

DOCKET NO. 458-02-3721

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

HUSSEIN ALI YASSINE, D/B/A
TREASURE ISLAND PIRATE BAR
PERMIT NOS. MB-408990 & LB-408991
TRAVIS COUNTY, TEXAS
(TABC CASE NO. 598277)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission, TABC) seeks to suspend the permits of Hussein Ali Yassine, d/b/a Treasure Island Pirate Bar (Respondent) based on the sale of alcohol to a minor. The Administrative Law Judge (ALJ) recommends the permits be suspended for 14 days with the option of paying a civil penalty of \$150.00 per day in lieu of suspension.

I. JURISDICTION AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested in this proceeding; they are addressed in the Findings of Fact and Conclusions of Law.

On October 8, 2002, a hearing convened before ALJ John H. Beeler. Staff appeared and was represented by attorney Dewey Brackin. Respondent appeared and was represented by attorney Don Walden. The hearing concluded that same day but the record was left open for the filing of additional evidence and closed on December 20, 2002.

II. DISCUSSION

A. Evidence and Argument

TABC offered the testimony of one witness, Theresa Ray. As part of a sting operation on December 21, 2001, Ms. Ray entered the licensed premises and purchased an alcoholic beverage, a beer, from the bartender. She was 18 years old at the time and was not requested to show identification. Ms. Ray did not appear to be over 21 years of age.

Respondent testified that he was not present on the night in question and learned of the alleged sale to the minor the next morning. He terminated the employees involved. He did not admit nor dispute the version of the facts as related by Ms. Ray but testified that the individuals responsible for selling the alcoholic beverage to Ms. Ray were certified as servers by TABC. All employees required to be certified are certified, and he enforces policies to assure no minors are served alcohol. Respondent has been suspended twice before for the offense of allowing a minor to consume alcohol on the premises.

Respondent argues that the permits should not be suspended because all required employees, including the employees involved in the alleged sale to the minor, were TABC certified, thus precluding any action against Respondent resulting from their misconduct.

TABC agrees that, under certain circumstances, the actions of an employee are not attributable to the permittee. However, one condition is that all required employees have to be TABC certified and Respondent has not shown that to be true. Respondent claims that all non-certified employees were exempt because they had not been employed for more than 30 days, but offered no evidence of that.

B. Analysis and Conclusion

The only issue in this hearing is whether all required employees were TABC certified. The record was left open to allow Respondent to file documents showing the certifications. Although both parties filed closing arguments, response letters, and documents concerning certification, no evidence was presented demonstrating that non-certified employees were exempt. While Respondent did not admit that Ms. Ray was served an alcoholic beverage on the licensed premises on the date in question, no evidence to the contrary was presented. Respondent did establish that various procedures were in place in an attempt to educate the employees concerning laws pertaining to the sale of alcohol. Respondent also demonstrated that most of the employees were certified by TABC. However, in order for the actions of an employee who sells alcohol to a minor not to be attributed to the permittee, all required employees must be certified. This is an affirmative defense and must be proven by Respondent. The ALJ is in possession of no such proof, and therefore, recommends suspension of the permit.

Finding that suspension is warranted, the question becomes what length of suspension is appropriate. Most likely inadvertently, neither party addressed this. There was agreement during the hearing that Respondent has been suspended twice before for permitting a minor to possess alcohol on the premises. In 1998, Respondent was suspended for seven days for an offense occurring on April 13, 1997 and in 2001, Respondent was suspended for 21 days for an offense occurring on April 23, 1999. Respondent also had three cases of sale to a minor that did not result in suspensions because the employees were TABC certified.

§ 106.13 of the Texas Alcoholic Beverage Code provides that:

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 90 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor or with criminal negligence permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than six months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

The Standard penalty Chart found at 16 Texas Administrative Code § 37.60(a), although not binding, provides guidance in establishing an appropriate length of suspension. The chart recommends a suspension for 7-20 days for a first violation, and 10-90 days for a second violation, and 60-cancellation for a third violation.

The ALJ has considered several factors in determining that a suspension of 14 days is appropriate in this situation. First, Respondent has a history of offenses concerning minors, both by sale and by allowing minors to possess alcohol on the premises. This is not surprising considering that the club is located in an area frequented by young people and it would seem that Respondent would assure that all of the employees would be TABC certified in such a situation. Respondent has, however, taken significant steps in addressing the problem. Most of the employees are certified, including the ones involved with the sale in issue here. Rules are posted at appropriate locations to assure that there are not questions about proper procedures, and the employees involved in this incident were terminated immediately.

The length of suspension needs to be long enough to emphasize the seriousness of the incident and to deter future such sales, but also needs to recognize that Respondent has taken the above mentioned steps. A period of 14 days with the option of paying a civil penalty of \$150.00 per day in lieu of suspension will accomplish both.

III. FINDINGS OF FACT

1. Hussein Ali Yassine, d/b/a Treasure Island Pirate Bar (Respondent), located in Austin, Texas, holds permit nos. MB-408990 and LB-408991 issued by the Texas Alcoholic Beverage Commission (Commission).

2. On March 4, 2002, the Commission's staff (Staff) issued a notice of hearing asserting that Respondent, with criminal negligence, sold an alcoholic beverage to a minor. The notice also stated the time and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; and the particular sections of the statutes and rules involved.
3. Respondent timely received the notice of hearing.
4. The hearing convened and closed on October 8, 2002, before Administrative Law Judge John H. Beeler. The record closed on December 20, 2002.
5. On December 21, 2001, on the licensed premises, Respondent's employee sold a beer to Theresa Ray, a 18-year-old who was not asked to provide identification.
6. Respondent has had prior violations concerning minors.
7. Most, but not all, of Respondent's employees are TABC certified.
8. The employees involved in the sale to the minor were TABC certified and were terminated as a result of the sale.
9. Respondent has taken significant steps in an attempt to prevent minors from consuming alcohol on the licensed premises.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. §§ 003.021(b) and 2003.042(5).
3. Respondent received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the above Findings of Fact and pursuant to § 106.13 of the Code, Respondent's permits are subject to suspension.

5. Based on the above Findings of Fact and Conclusions of Law Respondent's permits should be suspended for 14 days and Respondent should be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension.

SIGNED this 18th day of February, 2003.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 598277

IN RE HUSSEIN ALI YASSINE	§	BEFORE THE
D/B/A TREASURE ISLAND PIRATE BAR§		
PERMIT NO. MB-408990 & LB-408991	§	
	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3721)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of March, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on October 8, 2002, and the record was closed December 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 18, 2003. 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 MB-408990 & LB-408991 are hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,100.00** on or before the **25th day of June, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **fourteen (14) days, beginning at 12:01 A.M. on the 2nd day of July, 2003**.

This Order will become final and enforceable on **April 18, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 28th day of March, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Don Walden
ATTORNEY FOR RESPONDENT
4408 Spicewood Springs Road
Austin, Texas 78759
VIA FACSIMILE: (512) 795-8079

Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE: (512) 475-4994

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

Austin District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 598277

REGISTER NUMBER:

NAME: Hussein Ali Yassine

TRADENAME: Treasure Island Pirate Bar

ADDRESS: 413 E. 6th Street, Austin, Texas 78701

DATE DUE: May 28, 2003

PERMITS OR LICENSES: MB-408990 & LB-408991

AMOUNT OF PENALTY: \$2,100.00

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 28TH DAY OF MAY, 2003, 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.