

DOCKET NO. 597076

IN RE PAR FOUR INVESTMENT, INC.	§	BEFORE THE
D/B/A THE HIDEWAY ON DUNVALE	§	
PERMIT NOS. MB224302, LB224303,	§	
PE224304	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1158)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of June 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened and adjourned on April 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 17, 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.

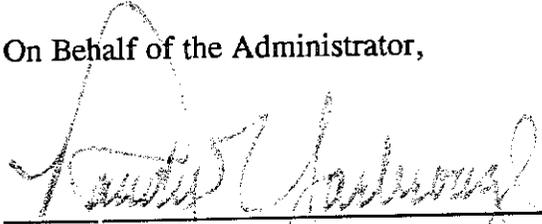
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the complaint against Permit Nos. MB224302, LB224303, and PE224304 are hereby **DISMISSED with prejudice**.

This Order will become final and enforceable on June 28, 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 7th day of June, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Carrie L. McLarty
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Ronald Monshaugen
ATTORNEY FOR RESPONDENT
1225 North Loop West, Ste. 640
Houston, Texas 77008
VIA FAX NO. (713) 880-5297

Par Four Investment Inc.
d/b/a The Hideway on Dunvale
RESPONDENT
3122 Dunvale Rd.
Houston, TX 77063
CERTIFIED MAIL NO. 7001 2510 0000 7278 7247

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

PAR FOUR INVESTMENT, INC., DBA
THE HIDEAWAY ON DUNVALE,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks to revoke permits held by Par Four Investments, Inc., (Respondent) doing business as The Hideaway on Dunvale (the Hideaway) for allegedly selling an alcoholic beverage to an intoxicated person. The Administrative Law Judge (ALJ) concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent sold or delivered an alcoholic beverage to an intoxicated person. Consequently, this Proposal for Decision (PFD) recommends that no adverse action be taken against Respondent.

I. Jurisdiction and Notice

Notice and jurisdiction were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

II. Procedural History

The hearing convened and the record closed on April 11, 2002. Respondent appeared and was represented by Ronald Monshaugen, attorney. Petitioner was represented by Lindy To, staff attorney. ALJ Carrie McLarty presided over the hearing and issues this PFD.

III. Discussion

A. Background

Respondent operates the Hideaway, located in Houston, Harris County, Texas, pursuant to Texas Alcoholic Beverage Commission permit numbers MB224302, LB224303, and PE224304.

On December 10, 2000, Respondent sold and delivered alcoholic beverages to Lance Brautigam. Mr. Brautigam was killed in the early morning hours of December 11, 2000, when his motorcycle crashed into a light pole.

Petitioner conducted an investigation and determined that on December 10, 2000, Respondent and/or its agent, servant, or employee sold or delivered an alcoholic beverage to Mr. Brautigam when Mr. Brautigam was intoxicated, in violation of TEX. ALCO. BEV. CODE §11.61(b)(14). Petitioner further determined that revocation of Respondent's permits was the proper penalty for the alleged violation. As a result of Petitioner's proposed revocation of its permits, Respondent initiated this administrative appeal.

B. Legal Standards

1. Authorization for revocation

Petitioner is authorized to suspend or cancel a permit if a permittee sells or delivers an alcoholic beverage to an intoxicated person. TEX. ALCO. BEV. CODE §11.61(b)(14). "Permittee" includes the permit holder as well as the holder's agent, servant, or employee. TEX. ALCO. BEV. CODE §1.04(11).

2. "Intoxication" defined

"Intoxication," for purposes of this proceeding, is defined at 16 TEX. ADMIN. CODE §50.2(a)(2) as not having normal use of one's mental or physical faculties due to ingestion of alcohol or having an alcohol concentration of 0.08 grams or more of alcohol per 100 milliliters of blood.

C. Summary of disputed issues

Respondent argues that Petitioner must show that its employee intended or knowingly sold Mr. Brautigam alcoholic beverages when Mr. Brautigam was intoxicated. Petitioner contends that the statute under which it seeks to revoke Respondent's permits does not require that it establish Respondent intentionally or knowingly violated the statute.

D. Evidence

Petitioner has the burden of proof to establish by a preponderance of the evidence that Respondent and/or its agent, servant, or employee sold Mr. Brautigam alcoholic beverages on December 10, 2000, at a time when Mr. Brautigam was intoxicated.

Petitioner called six witnesses in support of its case: Alfred Alaniz, Paul Kennedy, Robert Bowers, Cameron Birse, Robert Svoboda, and Dr. Ashraf Mozayani. In addition, it offered documentary evidence including Respondent's permits and history, and Mr. Brautigam's autopsy and toxicology report.

Respondent called two witnesses, JoJo Rainwater and Steven Selfridge. It offered documentary evidence including employee training records and photographs of the Hideaway.

1. Alfred Alaniz

Alfred Alaniz is the Houston Police Department officer who worked the fatality accident involving Mr. Brautigam on December 11, 2000. He testified that he was dispatched to the scene of the accident at 2:13 a.m.

2. Paul Kennedy

Paul Kennedy was a friend of Mr. Brautigam's. The men worked together at a company called Knust-SBS (Knust) and lived in Richmond Chase apartments on Richmond Avenue. Each worked the night shift at Knust. On December 9, 2000, after getting off work, Mr. Kennedy, Mr. Brautigam, and four other men drove to Lake Charles, Louisiana to gamble. Mr. Kennedy drank on the way to Lake Charles and throughout the time he was at the casino. Mr. Kennedy did not recall seeing Mr. Brautigam drink on the trip to Lake Charles or while at the casino. Mr. Kennedy was very intoxicated and slept for most of the return trip to Houston. He slept until approximately 2:00 or 3:00 p.m. on December 10, 2000, then walked from his apartment to the Hideaway at approximately 7:00 p.m.

Mr. Kennedy did not recall many specifics of the weekend in question due to the large amount of alcohol he consumed and his subsequent state of intoxication. Mr. Kennedy estimated he had approximately five to six beers, three to four shots of vodka, and two to three Long Island Iced Teas while at the Hideaway.¹ He thought Mr. Brautigam arrived at the Hideaway at approximately 11:00 p.m. Mr. Kennedy believed he saw Mr. Brautigam with a beer and recalled seeing Mr. Brautigam visiting with some girls and playing shuffleboard. Later that evening, Mr. Kennedy became involved in an altercation with Robert Bowers and Mr. Brautigam intervened to separate the two. Mr. Kennedy testified he never saw Mr. Brautigam intoxicated at any point during the weekend, including the time spent at the Hideaway. Mr. Kennedy thought he left the Hideaway at about 1:30 a.m. on December 11, 2000, prior to Mr. Brautigam leaving, although he may have left as early as 12:30 a.m.

3. Robert Bowers

Robert Bowers was another friend of Mr. Brautigam's who also worked at Knust and lived in the Richmond Chase apartments. Like Mr. Kennedy, Mr. Bowers had a considerable amount of alcohol at the Hideaway but did not consider himself intoxicated. Mr. Bowers walked over to the Hideaway from his apartment at approximately 8:00 to 9:00 p.m. He consumed approximately five to six beers, and five to six shots of vodka and/or tequila. Mr. Bowers testified that Mr. Brautigam arrived between 11:00 and 11:30 p.m. Mr. Bowers saw Mr. Brautigam have one drink on arrival, then go off to play shuffleboard about 15 to 20 minutes later. Mr. Bowers was unsure when Mr.

¹A Long Island Iced Tea is a mixed drink containing one-half ounce each of rum, vodka, and gin, as well as non-alcoholic Triple Sec, sweet and sour mix, and cola.

Brautigam left the Hideaway. Mr. Bowers did not know what Mr. Brautigam drank that evening but stated that Mr. Brautigam looked fine all evening.

4. Cameron Birse

Cameron Birse was Mr. Brautigam's roommate at Richmond Chase apartments and worked with him at Knust. Mr. Birse went to Lake Charles with Mr. Kennedy, and Mr. Brautigam. He knows there was a cooler of beer in the car but slept most of the way there and back. He did not know if Mr. Brautigam drank during the trip to Lake Charles or on the way home. At the casino he generally stayed with Mr. Brautigam. Mr. Birse saw Mr. Brautigam with a glass throughout the time they were at Lake Charles but did not know what or how much Mr. Brautigam drank. The two men arrived back at their apartment at approximately 9:00 a.m. on December 10, 2000, and went to sleep. Mr. Birse awoke at approximately 9:00 p.m. and found Mr. Brautigam was already awake. Mr. Birse and Mr. Brautigam watched television until 11:00 p.m., during which time Mr. Birse consumed one to two beers. Mr. Birse did not know whether or not Mr. Brautigam had anything to drink while at the apartment. At 11:00 p.m. the men went to Blockbuster Video to rent movies. They started back to the apartment approximately 10 minutes later. Mr. Birse testified that Mr. Brautigam asked if he wanted to stop by the Hideaway. Mr. Birse told Mr. Brautigam he did not wish to go to the Hideaway, but would go back to the apartment and watch movies. Mr. Brautigam said he was going for a ride on his bike and was going to stop by the Hideaway for a beer. Mr. Birse went into the apartment and shortly thereafter heard a motorcycle drive off. Mr. Birse testified that Mr. Brautigam was not intoxicated when he left for the Hideaway. Mr. Birse never saw Mr. Brautigam again.

Mr. Birse clarified that the apartment complex directly across the street from the Hideaway, as depicted in Respondent's photographic exhibits, was not the Richmond Chase apartment complex. He explained that his apartment was around the corner, about a two to three minute walk from the Hideaway. Mr. Birse and Mr. Brautigam had acquaintances living in that apartment complex directly across from the Hideaway.

Mr. Birse testified that Mr. Brautigam could consume a large amount of alcohol without appearing intoxicated and it was feasible Mr. Brautigam could be drinking and no one would be able to tell.

5. Robert Svoboda

Robert Svoboda was filling in as a bartender at the Hideaway on December 10, 2000, while the regular bar employees attended the company Christmas party. Mr. Svoboda testified that he had been a bartender for over twelve years and had taken seller/server training courses every two years. Mr. Svoboda testified Mr. Brautigam arrived at the Hideaway between 11:00 and 11:30 p.m. and visited with other patrons sitting around the middle of the bar. Mr. Brautigam ordered two rounds of drinks for his friends, ordering a Long Island Iced Tea for himself each time. The second round of drinks was ordered within about one-half hour of the first round. Mr. Svoboda noticed the group sitting at the middle of the bar dispersed shortly after Mr. Brautigam ordered the second round, but did not know if the group went elsewhere in the bar. Mr. Svoboda held a current certification from

Petitioner for seller/server training. Mr. Svoboda kept an eye on Mr. Brautigam because Mr. Brautigam was drinking Long Island Iced Teas. Sometime between 12:30 and 12:45 a.m., Mr. Svoboda noticed Mr. Brautigam sitting at the bar, slouched and leaning on his elbow. Mr. Svoboda thought Mr. Brautigam might need attention and alerted the manager on duty, JoJo Rainwater. Mr. Rainwater spoke with Mr. Brautigam, then instructed Mr. Svoboda to close out Mr. Brautigam's tab. Mr. Brautigam had not ordered any additional rounds of drinks. The tab came to \$47.25 with a \$10.00 tip. The tab was closed out at 12:49 a.m.²

Mr. Svoboda testified Mr. Brautigam was well-behaved, personable, and non-belligerent while in Mr. Svoboda's presence. Mr. Brautigam never tried to order additional drinks after the second round was ordered and delivered at approximately midnight. Mr. Svoboda had no knowledge of anything Mr. Brautigam had to drink other than the two Long Island Iced Teas.

6. JoJo Rainwater

JoJo Rainwater was the manager on duty at the Hideaway on December 10 - 11, 2000. Mr. Rainwater testified that he had 22 years of experience in the bar business and had attended seller/server training courses. Mr. Rainwater arrived at the Hideaway between 12:15 and 12:30 a.m. on December 11, 2000, after the Christmas party. Shortly thereafter, Mr. Svoboda asked Mr. Rainwater to check on Mr. Brautigam. Mr. Rainwater knew Mr. Brautigam. He saw Mr. Brautigam leaning on his elbow at the bar and asked to speak with him in another area of the bar. Mr. Rainwater testified that no drinks were anywhere near the area of the bar where Mr. Brautigam had been sitting. Mr. Brautigam explained that he was not intoxicated but that he was very tired. Mr. Rainwater suggested that Mr. Brautigam close out his tab and go home and get some rest. Mr. Brautigam agreed. Mr. Rainwater had Mr. Svoboda close out Mr. Brautigam's tab and Mr. Brautigam signed the receipt. Mr. Rainwater asked Mr. Brautigam if he needed a cab, but Mr. Brautigam explained that he lived across the street. Mr. Rainwater testified once he began speaking with Mr. Brautigam, Mr. Brautigam sounded fine, and did not slur his speech. Mr. Rainwater walked outside with Mr. Brautigam, who walked steadily. Mr. Rainwater watched Mr. Brautigam walk to the apartments across the street, then went back inside.

7. Dr. Ashraf Mozayani

Dr. Mozayani testified that she was the Chief Toxicologist with the Harris County Medical Examiner's Office and had been so for the past six years. Dr. Mozayani testified Mr. Brautigam's blood alcohol content at the time of his death was 0.26 grams of alcohol per 100 milliliters of blood. Dr. Mozayani explained that approximately one drink (one beer, mixed drink, or glass of wine) is eliminated from a person's system every hour and that alcohol is fully absorbed into a person's system within approximately one-half hour after consumption.

²The actual receipt shows a close-out time of 1:47 a.m.; however, testimony indicated that the clock had never been changed to account for the daylight savings time change.

Dr. Mozayani calculated that if Mr. Brautigam consumed two Long Island Iced Teas between 11:00 p.m. and 12:00 a.m., all the alcohol he had consumed would be absorbed by 12:30 a.m. She also calculated that, given the elimination rate and the alcoholic contents of the two drinks, Mr. Brautigam's blood alcohol level would be between 0.04 and 0.06 at 12:30 a.m. Dr. Mozayani testified Mr. Brautigam would have had to consume in excess of 10 additional beers after leaving the Hideaway in order for his blood alcohol level to reach 0.26 at the time of his death at approximately 2:10 a.m.

Dr. Mozayani's opinion was Mr. Brautigam must have consumed more than two drinks while at the Hideaway and he would have shown obvious signs of intoxication while there. Dr. Mozayani testified that at a level of 0.26 a person's central nervous system is completely depressed and the person will have impaired vision, poor judgment, and will probably have slurred speech.

Dr. Mozayani testified it would be possible for Mr. Brautigam to have residual alcohol in his system from any drinking he did the previous night. She explained chronic drinkers can show less signs of intoxication and metabolize alcohol faster than less experienced drinkers.

8. Steven Selfridge

Steven Selfridge is the President and sole shareholder of Par Four Investments, Inc. He purchased the business in June, 1998. No violations have occurred in connection with any of his TABC permits during the time he has owned the bar.

IV. Analysis

A. Intent

TEX. ALCO. BEV. CODE §11.61(b)(14), the statute under which Petitioner seeks to revoke Respondent's permits, does not contain a requirement that the permittee intend to or knowingly sell or deliver an alcoholic beverage to an intoxicated person. Petitioner must only prove by a preponderance of the evidence that Mr. Brautigam was intoxicated at the time the drinks were ordered and delivered.

B. Intoxication level of Mr. Brautigam

1. Loss of normal use of mental or physical faculties

The record indicates that Mr. Brautigam never lost the normal use of his mental or physical faculties during the time he was sold and delivered alcoholic beverages at the Hideaway. Mr. Kennedy and Mr. Bowers testified that Mr. Brautigam did not appear to be intoxicated while at the Hideaway. Specifically, Mr. Brautigam was seen by both men playing shuffleboard and Mr. Brautigam helped break up an altercation between the two men. These activities tend to refute Petitioner's contention that Mr. Brautigam did not have the normal use of his mental or physical capacities when he was sold or served drinks earlier in the evening.

Petitioner argues that little if any weight should be given to the testimony its own witnesses, Mr. Kennedy, and Mr. Bowers regarding Mr. Brautigam's appearance and demeanor while at the Hideaway, because they were themselves intoxicated. However, Petitioner asserts that Mr. Kennedy and Mr. Bowers should be believed as to their testimony that they saw Mr. Brautigam with a beer while playing shuffleboard. Petitioner cannot have the benefit of only part of this testimony without accepting the remainder. If, in fact, Mr. Brautigam did have a beer, it was not sold to him as part of the two rounds he ordered and purchased from Mr. Svoboda. Petitioner did not establish that Mr. Svoboda or anyone else sold or delivered Mr. Brautigam anything other than two Long Island Iced Teas. Although various persons in the Hideaway were buying rounds of drinks, Mr. Brautigam's partaking in other rounds is unclear.

Mr. Brautigam did not exhibit overt signs of intoxication while at the Hideaway. Mr. Svoboda noticed Mr. Brautigam leaning on his elbow at the bar, sometime after Mr. Brautigam consumed the two drinks. Mr. Svoboda asked Mr. Rainwater to check on Mr. Brautigam. Mr. Rainwater, recognizing Mr. Brautigam as a frequent patron of the Hideaway, engaged Mr. Brautigam in conversation. Mr. Rainwater specifically stated that Mr. Brautigam's speech was not slurred and that he had no difficulty walking or maintaining steady balance, including walking out of the Hideaway and across the street. Mr. Brautigam explained that he was leaning on the bar because he was tired. This explanation is at least as equally consistent with being tired as it is with Petitioner's claim that Mr. Brautigam was intoxicated. Moreover, Mr. Brautigam's possible intoxication at the time he was leaning on the bar would only be relevant to the issues in this case if Mr. Brautigam sought to order or be served any alcoholic beverages at that time. The crucial point at which Petitioner must establish intoxication in this case is when Mr. Brautigam ordered and was served the Long Island Iced Teas earlier in the evening.

2. Blood alcohol content

The alternative definition of intoxication involves blood alcohol content. It is uncontroverted that Mr. Brautigam had a blood alcohol level of 0.26 at the time of his death.

During its closing argument, Petitioner stated that this was not a "smoking gun" case and that the only reliable testimony presented in the hearing was that of Dr. Mozayani. Dr. Mozayani calculated that if Mr. Brautigam consumed only two Long Island Iced Teas between the hours of 11:00 p.m. and 12:00 a.m. then he would have to consume in excess of 10 beers in order to achieve a blood alcohol level of 0.26 at the time of his death. Relying on Dr. Mozayani's calculations, Petitioner argued that Mr. Brautigam must have consumed more alcohol at the Hideaway than just two Long Island Iced Teas and that he was intoxicated at some point in the evening when he was sold or served alcohol at the Hideaway. However, there is no evidence as to what alcoholic beverages Mr. Brautigam may or may not have consumed after he left the Hideaway. There is a period of approximately 1 hour and 20 minutes from the time Mr. Brautigam left the Hideaway until his death. Petitioner asserts Mr. Brautigam could not have consumed over 10 beers during this period; however, Mr. Brautigam could have consumed forms of alcohol other than beer. Petitioner asserts that Respondent presented no evidence Mr. Brautigam had any alcohol after leaving the Hideaway and so the possibility of his having done so should not weigh in the ultimate decision in this case. Respondent's counter-argument is that the lack of information as to Mr. Brautigam's

consumption, particularly as to the period after he left the Hideaway, is precisely what prevents Petitioner from meeting its burden of proof.

Although Dr. Mozayani testified that Mr. Brautigam could have had residual amounts of alcohol in his system from any previous drinking the night before, there is no conclusive testimony as to what, if anything, Mr. Brautigam drank during the Louisiana road trip. Similarly, there is no conclusive testimony as to what he drank between the time he woke up on December 10, 2000, and the time Mr. Birse awoke. It is reasonable to infer that if Mr. Brautigam had any residual alcohol in his system, he might have had a blood alcohol level in excess of 0.00 when he began drinking at the Hideaway. It does not, however, follow that he would necessarily have been intoxicated at the time he bought and was served the Long Island Iced Teas. It cannot be concluded that it is more likely than not that Mr. Brautigam had a blood alcohol level of 0.08 or greater at the relevant point in time. Coupled with the uncontroverted evidence that Mr. Brautigam appeared to have the normal use of his mental and physical faculties at least up to the time he was seen leaning on the bar and his tab was closed, Petitioner failed to meet its burden of proof in this case.

Because the ALJ concludes that Petitioner failed to meet its burden of proof, the issues relating to any statutory defenses claimed by Respondent are not discussed in this proposal for decision.

V. Conclusion and Recommendation

The ALJ concludes Petitioner failed to demonstrate by a preponderance of the evidence that Mr. Brautigam was intoxicated at the time he purchased and was served alcoholic beverages at the Hideaway. Although Mr. Brautigam was clearly intoxicated at the time of his death, the point at which he became intoxicated is unclear.

Because Petitioner failed to sustain its burden of proof, the ALJ recommends that no adverse action be taken against Respondent.

VI. Proposed Findings of Fact

1. Par Four Investments, Inc. (Respondent) operates a bar known as The Hideaway on Dunvale (the Hideaway) in Houston, Harris County, Texas, pursuant to Texas Alcoholic Beverage Commission (Petitioner) permit numbers MB224302, LB224303, and PE224304.
2. On December 10, 2000, Lance Brautigam purchased and was served two alcoholic beverages from Respondent.
3. On December 11, 2000, at 2:10 a.m., Mr. Brautigam was killed while operating his motorcycle. At the time of his death, Mr. Brautigam's blood alcohol level was 0.26.
4. Petitioner conducted an investigation and determined that Respondent sold or served alcoholic beverages to Mr. Brautigam when Mr. Brautigam was intoxicated.

5. Based on Finding of Fact 4, Petitioner determined that Respondent's permits should be revoked. Respondent brought an appeal of this determination resulting in this administrative hearing.
6. On December 27, 2001, notice of the hearing was sent to Respondent. The notice contained a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
7. The hearing was held on April 11, 2002, in Houston, Texas.
8. Mr. Brautigam had the normal use of his mental or physical capacities at the time Respondent sold and served Mr. Brautigam alcoholic beverages.
9. Mr. Brautigam's blood alcohol level at the time Respondent sold and served Mr. Brautigam alcoholic beverages is unknown.

VII. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§2001.051 and 2001.052.
4. Based on Findings of Fact Nos. 8 and 9, Petitioner failed to prove by a preponderance of the evidence that Respondent sold or delivered an alcoholic beverage to Mr. Brautigam when Mr. Brautigam was intoxicated.
5. Based Conclusion of Law No. 4, Petitioner's proposed revocation of Respondent's permits should be denied.

Signed this 17th day of May 2002.



Carrie L. McLarty
Administrative Law Judge
State Office of Administrative Hearings