

hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052.

On June 2, 2006, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Diane Brown, TABC Staff Attorney. Respondent appeared and was represented by its attorney, Mr. Thompson. Following presentation of evidence, the record closed on June 2, 2006.

II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13, TABC may cancel or suspend a permit for not more than 90 days if the permittee, "with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor" on the licensed premises.

Further, criminal negligence is defined in TEX. PEN. CODE ANN. § 6.03(c) as follows:

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 standpoint.

III. EVIDENCE

A. Respondent's Permits

Respondent holds a Mixed Beverage Permit, MB-526011, including a Mixed Beverage Late Hours Permit, issued by TABC, for the premises located at 114 W. Exchange Avenue, Fort Worth.

Tarrant County, Texas. These permits were originally issued on November 22, 2002, and they have been continuously renewed.

B. Alleged Sale to Minor on Licensed Premises

The following evidence describes a sale to a minor occurring on Respondent's premises on July 22, 2005. This evidence was undisputed.

On July 22, 2005, TABC Agent John Graham entered Respondent's premises to conduct a "minor" sting operation. Agent Graham entered the premises with Hannah Woody, a 16-year-old female. Before entering the premises, Agent Graham had instructed Ms. Woody to present her valid Texas driver's license upon request.

As Ms. Woody entered the premises, the doorman requested her identification. After viewing this identification, the doorman placed an "X" mark on Ms. Woody's hand to show she was a minor. Ms. Woody did not attempt to remove this mark from her hand during the sting operation.

Within Agent Graham's view, Ms. Woody next approached the bar. Upon encountering the bartender, she ordered a Coors Lite. The bartender failed to request identification from Ms. Woody. The bartender provided the requested Coors Lite to Ms. Woody and accepted her \$2 in payment.

Following this sale, Agent Graham confirmed through sight, smell, labeling, and taste that the Coors Lite served to Ms. Woody was, in fact, an alcoholic beverage.

IV. ANALYSIS

The evidence clearly establishes that Respondent's employee sold an alcoholic beverage to 16-year-old Ms. Woody on Respondent's licensed premises. The evidence also establishes that this act was committed with criminal negligence. Respondent's bartender failed to request identification from Ms. Woody, even though she was prepared to present her valid Texas driver's license as

evidence that she was a minor. The bartender further failed to observe the "X" mark on Respondent's hand as evidence that she was a minor.

Based on this violation, the ALJ recommends a 30-day suspension of Respondent's permits. As an alternative to this suspension, TABC should allow Respondent to pay a \$4,500 civil penalty.

V. PROPOSED FINDINGS OF FACT

1. Non-Stop Entertainment Group Ltd. d/b/a Stone Canyon (Respondent) holds a Mixed Beverage Permit, MB-526011, including a Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 114 W. Exchange Avenue, Fort Worth, Tarrant County, Texas.
2. These permits were originally issued on November 22, 2002, and they have been continuously renewed.
3. On July 22, 2005, TABC Agent John Graham entered Respondent's premises to conduct a "minor" sting operation.
4. Agent Graham entered the premises with Hannah Woody, a 16-year-old female.
5. Before entering the premises, Agent Graham had instructed Ms. Woody to present her valid Texas driver's license upon request.
6. As Ms. Woody entered the premises, the doorman requested her identification. After viewing this identification, the doorman placed an "X" mark on Ms. Woody's hand to show she was a minor. Ms. Woody did not attempt to remove this mark from her hand during the sting operation.
7. Within Agent Graham's view, Ms. Woody approached the bar. Upon encountering the bartender, she ordered a Coors Lite.
8. The bartender failed to request identification from Ms. Woody.
9. The bartender provided the requested Coors Lite to Ms. Woody and accepted her \$2 in payment.

10. Following this sale, Agent Graham confirmed through sight, smell, labeling, and taste that the Coors Lite served to Ms. Woody was, in fact, an alcoholic beverage.
11. On March 3, 2006, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent and its attorney, Frank Thompson.
12. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On June 2, 2006, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
14. Petitioner was represented at the hearing by Diane Brown, TABC Staff Attorney. Respondent appeared and was represented by its attorney, Mr. Thompson.
15. Following presentation of evidence, the record closed on June 2, 2006.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61(b)(2) and 106.13.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises. TEX. PEN. CODE ANN. § 6.03(d).
5. Respondent's permits should be suspended for 30 days. TEX. ALCO. BEV. CODE ANN. § 106.13 and 16 TEX. ADMIN. CODE § 37.60.
6. As an alternative to suspension, Respondent should be permitted to pay a \$4,500 civil

SOAH Docket No. 458-06-1589
TABC Docket No. 502004

Proposal for Decision

penalty. TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED June 23, 2006.



MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE Non-Stop Entertainment Group Ltd. d/b/a Stone Canyon
DOCKET NUMBER: 458-06-1589
AGENCY CASE NO. 502004

Diane Brown
Staff Attorney
Texas Alcoholic Beverage Commission
Ph: 214/678-4000
Fax: 214/678-4001

AGENCY COUNSEL
BY FAX

J. Frank Thompson
Fax: 817/870-2979

ATTORNEY FOR RESPONDENT
BY FAX

As of April 11, 2006

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 23, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 458-06-1589; Texas Alcoholic Beverage Commission vs Non-Stop Entertainment Group Ltd. d/b/a Stone Canyon. (TABC Case No. 502004)

Dear Mr. Steen:

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 Diane brown, attorney for Texas Alcoholic Beverage Commission, and to J. Frank Thompson, attorney for the Respondent. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Non-Stop Entertainment Group Ltd d/b/a Stone Canyon (Respondent), alleging that Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises, in violation of the Texas Alcoholic Beverage Code. Petitioner requested a 30-day suspension of Respondent's permits. In lieu of suspension, Petitioner requested that Respondent pay a civil penalty of \$4,500. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) finds Petitioner proved its allegations. The ALJ recommends a 30day suspension of Respondent's permits. In lieu of suspension, TABC should allow Respondent to pay a \$4,500 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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Monica Garza
Administrative Law Judge

MG/dd