

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

JIMMYJOHN ENTERPRISES, INC.
D/B/A E-Z MART STORE #460
PERMIT NO. BQ-284760
BRAZOS COUNTY, TEXAS
(TABC CASE NO. 599149)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) seeks to suspend Jimmyjohn Enterprises, Inc.'s d/b/a E-Z Mart Store #460 (Respondent) permit for allowing a minor purchase an alcoholic beverage. The Administrative Law Judge (ALJ) recommends that the permit be suspended for 80 days and that Respondent be allowed to pay a civil penalty in the amount of \$150.00 per day in lieu of suspension.

I. PROCEDURAL HISTORY & JURISDICTION

Notice and jurisdiction were not contested in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion.

On November 13, 2002, a hearing convened before ALJ John H. Beeler, State Office of Administrative Hearings (SOAH). The Texas Alcoholic Beverage Commission (TABC) was represented at the hearing by Dewey Brackin, TABC Staff Attorney. Respondent appeared through attorney Johnny B. Rogers. The record was closed on the same day.

II. DISCUSSION

A. Applicable Law

TEX. ALCO. BEV. CODE ANN. § 106.13(a) provides that "... the commission or administrator may cancel or suspend ... 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...."

B. Stipulations

The parties entered into written stipulations that the alleged sale to the minor did, in fact take place, and to the administrative history of E-Z Mart Store # 460. The history is as follows:

Offense	Date	Disposition
Sale to Minor	6/7/00	21 day suspension or \$2,150.00 fine
Sale to Minor	1/28/99	7 day suspension or \$1,050.00 fine
Sale to Minor	8/6/98	Restrained
Sale to Minor	12/26/94	7 day suspension or \$1,050.00 fine
Sale to Minor	10/22/93	Restrained

C. Appropriate Penalty

The parties requested that the ALJ determine the appropriate penalty based on the above stipulations. TEX. ALCO. BEV. CODE ANN. § 106.13 dictates cancellation or not more than a 60-day suspension for a first offense, cancellation or not more than a three-month suspension for a second offense, and cancellation or not more than a 12-month suspension for a third offense occurring within 36 consecutive months of the first offense. § 106.13 of the Code. Under the TABC's "standard penalty chart" a violation of § 106.13 calls for a suspension of seven to 15 days for a first offense, a suspension of 10 to 90 days for a second offense, and a minimum suspension of 60 days or cancellation for a third offense. See 16 TAC TEX. ADMIN. CODE (TAC) § 37.60. The standard penalty chart is not binding but is used here for guidance.

In closing arguments Staff asked for a 80 day suspension and Respondent requested that a seven day suspension. Both agreed that a civil penalty in the amount of \$150.00 per day in lieu of suspension is appropriate.

The ALJ recommends the TABC suspend Respondent's permit for 80 days and that Respondent be allowed to pay a civil penalty of \$150.00 per day in lieu of suspension. This is less than the maximum penalty for a location that has had ongoing problems concerning the sale of alcohol to minors and is appropriate based upon the administrative history.

IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Permit No. BQ-284760 to Jimmyjohn Enterprises, Inc.'s d/b/a E-Z Mart Store #460 (Respondent) located in Brazos County, Texas.
2. On January 10, 2002, Respondent, its agent, servant, or employee, with criminal negligence, sold an alcoholic beverage to a minor.

3. The administrative history for the licensed premises is as follows:

Offense	Date	Disposition
Sale to Minor	6/7/00	21 day suspension or \$2150.00 fine
Sale to Minor	1/28/99	7 day suspension or \$1050.00 fine
Sale to Minor	8/6/98	Restrained
Sale to Minor	12/26/94	7 day suspension or \$1050.00 fine
Sale to Minor	10/22/93	Restrained

4. On May 20, 2002, the Staff of the TABC served its Notice of Hearing (the NOH) on Respondent.
5. The NOH referenced the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
6. On November 13, 2002, a hearing convened before Administrative Law Judge John H. Beeler, State Office of Administrative Hearings (SOAH). Staff was represented by Dewey Brackin, an attorney with the TABC Legal Division. Respondent appeared through attorney Johnny B. Rogers. The record was closed the same day.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter under § 106.13 of the Code.
2. 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. §2003.021 (Vernon 2002).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based upon the above Findings of Fact, Respondent violated § 106.13(a) of the Code.

5. Based on the foregoing findings and conclusions, Respondent's permit should be suspended for 80 days and Respondent should be allowed to pay a civil penalty in the amount of \$150.00 per day in lieu of suspension.

SIGNED January 13th, 2003.



JOHN H. BEELER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599149

IN RE JIMMYJOHN ENTERPRISES, INC.	§	BEFORE THE
D/B/A E-Z MART STORE #460	§	
PERMIT NO. BQ-284760	§	
	§	TEXAS ALCOHOLIC
	§	
BRAZOS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3718)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1st day of April, 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 November 13, 2002 , and adjourned November 13, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 13, 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. Exceptions were filed by Respondent on January 27, 2003. No replies were filed by Petitioner.

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 except for Conclusion of Law No. 5, which is hereby amended as follows: Based on the foregoing findings and conclusions, Respondent's permit should be suspended for fifty (50) days and Respondent should be allowed to pay a civil penalty in the amount of \$150.00per day in lieu of suspension. 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 BQ-284760 is hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$7,500.00 on or before the **30th** day of **May, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **fifty (50) days, beginning at 12:01 A.M. on the 6th day of June, 2003.**

IT IS FURTHER ORDERED that all Respondent's employees attend a Project Save Training for Retailers in reference to the sale to minors and sale to intoxicated persons within ninety (90) day from the issuance of this Order.

This Order will become final and enforceable on April 22, 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 1st day of April, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Johnnie B. Rogers
ATTORNEY FOR RESPONDENT
11003 Onion Creek Ct.
Austin, Texas 78747-1608
VIA FACSIMILE: (512) 280-5577
AND REGULAR MAIL

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

Waco District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 599149

REGISTER NUMBER:

NAME: Jimmyjohn Enterprises, Inc.

TRADENAME: E-Z Mart Store #460

ADDRESS: 3300 Finfeather, Bryan, Texas 77801

DATE DUE: May 30, 2003

PERMITS OR LICENSES: BQ-284760

AMOUNT OF PENALTY: \$\$7,500.00

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 30TH 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.