do this. While Mr. Jeong was thin and looked to be about 5'5" tall, it would still seem difficult to be able to simply pick him up by the lapels and muster enough strength to throw him judo-style on the floor with much force. Supposedly this happened twice. There was no testimony on Mr. Baek's size or strength. It seems that it would have been very hard to gain enough leverage to throw a person down by picking them up by the lapels. While Mr. Jeong said he held his hand up to defend himself when Mr. Baek first struck him, it is hard to believe that he acquiesced completely while Mr. Baek picked him up and threw him down twice. It is more likely that Mr. Baek punched him, as he told Detective Castillo. It is also hard to see that he just lay on the ground for almost five minutes while Mr. Baek and Mr. Choi kicked him continuously. He testified at one point that there were about 20 people in the bar. Perhaps he could have gotten up and run to them to get them to intervene. It is also hard to see how Mr. Baek and Mr. Choi would have the nerve to continue to kick him while on the ground for almost five minutes in front of so many potential witnesses.

Mr. Jeong did not have clear recollection of what happened after that. He thought he was put on top of a table and thought he remembered black people picking him and throwing him out the door through the air. Mr. Battle was more credible on this point when he said he helped escort out Mr. Jeong without incident. Mr. Jeong was able to walk out on his own two feet. He was also able to walk in and out of Mr. Choi's car in getting to his house. This brings into question the allegation that his foot was reinjured in the assault. Mr. Jeong never mentioned whether his foot hurt during or soon after the assault.

It is also difficult to understand how Mr. Jeong would invite Mr. Choi into his house after suffering a savage beating, even if Mr. Choi did apologize to him. If Mr. Choi had participated in beating him severely earlier, why might he not get angry again and strike him? Mr. Jeong claimed that Mr. Choi became aggressive after he had been drinking

alcohol. At the very least, Mr. Jeong would have discussed the incident with him or mentioned it to his wife, the Respondent, when he talked to her on the telephone at 4:10 a.m.

It seemed that Mr. Jeong's foot was the main reason for his deciding to go to the hospital. He said he could not walk to go to the bathroom in his house, yet he seemed to have had no problem in walking from the bar to the door and to and from Mr. Choi's car. If his foot was broken at the bar, it is hard to believe that he would have been able to walk readily from about 1:30 a.m. to almost 7 a.m. There is the possibility that Mr. Jeong fell and reinjured his foot in his home after Mr. Choi left.

Detective Castillo testified that she observed numerous scratches on Mr. Jeong, but she did not see him until four days after the assault, so there is the possibility that at least some of the scratches were made after the night of the assault. No explanation was offered on how he could have gotten so many scratches. For instance, he never testified or reported that anyone had scratched him with their fingernails. Perhaps the scratches were made by the sides of the shoes of the men when they kicked him, but no evidence was presented to support that. While Detective Castillo testified that the hospital had told her that Mr. Jeong had received abrasions and bruises, she did not say that hospital personnel had mentioned scratches. It was she who observed scratches. The evidence on the scratches occurring at the Jackpot is weak. All of this weighs against any conclusion that Mr. Jeong was severely beaten in the Jackpot.

In spite of the problems in Mr. Jeong's testimony, it was credible enough to believe that Mr. Baek punched him, that he fell to the floor, and that Mr. Baek and Mr. Choi kicked him briefly while on the floor. The assault lasted for much less than five minutes, and no one physically threw him out through the air. Mr. Jeong's supposedly verbal offense of Mr. Choi was not sufficient provocation nor was there any other evidence that Mr. Jeong provoked the assault. Mr. Choi's apology to him and his taking Mr. Jeong home adds credence to the assault taking place. Since the employees of Respondent committed the assault, Respondent is clearly liable for a breach of the peace. Respondent's sole defense was that Mr. Jeong had falsely alleged an assault in order to financially ruin the Jackpot because he hated her family. While she may be correct in saying that Mr. Jeong exaggerated his injuries in order to hurt her family, it is too difficult to believe that no assault took place and that instead he plotted to cause all his injuries just to harm her through the legal system.

Sanction

Under the Code, a permittee who commits the violation of breach of the peace can be denied the right to pay a civil penalty in lieu of suspension. The TABC rules delineate the considerations to be reviewed in allowing the payment of a civil penalty, 16 TAC §37.61 (b) and (c), *supra*. Code §11.64(a) requires consideration of the economic impact a penalty would have on a permittee.

Respondent holds a Mixed Beverage Permit as well as a Mixed Beverage Late Hours Permit. The Jackpot is only a partial source of her business. She has a clean record of past violations except for minor ones. There have been no other claims of any breach of the peace. On the other hand, there has not been a long time in which to observe the Jackpot since it has only been open since January, 2001.

Respondent's conduct in connection with the breach of the peace was not intentional or reckless. She was not even present on the night the breach occurred. The conduct of her employees clearly was intentional. The evidence was inconclusive that the violation caused serious bodily injury to Mr. Jeong because it was not clear that his foot was broken or that he suffered a large number of scratches because of the assault. He had broken the foot in the same place in an auto accident only two years earlier.

At the hearing, when Respondent was asked how the employees were instructed in regard to fights in the Jackpot, she said they were instructed to be courteous to customers at all times. She said there were never any fights at the Jackpot. An aggravating circumstance is that the breach of the peace was unjustifiably caused by employees and not just patrons of the Jackpot. An important ameliorating circumstance, in addition to those mentioned above, is that those employees will not be allowed to work at the Jackpot in the future.

Respondent testified that the Jackpot did not receive much revenue. The Staff offered no evidence on the Jackpot's income. The penalty proposed here is intended to reflect the seriousness of the violation while avoiding an excessive economic impact on Respondent.

IV. CONCLUSION

Based on a preponderance of the evidence, a breach of the peace occurred at the Jackpot in violation of the Code. As a consequence, it is proposed that Respondent's permits be suspended for 20 days, with a civil penalty, in lieu of suspension, of \$150 per day for a total of \$3,000.

FINDINGS OF FACT

1. Sung Yong Choi (Respondent), doing business as Jackpot Sushi Sports Grill, is the holder of Mixed Beverage Permit No. MB-486893 and Mixed Beverage Late Hours Permit No. LB-486894, issued by the Texas Alcoholic Beverage Commission (TABC) on January 26, 2001. The permits have been continuously renewed.
3. On September 17, 2001, the staff of TABC (the Staff) sent a notice to Respondent that TABC was seeking to cancel or suspend Respondent's permits based on the Texas Alcoholic Beverage Code (the Code) violation of breach of the peace.

4. On February 1, 2002, the Staff sent a Notice of Hearing by certified mail to Respondent. The hearing notice specified the time, place, and nature of the hearing; the legal authority for the hearing; and the matter to be determined.

Violation

5. On Saturday, April 28, 2001, Sammy Jeong was served food, whiskey, and a Miller Lite beer at the Jackpot Sushi Sports Bar (the Jackpot) in El Paso, Texas.
6. Kevin Baek and Young Choi, Respondent's husband, were on duty as employees of the Jackpot.
7. Kevin Baek punched Sammy Young without provocation, knocking him to the floor, and he and Young Choi then kicked him several times.
8. Mr. Jeong suffered bruises and scratches from the assault.

Sanction

9. Respondent has a license that allows the sale of alcoholic beverages at late hours.
10. The sale of alcoholic beverages is a partial source of Respondent's business.
11. A breach of peace is a serious violation that should be avoided especially when committed by employees.
12. Respondent's record shows only minor past violations of the Code.
13. Respondent's conduct was neither intentional nor reckless.
14. Respondent's employees' conduct was intentional.
15. The assault did not cause serious bodily injury or death.
16. Respondent has always instructed her employees to treat customers courteously, and there are no fights at the Jackpot.
17. It has been several months since Respondent's employees who committed the assault worked at the Jackpot, and they will not work there in the future.
18. A penalty of more than a 20-day suspension or more than \$3,000 would have excessive and permanent economic impact on Respondent's business.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. [CODE] §§5.31--5.44.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to CODE §5.43(a) and TEX. GOV'T. CODE ANN. §§2003.021 and 2003.042.
3. Service of proper notice of the hearing was made on Respondent pursuant to CODE §11.63 and the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§2001.051 and 2001.052.
4. On August 10, 2000, Respondent violated CODE §28.11 when her employees caused a breach of the peace by assaulting Sammy Jeong.
5. Under the criteria in CODE §11.64(a) and 16 TEXAS ADMINISTRATIVE CODE §37.61, Respondent is entitled to pay a civil penalty in lieu of a suspension.
6. Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Respondent's permit and license both be suspended for a period of 20 days with a civil penalty, in lieu of a suspension, of \$150 per day for a total of \$3,000.

SIGNED this 15th day of April, 2002.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS