

DOCKET NO. 458-03-0393

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
PETITIONER AND PROTESTANT**

VS.

**LIENG XAYASENG D/B/A PAKXE CAFE,
RESPONDENT
DALLAS COUNTY, TEXAS
TABC CASE NO. 595829**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

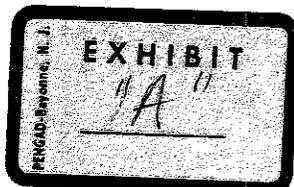
PROPOSAL FOR DECISION

Lieng Xayaseng d/b/a Pakxe Café (Respondent) has applied for a Wine and Beer Retailer's Permit, a Retail Dealer's On-Premises Late Hours License, and a Food and Beverage Certificate. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner and/or Protestant) protest issuance of this permit, license, and certificate, alleging that Respondent will operate its business in a place or manner which warrants the refusal of the permits based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency and allegedly made a false statement or misrepresentation in her original application. This proposal for decision recommends that the applications be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.46(a)(8), 11.61, 25.04, 25.13, 61.47, and 61.71. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On October 8, 2002, Petitioner issued its Notice of Hearing, directed to Respondent at 4315 Bryan Street, Dallas, Texas 75204-6738, which was received by Respondent on October 10, 2002. A Supplemental Notice of Hearing was sent to Respondent's same address on November 5, 2002, and received by Respondent on November 12, 2002. Each receipt was evidenced by a signature on the return receipt. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. The Notice of Hearing also contained the following language in 12-point



or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. On November 14, 2002, a hearing convened before SOAH Administrative Law Judge (ALJ) Cindy T. Greenleaf at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on November 14, 2002.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notice of Hearing and in the Supplemental Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

III. PROPOSED FINDINGS OF FACT

1. Respondent, Lieng Xayasang d/b/a Pakxe Café, filed an application with the Texas Alcoholic Beverage Commission (TABC) for a Wine and Beer Retailer's Permit, a Retail Dealer's On-Premises Late Hours License, and a Food and Beverage Certificate for the premises located at 4315 Bryan Street, Dallas, Dallas County, Texas.
2. On October 8, 2002, Petitioner issued its Notice of Hearing to Respondent. This Notice of Hearing was received by Respondent on October 10, 2002.
3. A Supplemental Notice of Hearing was sent to Respondent on November 5, 2002, which was received by Respondent on November 12, 2002.
4. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The Notice of Hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
6. On November 14, 2002, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not

represented at the hearing. After presentation of evidence regarding jurisdiction and notice, the record closed on November 14, 2002.

7. Respondent will conduct her business in a place or manner detrimental to the general welfare, health, peace, morals, safety, and public sense of decency.

8. The applicant permitted the unlawful use of a permit or license at another licensed premises, engaged in a subterfuge at another licensed premises, stored alcoholic beverages on another licensed premises with an alcoholic content above 17% in violation of the permit, stored imported alcoholic beverages with unauthorized labels at another licensed location, stored empty and partially empty open containers, stored pornographic materials at another licensed location, and failed to keep invoices for alcoholic beverages other than beer on another licensed premises.

9. The premises are located within 300 feet of one or more churches.

10. The City of Dallas rescinded its approval of the application.

11. Respondent, on or about April 5, 2001, made a false statement or a misrepresentation in her original application, by representing falsely that the licensed premises was not located within 300 feet of a church.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding. TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.46(a)(8), 11.61, 25.04, 25.13, 61.47, and 61.71.

2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.

3. Proper and timely notice of the hearing was effected upon Respondent. TEX. GOV'T CODE ANN. ch. 2001.

4. The hearing proceeded on a default basis. 1 TEX. ADMIN. CODE § 155.55.

5. The place or manner in which Respondent has conducted and will conduct her business warrants denial of the original application based on the general welfare, health, peace, morals, safety, and sense of decency of the people. TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(8), 11.61, 25.04, 25.13, 61.42, and 61.71.

6. Respondent violated the Code by making a false statement or misrepresentation in her original application. TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(4), 11.61 (a)(4), 61.43 (a)(4), and 61.71

(a)(1) and (4).

5. Respondent's application for a Wine and Beer Retailer's Permit, a Retail Dealers On-Premises Late Hours License, and a Food and Beverage Certificate should be denied. TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.46, 11.61, 25.04, 25.13, 61.42, 61.43, 61.47, and 61.71.

SIGNED on this the 7th day of January, 2003.



CINDY T. GREENLEAF
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 595829

IN RE LIENG XAYASENG	§	BEFORE THE
D/B/A PAKXE CAFÉ	§	
ORIGINAL APPLICATION BG, BL & FB	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0393)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 31st day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cindy T. Greenleaf. The hearing convened on November 14, 2002, and adjourned on November 14, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 7, 2002. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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.

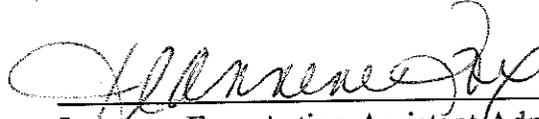
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for a BG, BL & FB is hereby **DENIED**.

This Order will become final and enforceable on February 21, 2003, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 31st day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Cindy T. Greenleaf
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

LIENG XAYASENG
D/B/A PAKXE CAFE
RESPONDENT
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Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Dallas District Office