



SOAH Docket No. 458-06-1879  
TABC Docket No. 513523

### Proposal for Decision

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 19, 2006, a hearing convened before SOAH ALJ Cindy T. Greenleaf 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, John Burton. Following presentation of evidence, the record closed on June 19, 2006.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71, TABC may cancel or suspend a retail dealer's off-premise license for not more than 60 days if the licensee, "with criminal negligence, sold, served, or delivered an alcoholic beverage to a minor" on the licensed premises. Additionally, pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13, TABC may cancel or suspend a retail license or permit for not more than 90 days if the licensee or 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(d) 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.

Pursuant to § 11.64 of the Code, when a license or permit suspension is authorized, the

SOAH Docket No. 458-06-1879  
TABC Docket No. 513523

### Proposal for Decision

licensee or permittee must be afforded the opportunity to pay a civil penalty in lieu of the suspension. In determining the amount of the penalty, the Texas Alcoholic Beverage Commission shall consider the economic impact a suspension would have on the licensee or permittee.

## III. EVIDENCE

### A. Respondent's Permit/License

Respondent holds a Wine Only Package Store Permit, Q-213209, and a Beer Retailer's Off Premise License, BF-252095, issued by TABC, for the premises located at 2274 Hemphill, Fort Worth, Tarrant County, Texas. Both were originally issued on February 2, 1990, and 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 November 19, 2005. This evidence was undisputed.

On November 19, 2005, TABC Agent John Graham entered Respondent's premises to conduct a "minor" sting operation. Agent Graham entered the premises prior to Jason Niemela, a 17-year-old male. Before entering the premises, Agent Graham had instructed Mr. Niemela to attempt a purchase of beer, be truthful, and present his valid Texas Driver's License upon request of the cashier.

In Agent Graham's view, Mr. Niemela entered the premises and proceeded directly to the beer cooler. He retrieved a Keystone Light can of beer and approached the Respondent, who was the cashier behind the counter. Respondent failed to request identification from Mr. Niemela and accepted his \$1 in payment for the beer.

SOAH Docket No. 458-06-1879  
TABC Docket No. 513523

#### Proposal for Decision

Following this sale, Agent Graham confirmed through site, labeling, markings, and his familiarity with the product that the Keystone Light purchased by Mr. Niemela was, in fact, an alcoholic beverage.

Respondent presented no evidence for consideration in this proceeding, no evidence regarding the economic impact any suspension on his permit and license might have on his business, nor any evidence reflecting any aggravating or mitigating circumstances involved.

#### IV. ANALYSIS

The undisputed evidence clearly establishes that Respondent sold an alcoholic beverage to 17-year-old Jason Niemela on Respondent's licensed premises. The evidence also establishes that this act was committed with criminal negligence. Respondent failed to request identification from Mr. Niemela, even though he was prepared to present his valid Texas Driver's License as evidence that he was a minor.

The only contested issue to be determined in this case is the length of suspension or amount of civil penalty to be imposed in lieu of suspension. Petitioner recommended a suspension period which falls within the Standard Penalty Chart for this violation. *See* 16 TEX. ADMIN. CODE § 37.60. Although Respondent requested a lesser penalty, Respondent did not offer any recommendation, did not offer any evidence regarding the economic impact a suspension on Respondent's permit and license might have on his business, nor offer any aggravating or mitigating circumstances. Therefore, the ALJ has nothing to consider which could justify reducing the civil penalty recommended by Petitioner.

Based on this violation, the ALJ recommends a 15-day suspension of Respondent's permit and license. As an alternative to this suspension, TABC should allow Respondent to pay a \$2,250 civil penalty.

SOAH Docket No. 458-06-1879  
TABC Docket No. 513523

Proposal for Decision

**V. PROPOSED FINDINGS OF FACT**

1. Mansur Nazir d/b/a Bill Up Food Store (Respondent) holds a Wine Only Package Store Permit, Q-213209, and a Beer Retailer's Off Premise License, BF-252095, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2274 Hemphill, Fort Worth, Tarrant County, Texas.
2. Both the permit and the license were originally issued on February 2, 1990, and have been continuously renewed.
3. On November 19, 2005, TABC Agent John Graham entered Respondent's premises to conduct a "minor" sting operation.
4. Agent Graham entered the premises prior to Jason Niemela, a 17-year-old male.
5. Before entering the premises, Agent Graham had instructed Mr. Niemela to attempt a purchase of beer, be truthful, and present his valid Texas Driver's License upon request of the cashier.
6. In Agent Graham's view, Mr. Niemela entered the premises and proceeded directly to the beer cooler. He retrieved a Keystone Light can of beer and approached the Respondent, who was the cashier behind the counter.
7. Respondent failed to request identification from Mr. Niemela.
8. Respondent accepted Mr. Niemela's \$1 in payment for the beer.
9. Following this sale, Agent Graham confirmed through site, labeling, markings, and his familiarity with the product that the Keystone Light purchased by Mr. Niemela was, in fact, an alcoholic beverage.
10. On May 4, 2006, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent.
11. 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.

SOAH Docket No. 458-06-1879  
TABC Docket No. 513523

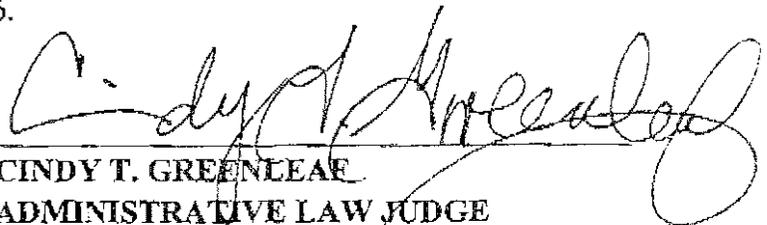
Proposal for Decision

12. On June 19, 2006, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Cindy Greenleaf at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
13. Petitioner was represented at the hearing by Diane Brown, TABC Staff Attorney. Respondent appeared and was represented by his attorney, John Burton.
14. Following presentation of evidence, the record closed on June 19, 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), 61.71(a)(5), 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, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises. TEX. PEN. CODE ANN. § 6.03(d).
5. Respondent's permit and license should be suspended for 15 days. TEX. ALCO. BEV. CODE ANN. §§ 61.71 and 106.13 and 16 TEX. ADMIN. CODE § 37.60.
6. As an alternative to suspension, Respondent should be permitted to pay a \$2,250 civil penalty. TEX. ALCO. BEV. CODE ANN. § 11.64.

SIGNED July 13, 2006.

  
CINDY T. GREENLEAF  
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  
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## SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: Mansur Nazir d/b/a Bill Up Food Store

DOCKET NUMBER: 458-06-1879

AGENCY CASE NO: 513523

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BY FAX

as of July 13, 2006

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 13, 2006

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

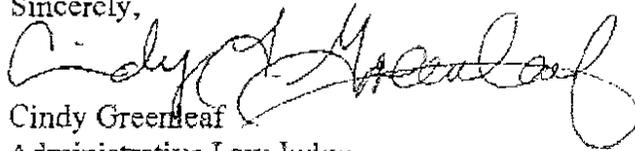
**RE: Docket No. 458-06-1879; Texas Alcoholic Beverage Commission vs Mansur Nazir  
d/b/a Bill Up Food Store, (TABC Case No. 513523)**

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 John Burton, attorney for the Respondent. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Mansur Nazir d/b/a Bill Up Food Store (Respondent), alleging that Respondent, 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 15-day civil penalty of \$2,250. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) finds Petitioner proved its allegations. The ALJ recommends a 15-day suspension of Respondent's permits. In lieu of suspension, TABC should allow Respondent to pay a \$2,250 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,

  
Cindy Greenleaf  
Administrative Law Judge

CG/dd

Diane Brown, TABC Staff Attorney, VIA FACSIMILE 214/678-4050  
John Burton, Attorney for Respondent, VIA FACSIMILE, 817/921-9740