

DOCKET NO. 515507

IN RE OUTFITTER'S	§	BEFORE THE TEXAS
d/b/a Outfitter's	§	
PERMIT NO. N563328	§	
	§	
	§	ALCOHOLIC
	§	
HUTCHINSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2314)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of January, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on July 11, 2006 and closed on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 25, 2006. 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 and Response have been filed and ruled on by the ALJ.

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.

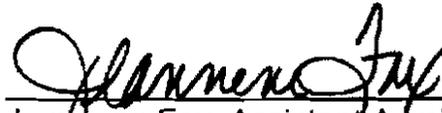
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits shall be suspended for a period of 5 days commencing at 12:01 on March 14, 2007, unless a civil penalty in the sum of \$750.00 is paid by the Respondent to the Commission on or before 12:01 a.m. on March 7, 2007.**

This Order will become final and enforceable on February 19, 2007, 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.

SIGNED on this **5th** day of **January, 2007**, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 806-792-0149
Ph.: 806-792-0007

OUTFITTER'S
d/b/a Outfitter's
RESPONDENT
RR 2 Box 6-9
Fritch, Texas 79036-9606
CERTIFIED MAIL NO. 7003 2260 0000 6465 8827
RETURN RECEIPT REQUESTED

Frank Lay
RESPONDENT'S ATTORNEY
VIA FACSIMILE 806-279-2347
Ph.: 806-273-2347

Jerry McClain
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-678-4050
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TABC Legal Services Division

Licensing Division

Amarillo District Office

SOAH DOCKET NO. 458-06-2314

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
	§	
V.	§	
	§	
OUTFITTER'S	§	OF
D/B/A OUTFITTER'S,	§	
HUTCHINSON COUNTY, TEXAS	§	
(TABC CASE NO. 515507)	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Commission or TABC) brought this disciplinary action against Outfitter's d/b/a Outfitter's, (Respondent), alleging that Respondent, his agent, servant, or employee, on December 4, 2005, allowed a breach of the peace on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of persons on the premises, in violation of Texas Alcoholic Beverage Code (the Code) §§11.61(b)(2), 24.11, 28.11, 61.71(a)(1), 69.13 and/or 71.09. Based on the evidence, the Administrative Law Judge (Judge) finds the Petitioner proved the allegations by a preponderance of the evidence and recommends that Respondent's permits should be suspended for five days or a civil penalty paid.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute disciplinary action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. HEARING AND EVIDENCE

On July 11, 2006, a hearing was convened before Judge B. L. Phillips, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. Petitioner was represented by Timothy E. Griffith, attorney. Respondent was represented Frank Lay, attorney, who appeared by telephone. The record closed the same day.

III. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to the Code §§ 11.61(b) (2) and (7), the TABC may suspend or cancel a permit if it finds that the licensee violated a provision of the Code or rule of the Commission, or if the place or manner in which permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and the safety of the people and on the public sense of decency. The Commission is authorized under §§ 24.11, 28.11, and 69.13 to suspend or cancel a permit or license if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

IV. EVIDENCE

A. Documentary Evidence

Petitioner offered into evidence three exhibits, the Notice of Hearing issued in the case, Respondent's permit history, and a police report filed as a result of the incident underlying this case. Respondent offered into evidence a series of photos showing different views of the licensed premises. All offered exhibits were admitted into evidence.

B. Aaron McWilliams, Hutchinson County Sheriff's Deputy

Deputy McWilliams testified that he was contacted on December 4, 2005, by Carla Bechtel who stated that she was involved in an incident with Jessica Rawlins on the parking lot of Outfitter's. Bechtel told him that she was employed by Outfitter's on that date and was taking out the trash when she observed Rawlins sitting in a vehicle waiting for her. The two women subsequently got into a fight on the parking lot of the licensed premises. Deputy McWilliams observed that Bechtel had an apparent injury to her face with redness and swelling.

C. Jessica Rawlins

Ms. Rawlins testified that she was employed as the assistant manager of Outfitter's in December, 2005. On the date of the incident in question, Ms. Rawlins drove to Outfitter's intending to talk with Ms. Bechtel after Bechtel got off of work, and the two of them got into a fight that spilled over into the parking lot of Outfitter's. Ms. Rawlins testified that she parked in an area that was not usually used for parking for the licensed premises.

D. Gary Barnes

Mr. Barnes is the owner of Outfitter's and is employed as a Game Warden, making him a certified peace officer. Mr. Barnes was aware of the problems that existed between Ms. Rawlins and Ms. Bechtel prior to December 4, 2005. On that date, he was out of town when he was called by Ms. Rawlins and told that she was going to see Ms. Bechtel that night. Mr. Barnes testified that he told Ms. Rawlins that any fight had better not take place on the licensed premises. After he was notified that a fight had occurred between the two women, he held a meeting with both in order to attempt to rectify the situation and he notified TABC that a fight involving two of his employees had spilled over into parking lot of the license premises.

E. Sharla Rawlins

Ms. Rawlins testified that she was employed as the manager of Outfitter's on December 4, 2005, and that Ms. Bechtel was working on the licensed premises that night. Ms. Rawlins stated that there was nothing that she could have done to prevent the fight between the two women.

V. ANALYSIS

The Code authorizes the TABC to suspend or cancel a permit if it finds that the licensee violated a provision of the Code or rule of the Commission, or if the place or manner in which permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and the safety of the people and on the public sense of decency. In this case, the TABC alleges that a breach of the peace occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

The evidence is sufficient to prove the issues that establish a breach of the peace violation. Ms. Bechtel and Ms. J. Rawlins were both employees of Outfitter's when they engaged in a fight that spilled over into the parking lot of the licensed premises. Whether or not the fight started off the licensed premises is irrelevant since all the evidence agrees that the fight eventually occurred on the parking lot of Outfitter's, which fits the definition of a licensed premises under the Code. The only real issue is whether the fight was beyond Respondent's control and resulted from Respondent's improper supervision of persons on the premises. The evidence supports a finding in favor of Petitioner in this regard. Respondent and his club manager that night, Sharla Rawlins, both argued that there was nothing they could have done to prevent the fight; however, Respondent's own testimony belies that argument. Respondent testified that Ms. J. Rawlins called him on the night of the fight while he was out of town to tell him that she was going to see Ms. Bechtel that night and that he told her that any fight had better not take place on the licensed premises. His own words to

Ms. J. Rawlins suggests that he knew that there was going to be a fight that night, and yet he did nothing to stop the fight. He argued that he was out of town and could not respond to the threat of a fight; however, he was back in town later that evening to have a meeting with Ms. Bechtel and Ms. J. Rawlins after the fight occurred. More importantly, Ms. J. Rawlins was able to contact him by phone to tell him of her intentions. He could easily have told her that she would be fired if she engaged in a fight with another employee, especially if it occurred on the licensed premises. The idea that he was aware that one employee was going to the licensed premises to confront another employee with whom she had a conflict is unacceptable and should have been properly handled by Respondent, but was not. Furthermore, there is no reason to believe that Respondent could not have placed a phone call to Ms. Sharla Rawlins, the club's manager, that night to tell her that Ms. J. Rawlins was coming to confront Ms. Bechtel. Ms. S. Rawlins could then have called police or the sheriff's office to have an officer on the licensed premises that day to either stop any fight from occurring or to break up the fight. Instead, Respondent did nothing and apparently did not give Ms. S. Rawlins any notice of the events to occur so that she could respond. The evidence is conclusive that the breach of the peace was not beyond Respondent's control and did directly result from his improper supervision of persons on the premises, in this case two employees of the licensed premises over whom he should have been able to exercise some control.

The evidence was sufficient to prove that Respondent violated the Code and his permits should be suspended or a civil fine paid. However, this was not a major fight as it involved only two persons and appears to have occurred more because of personal animosity than the improper use of alcoholic beverages. And while it was not good management on the part of Respondent to do nothing to defuse the situation once he was apprised of the possibility of a fight, this could have been a lapse on his part partially because he was out of town that day and might have had other responsibilities on his mind at the moment because of his duties as a game warden. Finally, Respondent did attempt to defuse the situation between the two women by meeting with them and the club manager that night after the fight occurred. Because of these mitigating factors, the Judge believes that the Commission's recommended penalty should be ameliorated and that Respondent

should have a five day suspension or the payment of a civil penalty of one hundred and fifty dollars per day of the proposed suspension in the alternative.

VI. PROPOSED FINDINGS OF FACT

1. Outfitter's d/b/a Outfitter's, Hutchinson County, Texas, holds Permit Nos. N-563328, FB-563330 and PE-563329, issued by the TABC for the premises located at 9609 Fritch Fortress Road, Fritch, Hutchinson County, Texas.
2. Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated April 19, 2006.
3. The hearing on the merits convened July 11, 2006, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. The TABC was represented by attorney Timothy E. Griffith. The Respondent appeared and was represented by Frank Lay, attorney. The record closed on the same day.
4. Respondent employed Ms. Karla Bechtel and Ms. Jessica Rawlins at the licensed premises on or about December 4, 2005.
5. On that same date, Ms. J. Rawlins called him to tell him she was going to see Ms. Bechtel, who Respondent was aware she had a conflict with, and he told Ms. Rawlins that any fight should not occur on the licensed premises.
6. Respondent failed to warn Ms. J. Rawlins that she could be terminated if she got into a fight with another employee on the licensed premises.
7. Respondent also failed to notify Ms. Sharla Rawlins, the manager of the licensed premises on duty that night, that Ms. J. Rawlins had told him that she was coming to confront Ms. Bechtel that night.
8. Respondent and Ms. S. Rawlins failed to make notify law enforcement personnel that a possible fight might occur on the licensed premises that night or otherwise make arrangements to ensure that the fight did not occur on the licensed premises.
9. Ms. Rawlins and Ms. Bechtel got into a fight which spilled over onto the parking lot of the licensed premises.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 61.71, and 61.73.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Findings of Fact No. 4-9, the Commission proved that Respondent, on or about December 4, 2005, violated the Code by allowing a breach of the peace on the licensed premises that was not beyond Respondent's control and resulted from Respondent's improper supervision of persons on the premises.
5. Based on the foregoing, suspension of Respondent's permits for a period of five days or payment of a civil penalty of one hundred and fifty dollars per day of the proposed suspension is warranted.

SIGNED: July 25th, 2006

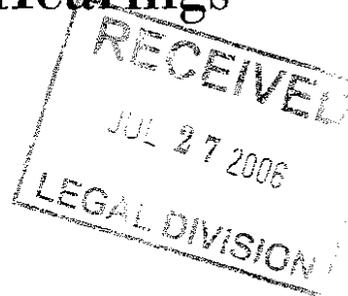


B. L. Phillips
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



July 25, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-2314, Outfitter's

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59©, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


B. L. Phillips
Administrative Law Judge

BLP/vu

Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Frank Lay, Respondent's Attorney, 2110 Hemlock, Borger, TX. 79007-VIA REGULAR MAIL