

DOCKET NO. 595955

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

PHILIP ANDREW ROBINSON
D/B/A TEXAS ROADHOUSE
PERMIT NOS. BG-492513 & FB-492514
RANDALL COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-1751)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of June, 2002, 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 on April 2, 2002, and adjourned April 2, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 22, 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 Nos. BG492513 and FB492514 are herein **SUSPENDED**.

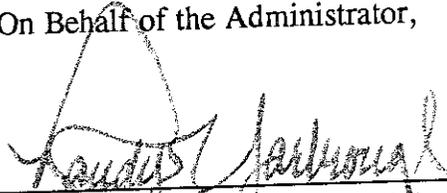
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$4,500.00 on or before the 7th day of August, 2002, all rights and privileges under the above described permits will be **SUSPENDED** for a period of thirty (30) days, beginning at 12:01 A.M. on the 14th day of August, 2002.

This Order will become final and enforceable on JUNE 24TH, 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 3rd day of June, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/vr

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

William R. McKinney, Jr.
ATTORNEY FOR RESPONDENT
1800 S. Washington, Suite 310
Amarillo, Texas 79102
VIA FACSIMILE: (806) 374-6672
& REGULAR MAIL

Philip Andrew Robinson
d/b/a Texas Roadhouse
RESPONDENT
13101 Zita Rd.
Amarillo, Texas 79118
CERTIFIED MAIL NO. 7001 2510 0000 7278 8619

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Lubbock District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595955

REGISTER NUMBER:

NAME: Philip Andrew Robinson

TRADENAME: Texas Roadhouse

ADDRESS: 901 Valencia, Amarillo, Texas

DATE DUE: August 14, 2002

PERMITS OR LICENSES: BG492513 & FBz492514

AMOUNT OF PENALTY: \$4,500.00

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 14TH DAY OF AUGUST, 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

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.

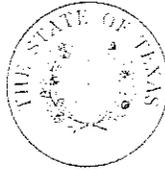
City

State

Zip Code

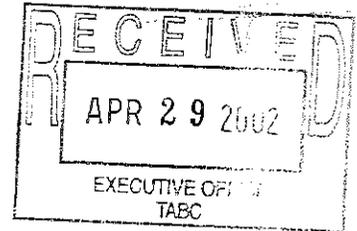
Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 26, 2002



REGULAR MAIL

Rolando Garza
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

RE: Docket No. 458-02-1751; Texas Alcoholic Beverage Commission vs. Philip Andrew Robinson;
D/B/A Texas Roadhouse (TABC Case No.595955)

Dear Mr. Garza:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to William R. McKinney, Jr., attorney for Respondent. For reasons discussed in the proposal, I recommend Respondent's permits be suspended for a period of thirty days or that Respondent be permitted to pay a civil penalty.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink that reads "B.L. Phillips".

B.L. Phillips
Administrative Law Judge

BLP:vu

Enclosure

xc: Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Ste. 160 Austin, Texas 78731 - REGULAR MAIL
William R. McKinney, Jr., Attorney, 1800 S. Washington, Ste. 310, Amarillo, Texas 79102 - REGULAR MAIL

Megaron Building
8212 Ithaca, Suite W3 ♦ Lubbock, Texas 79423
(806) 792-0007 Fax (806) 792-0149

DOCKET NO. 458-02-1751

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
PHILIP ANDREW ROBINSON	§	
D/B/A TEXAS ROADHOUSE	§	
PERMIT NOS. BG492513 & FB492514	§	
POTTER COUNTY, TEXAS	§	
(TABC CASE NO. 595955)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action against Philip Andrew Robinson dba Texas Roadhouse (Respondent) for allegedly, with criminal negligence, selling an alcoholic beverage to a minor. Staff recommended Respondent's permits be suspended for thirty to sixty days or that an civil penalty of one hundred and fifty dollars per day be assessed against Respondent. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner proved a preponderance of the evidence that Respondent, with criminal negligence sold an alcoholic beverage to a minor. Respondent's permits should be suspended for thirty days or the civil penalty be paid.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The hearing on this matter convened on April 2, 2002, before ALJ B. L. Phillips, at the Justice of the Peace Courtroom, Amarillo, Potter County, Texas. Staff was represented by attorney Dewey Brackin. Respondent was represented by attorney William R. McKinney, Jr. The record closed on April 2, 2002.

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.

Chelsea Moore. Moore testified that on July 26, 2001, she was working as an undercover informant for TABC, and on that date she and her partner James Russell entered the licensed premise pursuant to a minor sting operation. She approached the bar, presented to Respondent her valid Texas driver's license showing her date of birth of 02-20-85, and was served a Bud Lite beer. The entire transaction showing the sale of beer to Russell and the delivery of beer to Moore by Respondent was captured on videotape and the videotape was entered into evidence. The videotape shows Respondent joking with Moore by asking if she knows that she is dating an older man. Also entered into evidence were copies of the Texas Driver's licenses of Moore and Russell as well as their pictures.

James Russell. Russell testified that on July 26, 2001 he was working as an undercover informant for TABC and entered the licensed premise pursuant to a minor sting operation. He approached the bar accompanied by Moore, ordered two beers for himself and Moore, presented his valid Texas driver's license showing his date of birth of 10-02-84 to Respondent, and was served a Bud Lite beer.

B. Analysis.

Pursuant to TEX. ALCO. BEV. CODE § 106.13(a), the Commission may suspend or cancel a permit if it is found that the permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor. In this case, Respondent did not deny that the sale of an alcoholic beverage to a minor occurred but he argued that this action did not rise to the level of criminal negligence required to suspend this permits under this provision.

Pursuant to TEX. PENAL CODE § 6.03(a), 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 of care that an ordinary person would exercise under all the circumstances as viewed from the actor's viewpoint. Respondent argued that his actions on the date in question did not constitute a gross deviation from the standard of care as he viewed that standard because he attempted to determine the ages of Moore and Russell and merely made a mistake about their ages.

This logic cannot be accepted because the result would be that any permittee would be allowed to state that he or she made a mistake in selling alcohol to a minor

to avoid responsibility for this act. A permittee must be aware of the Code, Rules, and the law, especially where it comes to preventing minors from purchasing alcoholic beverages. Respondent argued that he attempted to check the ages of Moore and Russell before selling them the alcoholic beverages. The evidence does indicate that Respondent read the birth dates on the driver's licenses which were presented to him by Moore and Russell. Despite the fact that Respondent was presented with the evidence that both were minors and should have been alerted by their very youthful appearances, he proceeded to serve them both an alcoholic beverage. This was a violation of a very clear and unambiguous Code provision. Because of this finding, the Court finds that Respondent violated TEX. ALCO. BEV. CODE § 106.13(a) and that the permits should be suspended or a civil fine paid.

III. FINDINGS OF FACT

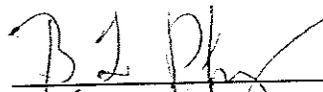
1. The Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit BG-492513 and a Food and Beverage Certificate FB-492514 to Respondent for the premises known as Texas Roadhouse, 901 Valencia, Amarillo, Randall County, Texas.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated February 12, 2002.
3. The hearing was convened on April 2, 2002, at the Justice of the Peace Courtroom, 500 S. Fillmore, Amarillo, Potter County, Texas. Respondent appeared and was represented by attorney William R. McKinney, Jr. Attorney Dewey Brackin represented Staff.
4. On May 7, 2000, Chelsea Moore and James Russell were working as undercover informants for TABC and entered into the licensed premises to conduct a minor sting operation.
5. On that date, Russell presented a valid Texas driver's license to Respondent showing a date of birth of 10-12-84, indicating that he was seventeen years old.
6. On that date, Moore presented a valid Texas driver's license to Respondent showing a date of birth of 02-20-85, indicating that she was sixteen years old.
7. On that date, Respondent served an alcoholic beverage in the form of a Bud Lite beer to both Russell and Moore.

8. Respondent observed that Russell was older than Moore and either willfully or negligently failed to perceive that they were both minors.
9. Respondent acted with criminal negligence in selling and delivering alcoholic beverages to Russell and Moore on that date.

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.
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 and TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Based upon Finding of Facts Nos. 1-9, Respondent violated TEX. ALCO. BEV. CODE § 106.13(a) by with criminal negligence selling, serving, dispensing, or delivering an alcoholic beverage to a minor.
5. Based on the foregoing, suspension of Respondent's Wine and Beer Retailer's Permit BG-492513 and a Food and Beverage Certificate FB-492514 for a period of thirty days is warranted.
7. 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 26th day of April, 2002.



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