

DOCKET NO. 521225

IN RE MELISSA KIM HOANG	§	BEFORE THE TEXAS
D/B/A UNITED LIQUOR	§	
PERMIT NOS. P601985	§	
	§	ALCOHOLIC
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-1196)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of May 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on February 23, 2007 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 7, 2007. 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 Replies to Proposal for Decision were filed to which the Administrative Law Judge made no recommendations or changes to the proposal.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that 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 Permit No. P601985 is **herein SUSPENDED for twenty (20) days.**

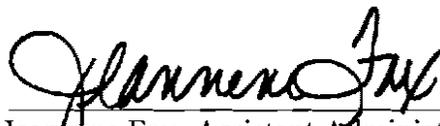
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$3,000.00** on or before the **17th day of July 2007**, all rights and privileges under the above described permits will be **SUSPENDED for a period of twenty (20) days beginning at 12:01 A.M. on the 25th day of July 2007.**

This Order will become final and enforceable on June 21, 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 the 24th day of May 2007.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Don Smith
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Melissa Kim Hoang
D/B/A United Liquor
RESPONDENT
19119 Dianeshire Dr.
Spring, TX 77388
VIA REGULAR MAIL

Aloysius Duy-Hung Hoang
ATTORNEY FOR RESPONDENT
1900 N. Loop West, Suite 500
Houston, Texas 77018
VIA FACSIMILE TRANSMISSION TO (713) 600-3705

Ramona M. Perry
ATTORNEY FOR PETITIONER
Legal Services Division

Licensing Division

Beaumont District Office

SOAH DOCKET NO. 458-07-1196

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	
MELISSA KIM HOANG	§	OF
D/B/A UNITED LIQUOR	§	
PERMIT NO. P601985	§	
JEFFERSON COUNTY, TEXAS	§	
(TABC CASE NO. 521225),	§	
Respondent	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Staff) requested that the permit of Melissa Kim Hoang, d/b/a United Liquor (Respondent) be suspended for 20 days, because on or about February 10, 2006, Respondent or Respondent's agent, servant or employee, with criminal negligence, sold, served or delivered an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. § 106.13 (a). The Administrative Law Judge (ALJ) finds Staff has proven Respondent committed the alleged violations, and recommends a 20 day suspension.

I. PROCEDURAL HISTORY AND JURISDICTION

There are no contested issues of notice or jurisdiction, and those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened February 23, 2006, at the State Office of Administrative Hearings (SOAH), 2020 North Loop West, Suite 111, Houston, Texas, before ALJ Don Smith. TABC' Staff was represented by attorney Ramona Perry. Respondent appeared through her attorney Aloysius Hoang. Evidence was presented, and the record was closed on February 23, 2006.

II. ALLEGATIONS AND LEGAL STANDARDS

Pursuant to the Notice of Hearing issued by TABC, Staff alleges that on or about February 10, 2006, Respondent, its agent, servant, or employee, with criminal negligence sold, served, or delivered an alcoholic beverage to a minor, in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.

III. EVIDENCE, ANALYSIS AND RECOMMENDATION

A. Evidence

1. Testimony of Steven Cagle

Steven Cagle, an enforcement agent for the TABC, stated that on February 10, 2006, he was conducting surveillance on United Liquor at 3603 Nederland Avenue, Nederland, Jefferson County, Texas. A young white male driving a white Ford truck went into United Liquor, and after five minutes, came out of the store carrying a cardboard box. Agent Cagle stopped the male about two blocks away from the store and asked for his driver's license. The driver's license identified the male as David Bryan Bledsoe, a 19-year-old minor born on 11-28-1986. The cardboard box contained three alcoholic beverage bottles and a receipt from United Liquor for \$34.91. The alcoholic beverages were two 1.75 ml bottles of vodka and a 750 ml bottle of rum.

When questioned, the minor told the agent that the Asian female behind the counter at United Liquor did not ask him for any identification before selling him the liquor. The agent testified that he did not find any other identification for the minor in the vehicle. Agent Cagle cited Mr. Bledsoe for minor possessing/consuming alcoholic beverages. Mr. Bledsoe pled guilty to the charge.

Agent Cagle testified that his surveillance started around 8:20 p.m., the minor went into the store about 20 minutes later, and the agent issued the citation around 8:45 p.m. Around 9:00 p.m., Agent Cagle went back to the store and confronted the clerk.

The clerk behind the counter at the store was Respondent. She told Agent Cagle that she remembered the sale, made the sale, and checked the identification before making the sale.

2. Testimony of Melissa Kim Hoang

Respondent testified that on February 10, 2006, Agent Cagle told her that she had just sold alcoholic beverages to a minor. Mrs. Hoang told Agent Cagle that she had checked the young man's driver's license, and it listed the birth date as June 1984. She testified that she knows the minor, and it was the second sale to him. The first sale was in January. Agent Cagle issued her a citation. Respondent testified that the store had just opened in January, she knows all the customers, she always checks the identifications of the younger persons, and she has no employees.

B. ALJ's Analysis and Recommendation

Respondent's employee did, with criminal negligence, sell an alcoholic beverage to a minor on February 10, 2006.

Melissa Kim Hoang, Respondent, sold alcoholic beverages to a minor. The minor told Agent Cagle that Respondent had not ask him for any identification, and the only identification that the minor had on his person or in the truck at 8:45 p.m. when Agent Cagle stopped him, was his Texas Driver's License, identifying him as a minor. The evidence shows that Respondent sold alcoholic beverages to a minor without asking for any identification, or saw the identification and sold the beverages anyway. It was Agent Cagle's opinion that the minor clearly appeared to be under the age of 21, yet was able to purchase the alcoholic beverages.

Staff requested 20-day suspension, or a \$150 per day penalty in lieu of the suspension. The ALJ finds that Respondent sold alcoholic beverages to a minor, and agrees with Staff that a 20-day suspension is appropriate.

IV. FINDINGS OF FACT

1. Melissa Kim Hoang, d/b/a United Liquor (Respondent) is the holder of a Package Store Permit, P-601985, and Beer Retailer's Off-Premise License, BF-601986, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 3603 Nederland Avenue, Nederland, Jefferson County, Texas.
2. On January 4, 2007, the TABC's Staff sent a Notice of Hearing to Respondent.
3. The Notice of Hearing contained a statement of the time, date, location, and the 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 allegations and the relief sought by the TABC.
4. On February 23, 2007, a public hearing was held before Administrative Law Judge Don Smith. The Staff appeared through staff attorney Ramona Perry. Respondent appeared through her attorney Aloysius Hoang. Evidence was presented, and the record closed on February 23, 2007.
5. On February 10, 2006, Melissa Kim Hoang, Respondent, sold alcoholic beverages to David Bryan Bledsoe, at Respondent's premises without asking to see his identification.
6. On February 10, 2006, David Bryan Bledsoe was 19 years old, and appeared to be young.
7. Respondent has had no previous violations.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, and §§ 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. ch. 2003.
 3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE (TAC) § 155.55.
-

4. Based on the above Findings of Fact, on February 10, 2006, Respondent violated TEX. ALCO. BEV. CODE § 106.13 (a).
5. Based on Conclusion of Law 4, a 20-day suspension is warranted. 16 TEX. ADMIN. CODE § 37.60. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$3,000 civil penalty in lieu of suspension of its permit.

SIGNED this 7th of March, 2007



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 07, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-07-1196/ Texas Alcoholic Beverage Commission vs. Melissa Kim Hoang d/b/a United Liquor

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(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona M. Perry, 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
Aloysius Hoang, Attorney for Respondent, 1900 N. Loop West, Suite 500, Houston, Texas 77018 -**VIA REGULAR MAIL**

