

LEGAL STANDARDS AND APPLICABLE LAW

Staff's allegation in this case is that Respondent, its agent or employee, sold or delivered an alcoholic beverage to an intoxicated person. TABC is authorized to cancel or suspend a permit for not more than 60 days, pursuant to §11.61(b)(14) of the Code, if a permittee has sold or delivered an alcoholic beverage to an intoxicated person. Staff bears the burden of proof to show the alleged violations occurred.

EVIDENCE

Staff's Evidence

Staff presented testimony from TABC Agent Robert Saenz. He testified that on the evening of October 21, 2001, as part of a undercover operation, he entered the American Legion at around 10:00 p.m. After sitting at a table and ordering a beer, Agent Saenz noticed a man asleep at the bar, so he went to the bar to investigate. Agent Saenz testified that the man, later identified as a Mr. Rangel had his head laying on the bar and every couple of minutes he would shout "yea" very loud.

The agent further testified Mr. Rangel then stood up and walked to an opening in the bar area, started to fall, and a bar maid caught him. The bar maid then sat Mr. Rangel down and asked him if he wanted a Coors Light. She then handed him a beer. After the delivery of the beer the agent left the premises and notified Agent Doug Postert of the violation. Agent Saenz testified that he had observed Mr. Rangel to have slurred speech, to be unsteady on his feet, and that his eyes were half closed.

Agent Postert testified that after Agent Saenz had relayed his observations of a very intoxicated patron wearing a blue shirt with "Frank" on the front, he then entered the premises and observed that individual at the bar. Agent Postert spoke with the bartender, Mr. Gallegos, and identified the intoxicated individual as Mr. Rangel. Agent Postert asked Mr. Rangel to step outside and attempted to conduct field sobriety tasks. On the horizontal gaze nystagmus test Mr. Rangel was unable to follow the pen with his eyes only as instructed, and almost fell while attempting the one leg stand sobriety task. Agent Postert placed Mr. Rangel under arrest for public intoxication, believing him to be intoxicated.

Respondent's Evidence

Mr. Gerado Gallegos is a bartender at American Legion-Thomas Valle Post No. 479. He testified he has been a bartender for two and a half years at the American Legion. He stated that he called Mr. Rangel's son, Johnny Rangel, to come and pick up his father. Mr. Gallegos testified he was working, so he could not take Mr. Rangel home. He further testified that he would not have served beer to Mr. Rangel if he believed he was drunk. However, on cross-examination Mr. Gallegos admitted that the reason he called Mr. Rangel's son was because he believed him too drunk to drive himself home.

Mr. Johnny Rangel testified that he was home and the bartender, Mr. Gallegos, called and said

he needed to come pick up his father because he was not going to serve him any more beer. He further testified that when he arrived a short time later, his father was standing talking with a few friends and he did not have a drink. He told his father they needed to leave and he said, "O.K., but let me tell my friends goodbye." Mr. Rangel then walked over to the bar. Johnny Rangel testified when his father was up at the bar, some gentlemen walked in and began talking to him and they eventually arrested him. On cross-examination Mr. Rangel admitted his father was intoxicated, just not as intoxicated as the officers made him out to be.

Mr. Oscar Pena testified that he is a member of the American Legion Post and volunteers as the bar manager. He testified that he had been in the bar earlier that evening and Mr. Rangel did not appear intoxicated. He arrived back at the time the agents were in the parking lot with Mr. Rangel. He stated it was not the policy of the American Legion Post to serve drinks to intoxicated persons.

ANALYSIS

Staff's evidence supports that a sale of alcoholic beverage to an intoxicated person occurred on the licensed premises on October 20, 2001. It is undisputed that Respondent's employee, Mr. Gallegos sold alcoholic beverages, (beer) to Mr. Rangel and Agent Saenz testified he observed a bar maid give a Coors Light to Mr. Rangel after he almost fell behind the bar. The bartender had previously called Mr. Rangel's son to come and pick him up. Although, the testimony regarding why he felt the need to call Johnny Rangel was unclear and vague at best, it is obvious that Mr. Gallegos did not want Mr. Rangel to be operating a motor vehicle. The only logical conclusion is Mr. Gallegos believed Mr. Rangel was intoxicated.

Respondent's defense appears to be that the American Legion was doing the right thing by not allowing the intoxicated Mr. Rangel to drive home, however that is not the issue in this case. It is clear from all the testimony the employees continued to serve beer to Mr. Rangel, an obviously intoxicated patron.

FINDINGS OF FACT

1. American Legion-Thomas Valle Post No. 479 (Respondent) holds a Beer Retailer's On Premise License BE254025 issued for his premises, American Legion-Thomas Valle Post No. 479, located at 583 W. Main Street, Uvalde, Uvalde County, Texas.
2. On May 2, 2002, Staff of the Texas Alcoholic Beverage Commission (TABC) sent Respondent notice of the hearing by certified mail, return receipt requested. A hearing was scheduled by the State Office of Administrative Hearings (SOAH) and convened on June 12, 2002. Both parties appeared at the hearing. Evidence was received and the record closed on June 12, 2002.
3. On October 20, 2001, Respondent's employee or agent, sold an alcoholic beverage to an intoxicated person, Mr. Rangel, on the licensed premises.
4. On October 20, 2001, a bar maid gave an obviously intoxicated patron, Mr. Rangel, a beer,

after he had been laying his head on the bar and almost fell.

5. Mr. Rangel exhibited obvious signs of intoxication such as slurred speech, poor balance, and laying his head on the bar as if asleep.

6. Mr. Rangel was a danger to himself or others, having lost the use of normal mental or physical faculties, due to his consumption of alcoholic beverages.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. CH. 5, §§ 6.01, 11.61.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. CH. 2003.

3. Respondent received adequate notice of the proceedings and hearing.

4. Based on the above Findings of Fact Respondent's employee sold alcoholic beverages to an intoxicated person on the licensed premises, contrary to TEX. ALCO. BEV. CODE ANN § 61.71 (a) (6).

5. Based on the above Findings of Fact and Conclusion of Law Respondent's license should be suspended for seven days or be allowed to pay \$1050.00 in lieu of suspension.

SIGNED this 21st day of August, 2002.


Leah Davis Bates
Administrative Law Judge
State Office Of Administrative Hearings

DOCKET NO. 597100

IN RE AMERICAN LEGION - TOMAS	§	BEFORE THE
VALLE POST NO. 479	§	
D/B/A AMERICAN LEGION-TOMAS	§	
VALLE POST 479 THE AMERICAN	§	
DEPARTMENT LEGION	§	TEXAS ALCOHOLIC
PERMIT NO. BE-254025	§	
UVALDE COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2837)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of September, 2002 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on June 12, 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 August 21, 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 License No. BE-254025 is hereby **SUSPENDED**.

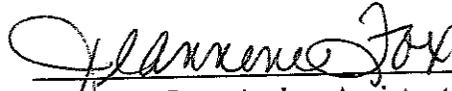
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,050.00** on or before the **20th** day of **November, 2002**, all rights and privileges under the above described license will be **SUSPENDED** for a period of seven (7) days, beginning at **12:01 A.M. on the 27th day of November, 2002**.

This Order will become final and enforceable on October 7, 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 16th day of September, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/YT

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

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San Antonio District Office

