

SOAH DOCKET NO. 458-08-2633

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
BLANCO GENERAL, L.L.C D/B/A BLANCO GENERAL PERMIT/LICENSE NO. BQ628576	§	OF
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brings this action against Blanco General, L.L.C. d/b/a Blanco General (Respondent), seeking to cancel Respondent's Wine and Beer Retailer's Off-Premise Permit. TABC alleges that Respondent's agents or employees, Sandra Edwards and her mother, Anna L. Jones, falsely answered questions on the application concerning Ms. Jones' marital status with Charles Rodney Jones, who had a felony conviction. Further, TABC alleges that Charles Rodney Jones, and son, Charles Michael Jones, are actively participating in Respondent's operation and therefore, because of the subterfuge relationship, Respondent's permit should be cancelled. This proposal for decision recommends that Respondent's permit be cancelled for falsely answering questions on the application but finds the evidence insufficient on the existence of a subterfuge relationship involving Charles Rodney Jones or Charles Michael Jones.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

A hearing convened before Administrative Law Judge (ALJ) Penny A. Wilkov on October 23, 2008, and on December 16, 2008, at the State Office of Administrative Hearings (SOAH) in Austin. Staff Attorney Susan Stith represented TABC. Respondent was represented by Attorney Dewey Bracken. The record closed on March 3, 2009, with Staff filing its rebuttal argument.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion.

II. DISCUSSION

A. Background

Respondent operates Blanco General, a convenience store located at 1138 Highway 281 South, Blanco, Blanco County, Texas. In March 2006, Ms. Edwards applied to the TABC for a wine and beer retailer's off-premise permit (permit) as a sole proprietorship. Following a conversation with a TABC employee on April 17, 2006, Ms. Edwards revised the application to the family-owned entity, Blanco General, L.L.C., which owned the land and building. The two applications listed the members and managers as follows:

The following were listed on the original application:¹

- Sandra Ann Edwards, President and manager, 30% interest;²
- Anna Lee Jones (Ms. Edwards' mother), member and manager;
- Justin R. Jones (Ms. Edwards' son), manager;
- Twelve Twenty Six Productions, Inc., 25% interest;³ and
- C.A.M.S. Trust, 45% interest.⁴

On the revised application, the following were listed:⁵

- Anna Lee Jones member and manager;
- Sandra Ann Edwards, manager, 30% interest;
- Chelsea Ann Harvey (Ms. Jones' granddaughter), manager;

¹ Exhibit 14.

² Ms. Edwards married and changed her name to Sandra Gustafson, but will be referred to here as Ms. Edwards.

³ Sandra Edwards, Anna Jones, and Justin Jones.

⁴ Anna Jones and Sandra Edwards, Trustee, with various grandchildren.

⁵ Exhibit 15.

- Twelve Twenty Six Productions, Inc., 25% interest;⁶ and
- C.A.M.S. Trust, 45% interest.⁷

On December 12, 2006, however, following an anonymous complaint that Respondent's true ownership had been misrepresented, Agent Mark Gohlke, a TABC Licensing Investigator, conducted an investigation centered on Ms. Jones' marital status and relationship with Charles Rodney Jones,⁸ who had a felony conviction, and whether he was actively participating in the business with Ms. Jones and Ms. Edwards.⁹

B. Applicable Law and Allegations

State law allows the TABC to cancel a renewal or original permit for numerous reasons. Staff has cited several provisions that prohibit false or misleading statements, including TEX. ALCO. BEV. CODE ANN §§ 11.61, 11.46(a)(4), and 61.43(a)(4), 61.71(a)(4) and (11), as the basis for the violations. These provisions generally allow suspension or cancellation of a permit, if after notice and hearing, it is found that the permittee either made a false or misleading statement in connection with the application or falsely or incorrectly answered a question in an original or renewal application.¹⁰

The TABC is also authorized to cancel an original or renewal permit if a person other than the permit-holder allowed the permit to be used or displayed. In this regard, Staff had alleged several

⁶ Sandra Edwards, Chelsea Harvey, and Justin Jones.

⁷ Sandra Edwards, Trustee, with various grandchildren.

⁸ Mr. Jones is also Ms. Edwards' father.

⁹ Tr. at 156.

¹⁰ TEX. ALCO. BEV. CODE § 11.61 provides, in pertinent part: (b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: (4) the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its agents, or employees. TEX. ALCO. BEV. CODE ANN. §§ 61.43(a)(4) and 61.71(a)(4) and (11), provides similar provisions.

provisions disallowing subterfuge ownership, TEX. ALCO. BEV. CODE ANN §§ 11.05, 11.61(b)(2), 61.71(a)(15) and 109.53. These provisions provide disciplinary authority for allowing the use or display of a permit in the conduct of business for the benefit of a person not authorized by law to have an interest in the permit.¹¹

Relying upon these provisions, TABC asserts that Respondent's existing permit should be cancelled because, in pertinent part, Respondent committed the following violations:

- (1) Respondent's agent, Anna L. Jones, falsely represented on her Personal History Sheet, that her spouse, Charles Rodney Jones, had never been arrested or charged with a criminal offense or knowingly been investigated for a criminal offense. According to Staff, Ms. Jones answered "no" to question 8, and failed to disclose her marriage to Charles Rodney Jones, who was convicted of two felony offenses on January 15, 1998.

Respondent's agent, Anna L. Jones, falsely answered question 10.E1a, addressing whether any person named in question 7A [Anna L. Jones] or a spouse had ever been convicted of a felony offense.

Respondent's agent, Sandra Ann Edwards, falsely represented on the application that . . . [she had never] knowingly been investigated for a criminal offense. According to Staff, Ms. Edwards answered "no" to questions 8, and failed to disclose that she had been investigated regarding the allegations of conspiracy to make a false and fraudulent statement to a government agency and to make false statements to the Commodity Credit Corp.

- (2) Respondent allowed Charles Rodney Jones and/or Charles Michael Jones to use or display the permit for his benefit when these individuals are not authorized by law to use or display the license or have an interest in the license.

¹¹ TEX. ALCO. BEV. CODE ANN. § 11.05 provides that no permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) provides that the word "permittee" also includes each member of a partnership or association. TEX. ALCO. BEV. CODE ANN. § 109.53 provides, in pertinent part, that it is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent.

C. Evidence and Argument Related to False Statements

1. TABC

Agent Gohlke testified that following a complaint alleging Ms. Jones and her husband, Charles Rodney Jones, were actually running Blanco General, he reviewed Respondent's application and noticed that on Ms. Jones' personal history sheet, she had marked "divorced" for her marital status.¹² Agent Gohlke then obtained a certified copy of the marriage license and an affidavit from the State Registrar of Vital Statistics, indicating no divorce reported between Anna Jones and Charles Rodney Jones.¹³ Relying on this evidence, Agent Gohlke filed criminal charges in Blanco District Court against Ms. Jones and a felony conviction was entered on March 28, 2007, after Ms. Jones plead guilty to making a false statement on a government record.¹⁴

Agent Gohlke testified that he found another false statement: Ms. Jones had marked "no" to the question whether a spouse has ever been arrested or charged with a crime.¹⁵ Agent Gohlke obtained copies of the judgment and found that Charles Rodney Jones and his son, Charles Michael Jones, were convicted in United States District Court for Conspiracy to Make False and Fraudulent Statements to Governmental Agencies to Obstruct Justice.¹⁶

Based on Agent Gohlke's conversation with United States Department of Agriculture (USDA) agent Mary Lewis, he concluded that Ms. Edwards had falsely represented in the application that she had never been investigated. Although Agent Lewis was issued a subpoena by the Texas

¹² Tr. at 72.

¹³ Exhibit 6.

¹⁴ Exhibit 7.

¹⁵ Tr. at 73-74.

¹⁶ Tr. at 83 and 145-146 and Exhibit 8.

Attorney General's Office to testify, the Department of Justice denied the request for her to testify, citing an on-going investigation and confidentiality.¹⁷

According to Agent Gohlke these combined false application statements were significant because a more thorough application investigation would have ensued if proper disclosures were made. Agent Gohlke testified that the nature of a TABC permit provides an opportunity for a substantial cash business, tax evasion, and money laundering, providing justification for disallowance of the permit when Charles Rodney Jones and his son, Charles Michael Jones, became an issue in the approval of the application.¹⁸

2. Respondent

Ms. Edwards denied that there was an intentional false statement about Ms. Jones' marital status because at that time her parents were separated and living apart, a circumstance not adequately described by the "married" or "divorced" option on the application. Moreover, Respondent argued, and Agent Gohlke agreed, that even if Ms. Jones had checked "married," it is not an automatic disqualification with this type of permit to have a spouse with a criminal record, so long as the spouse is not directly involved in the ownership.¹⁹ Respondent maintained, therefore, that since the inaccurate information was immaterial to the license and not meant to defraud, an amended application should have been the remedy rather than an enforcement action.

Ms. Edwards explained that on March 13, 2006, when she initially applied as a sole proprietorship and signed the acknowledgement page, her mother was not listed on the application.

¹⁷ Tr. at 105.

¹⁸ Tr. at 147.

¹⁹ Tr. at 161-162 and 169.

Later, after a TABC employee advised her to apply as a limited liability company, the personal history sheet was added without her re-signing the acknowledgement.²⁰ Ms. Edward disputed that she was responsible for the application containing the technically false statement.

Lastly, Ms. Edwards denied that she was ever under investigation, so when she answered the question “have you knowingly been investigated” it was a true statement. She explained that she was interviewed by a USDA employee but it was regarding a deposit ticket that she initialed at the bank, and not about her father, Charles Rodney Jones, or her brother, Charles Michael Jones.²¹ She testified was never informed in any manner that she was under any investigation.

D. Evidence and Argument Related to Subterfuge

1. TABC

Amy Harrison, the TABC Director of Licensing, agreed that TABC employees might have advised Ms. Edwards that a limited liability company offered more protection from lawsuits and liability, but also might have explained that a sole proprietorship invites scrutiny for subterfuge issues of ownership and control.²² She explained that with a subterfuge investigation, the TABC analyzes financial information such as utility records, property records, tax returns, bank statements and contracts.

²⁰ Exhibit 2, page 22.

²¹ Tr. at 289.

²² Tr. at 220.

Agent Gohlke testified that he considers who is actually in charge of the business and the daily operations. Here, he discovered the following subterfuge indications:

- the bank accounts listed Sandra Edwards and her brother, Charles Michael Jones, as the authorized signatories on the account;²³
- although Agent Gohlke received no formal training in handwriting analysis, there seemed to be inconsistencies in the actual signatures on the checks;²⁴
- Ms. Jones' signature on six checks did not match her signature on the application;²⁵
- signatures on a few deposit slips appeared to be similar to Charles Michael Jones' signature;
- the delivery record vendor, Hot Stuff Foods, indicated the billing address was Charles Rodney Jones' home address;²⁶
- a BMS Petroleum motor fuel supply agreement dated June 24, 2005, listed Anna Jones as President and Charles R. Jones, as a witness;²⁷
- Ms. Jones' 2005 income tax return listed her filing status as married.²⁸

Agent Gohlke concluded that all of these indications, taken together, show that Anna Jones and her husband were using the permit for their benefit.

²³ Tr. at 86-87.

²⁴ Tr. at 89.

²⁵ Tr. at 101.

²⁶ Tr. at 105 and 113, and Exhibit 3, page 2.

²⁷ Tr. at 114, and 121-122, and Exhibit 3, page 20-31.

²⁸ Tr. at 112 and Exhibit 4.

2. Respondent

Sandra Edwards explained that her family took out a two million dollar loan to build a very nice convenience store in Blanco, Texas, a small town of 1500 residents. The store offers food service of burgers, sandwiches, and pizza; showers for truck drivers; big canopies for trucks and buses; eleven islands for gas and diesel; and 24-hour-a-day service. It is located adjacent to a feed store and feed storage warehouse, operated by her father, brother, and mother, with the feed store connected by a long hall and door to the convenience store.

From the day the business opened in September 2006, Ms. Edwards managed the convenience store, including all ordering, scheduling, and payroll, although she was only able to work on weekends.²⁹ After leaving full-time employment in banking in August 2008, she began working full time.

Respondent pointed out the flaws with Agent Gohlke's investigation including:

- original checks were never examined;
- the bank was not contacted to confirm the authorized signatories;
- Ms. Jones and Ms. Edwards were not interviewed;
- Charles Rodney Jones or Charles Michael Jones were never observed at the store at any time;
- opinions were not based on training as a handwriting expert or certified fraud investigator;

²⁹ Tr. at 258.

- the opinion that checks were “forged” by the slant of the writing had no basis in expertise;³⁰
- the checks were not written to or made by Charles Rodney Jones or Charles Michael Jones;³¹
- Ms. Jones filed her 2005 income tax as married but filing separately;
- the mailing address for Hot Stuff Foods was Ms. Jones’ address;³² and
- the store has never made a profit.

Respondent argues that there was no evidence that Respondent did not control all aspects of the business. Additionally, Petitioner had the ability to examine all business-related documents by certified fraud investigators, but failed to conduct such an investigation.

E. ALJ’s Analysis

After considering the evidence and arguments presented, the ALJ concludes that the TABC has met its burden of proof to show that Respondent, through agent Anna L. Jones, made false statements on the application. The evidence does not preponderate, however, that a subterfuge relationship was established wherein Charles Rodney Jones or Charles Michael Jones would be allowed to use or display the permit when these individuals are not authorized by law. Nonetheless, based on the false application statements alone, cancellation of the permit is appropriate.

³⁰ Tr. at 178.

³¹ Tr. at 182.

³² Tr. at 196.

The TABC has met its burden of proof to show that one of Respondent's agents or employees, Anna L. Jones, made a false or misleading statement in connection with the original or renewal application by falsely representing that she was divorced from Charles Rodney Jones, who was convicted of two felony offenses on January 15, 1998. Furthermore, Ms. Jones made a second misleading statement by answering "no" to an application question asking whether her spouse had ever been arrested or charged with a criminal offense or knowingly been investigated for a criminal offense.

Although Respondent argued that the false statements were "technical violations" because it was not an automatic disqualification of the permit to be married to a person who had a criminal record, it is incumbent upon an applicant to fully disclose all relevant facts. Further, Respondent is held accountable for providing all relevant documents regardless of when changes are made to the application. Although an honest disclosure may have brought about an inquiry into Respondent's finances, management, records, or ownership, it may not have ultimately resulted in disqualification. Instead, Ms. Jones chose to commit a criminal offense by falsely answering the application which resulted in a felony conviction in Blanco District Court. Therefore, cancellation of the existing permit issued to Respondent, based on the false statement on the application is appropriate and the ALJ recommends that such permit be cancelled.

The ALJ cannot conclude that the evidence established that Respondent improperly allowed Charles Rodney Jones or Charles Michael Jones, unauthorized persons, to use or display a permit in the conduct of business, in violation of TEX. ALCO. BEV CODE ANN. § 11.05. The evidence did not establish that any unauthorized person benefited or participated in Respondent's operation of a convenience store in any way. The evidence failed to establish that an unauthorized person participated in the daily operation of the business, either in ordering, scheduling, or payroll; that an unauthorized person ever worked at the convenience store, as a manager or as an employee; or that an unauthorized person ever used the permit to obtain some benefit. Since the TABC had access to all records that would have shown strong involvement, it cannot be presumed that such records exist without their production.

There was also no showing of financial benefit to an unauthorized person. Ms. Edwards was responsible for all scheduling, ordering, and payroll, and assumed the position full-time when she quit her banking job. It was also uncontroverted that Respondent's ownership was divided into a 30% interest to Ms. Edwards, and a 70% interest to a trust with the grandchildren as beneficiaries. The only evidence of any possible benefit to the unauthorized persons was the non-expert testimony of Agent Gohlke that the slant of the handwriting established that some checks may have been in someone else's handwriting. Agent Gohlke, however, conceded that he had no formal training in handwriting analysis, that he had not referred the matter for prosecution, and did not explain how the forgery potentially benefitted any unauthorized person. Lastly, the testimony establishing that the billing address on one document was Ms. Jones' address failed to support a finding of disguised ownership and control, particularly when Ms. Jones served as an employee and manager of the business.

Although there is no finding of a subterfuge, the permit should be cancelled due to the false statements made on the application. Therefore, for the reasons set forth above, the ALJ recommends that Respondent's Wine and Beer Retailer's Off-Premise Permit be cancelled. In support of these recommendations, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Blanco General, L.L.C. d/b/a Blanco General (Respondent) operates Blanco General, a convenience store located at 1138 Highway 281 South, Blanco, Blanco County, Texas.
2. In March 2006, Sandra Edwards, Respondent's manager, applied to the Texas Alcoholic Beverage Commission (TABC) for a wine and beer retailer's off-premise permit (permit) as a sole proprietorship.
3. Following a conversation with a TABC employee on April 17, 2006, Ms. Edwards revised the application to the family-owned entity, Blanco General, L.L.C.. which owned the land and building. Anna L. Jones, Ms. Edward's mother, was added to Respondent's application as a member and manager.

4. On December 12, 2006, following an anonymous complaint that Respondent's true ownership had been misrepresented, Agent Mark Gohlke, a TABC Licensing Investigator, conducted an investigation centered on Ms. Jones' marital status and relationship with Charles Rodney Jones, who had a felony conviction, and whether he was actively participating in the business with Ms. Jones and Ms. Edwards.
5. On Respondent's application on a personal history sheet, Ms. Jones had marked "divorced" for her marital status.
6. No divorce was reported between Anna Jones and Charles Rodney Jones to the State Registrar of Vital Statistics.
7. Based on Ms. Jones' application response, criminal charges were filed in Blanco District Court against Ms. Jones and a felony conviction was entered on March 28, 2007, after she plead guilty to making a false statement on a government record.
8. Ms. Jones had also marked "no" to the question whether a spouse has ever been arrested or charged with a crime.
9. Charles Rodney Jones and his son, Charles Michael Jones, were convicted in United States District Court for Conspiracy to Make False and Fraudulent Statements to Governmental Agencies to Obstruct Justice.
10. Respondent, through agent Anna L. Jones, made a false statement on the application that Charles Rodney Jones, had never been arrested or charged with a crime.
11. Ms. Edwards had no knowledge that she had ever been investigated and therefore, without any conflicting testimony or evidence, it was not demonstrated that she falsely represented in the application that she had not been investigated.
12. Staff alleged that Respondent improperly allowed Charles Rodney Jones or Charles Michael Jones to use or display a permit in the conduct of business, as a subterfuge for the true ownership and control
13. Charles Rodney Jones and Charles Michael Jones did not participate in the daily operations of the business, either in ordering, scheduling, or payroll; never worked at the convenience store, as a manager or otherwise; never financially benefited from the business; and never signed any check nor received any check related to the business.
14. On August 19, 2008, TABC sent its Notice of Hearing to Respondent. This Notice of Hearing informed Respondent of the time, location, and the nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of

the statutes and rules involved; and included a short plain statement of the allegations and the relief sought by TABC.

15. A hearing convened before Administrative Law Judge (ALJ) Penny A. Wilkov on October 23, 2008, and on December 16, 2008, at the State Office of Administrative Hearings (SOAH) in Austin. Staff Attorney Susan Stith represented TABC. Respondent was represented by Attorney Dewey Bracken. The record closed on March 3, 2009, with Staff filing its rebuttal argument.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5 and 11.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this case, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. ALCO. BEV. CODE ANN. § 5.43 and 11.015, and TEX. GOV'T CODE ANN. § 2003.021.
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 §155.55.
4. Respondent's Wine and Beer Retailer's Off-Premise Permit should be cancelled because Respondent's agents or employees, Sandra Edwards and Anna L. Jones, made a false or misleading statement in connection with an original application. TEX. ALCO. BEV. CODE ANN. § 11.61(b) (4).
5. Respondent did not consent or allow Charles Rodney Jones or Charles Michael Jones to use or display its permit, in a subterfuge relationship. TEX. ALCO. BEV. CODE ANN. §§ 11.05 and 109.53.

SIGNED April 21, 2009.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS