

DOCKET NO. 526038

IN RE JIVA MANAGEMENT INC.	§	BEFORE THE TEXAS
D/B/A JACOB FOOD MART	§	
LICENSE NO. BF574392	§	
	§	ALCOHOLIC
	§	
SAN JACINTO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-1194)	§	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 April 10, 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. As of this date no exceptions have been filed.

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 Respondent's License(s) and/or Permit(s) are herein **SUSPENDED** for **ninety (90) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$13,500.00** on or before the **3rd day of July 2007**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **ninety (90) days beginning at 12:01 A.M. on the 11th day of July 2007**.

This Order will become final and enforceable on June 1, 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 29th 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

Altaf Siddik Adam
ATTORNEY FOR RESPONDENT
P. O. Box 572495
Houston, TX 77257
VIA FACSIMILE TRANSMISSION TO (713) 227-0602

Jiva Management Inc.
d/b/a Jacob Food Mart
RESPONDENT
12660 Hwy 59 S
Shepherd, Texas 77371
VIA REGULAR MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Conroe Outpost

Licensing Division

SOAH DOCKET NO. 458-07-1194

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	
JIVA MANAGEMENT INC.	§	OF
D/B/A JACOB FOOD MART	§	
LICENSE NO. BF574392	§	
SAN JACINTO COUNTY, TEXAS	§	
(TABC CASE NO. 526038),	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Staff) requested that the permit of Jiva Management Inc. d/b/a Jacob Food Mart (Respondent) be suspended for 90 days, because on or about March 22, 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) (b) and 61.71 (a) (5). The Administrative Law Judge (ALJ) finds Staff has proven Respondent committed the alleged violations, and recommends a 90 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 attorney Imdad Seehav. 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 March 22, 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) (b) and 61.71 (a) (5).

III. EVIDENCE, ANALYSIS AND RECOMMENDATION

A. Evidence

1. Testimony of Dustin Shrell

Dustin Shrell, an enforcement agent for the TABC, stated that on March 22, 2006, he was conducting minor sting operations, going to several locations, including Jiva Management Inc. d/b/a Jacob Food Mart at 12660 US 59 in Sheperd, San Jacinto County, Texas. An eighteen year old female, Christa Marie Garza (date of birth: 7-11-1987) was participating in the sting operations, along with Deputy Barrett, who was in plain clothes. Agent Scott Zella, another enforcement agent for the TABC, also participated in the sting operations. Respondent had agreed to have all the employees attend a SAVE PROGRAM by March 22, 2006, and that TABC Enforcement could conduct a sting operation to ensure Respondent was in compliance with a settlement order from a previous violation.

At 8:14 p.m., Ms. Garza entered the Jacob Food Mart, proceeded to the alcoholic beverages, picked up a four-pack of Seagram's alcoholic beverages, and proceeded to the check-out counter. The clerk was described as an "middle eastern Asian male" who spoke very little English. The clerk

asked for her identification, looked at her "under 21" driver's license, handed back the driver's license to Ms. Garza, told her the price for the alcoholic beverages, and made the sale. Ms. Garza bought the beverages for \$4.26. After she made the purchase, she walked out of the store, and Agent Shrell walked into the store.

Agent Shrell observed that Respondent had no signs posted to discourage the sale of alcoholic beverages to minors, and had no signs stating the store's policy guidelines to employees against the sales of alcoholic beverages to minors. The clerk, Ali Mohamad, was not certified under the SAVE PROGRAM. Agent Shrell issued a citation to Ali Mohamad for the sale of alcoholic beverages to a minor.

2. Testimony of Deputy Barrett

Deputy Barrett is a Trinity County Constable. He also described the same sale to a minor. On March 22, 2006, he was in plain clothes assisting in the minor sting operations. Ms. Garza, the minor, went into the Jacob Food Mart with him following her. She went to the cooler, got a four-pack of 12-oz Seagram lime flavored margaritas, and proceeded to the cashier. The cashier asked her for identification. She handed him her "under 21" driver's license. The cashier looked at the identification, handed it back to her, and told her the price for the alcoholic beverages. She paid with cash and walked out of the store with the alcoholic beverages. The deputy followed her out. No one else was in the store during the transaction.

B. ALJ's Analysis and Recommendation

Respondent's employee did, with criminal negligence, sell an alcoholic beverage to a minor. The witnesses testified that the minor appeared young. The photocopy of the minor driver's license clearly identifies Christa Marie Garza to be "UNDER 21 UNTIL 07-11-08." The evidence shows

that Respondent's employee sold alcoholic beverages to a minor with criminal intent after viewing her "under 21" driver's license.

Staff requested a 90-day suspension, or a \$150 per day penalty in lieu of the suspension. The ALJ finds that Respondent has a previous violation of sale to a minor. On February 22, 2006, Respondent agreed that all of its employees would attend a SAVE PROGRAM on or before March 22, 2006. The Respondent was advised that a follow up compliance check would be conducted on Respondent's premises within 90 days. On March 22, 2006 Respondent's employee had not attended a SAVE PROGRAM, there were no signs to discourage the sale of alcoholic beverages to minors, and there were no signs posted stating Respondent's policy guidelines to employees against sales of alcoholic beverages to minors. These factors all support the requested suspension, and the ALJ agrees with Staff's recommendation.

IV. FINDINGS OF FACT

1. Jiva Management Inc., d/b/a Jacob Food Mart (Respondent) is the holder of a Wine Only Package Store Permit, Q-574391, and Beer Retailer's Off-Premise License, BF 574392, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 12660 Hwy 59 South, Shepherd, San Jacinto 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 attorney Imdad Seehav. Evidence was presented, and the record closed on February 23, 2007.
5. On March 22, 2006, Respondent's employee, Ali Mohamad, sold alcoholic beverages to Christa Marie Garza at Respondent's premises, even though he was presented a "under 21" driver's license.

6. On March 22, 2006, Christa Marie Garza was 18-years old, and appeared to be young.
7. Respondent has three previous violations, one being for sale to a minor on February 4, 2006.
8. Respondent agreed to have all its employees attend a SAVE PROGRAM by March 22, 2006.
9. On March 22, 2006, Respondent's employee Ali Mohamad had not attended a SAVE PROGRAM.
10. On March 22, 2006, Respondent did not have any signs posted to discourage the sale of alcoholic beverages to minors.
11. On March 22, 2006, Respondent did not have any policy guidelines posted to employees against the sale of alcoholic beverages to minors.

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 March 22, 2006, Respondent violated TEX. ALCO. BEV. CODE §§ 106.13 (a) (b) and 61.71 (a) (5).
5. Based on Conclusion of Law 4, a 90-day suspension is warranted. 16 TEX. ADMIN. CODE § 37.60.
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$13,500 civil penalty in lieu of suspension of its permit.

SIGNED this 10th of April, 2007



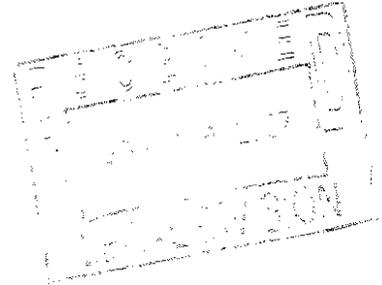
DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 10, 2007



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

VIA REGULAR MAIL

RE: Docket No. 458-07-1194 ; Texas Alcoholic Beverage Commission vs. Jiva Management Inc. d/b/a Jacob Food Mart

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 Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Altaf Adam, Attorney for Respondent, P.O. Box 572495, Houston, TX 77257 -**VIA REGULAR MAIL**