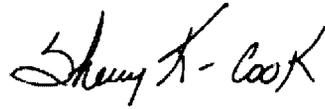


SIGNED this the 2nd day of July 2010, at
Austin, Texas.

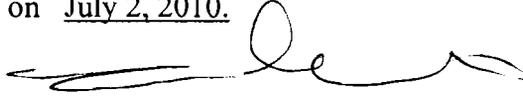
On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 2, 2010.



Alejandra Argueta, Paralegal
Texas Alcoholic Beverage Commission

Judge Tanya Cooper
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6777 Camp Bowie Boulevard, Suite 400
Fort Worth, Texas 76116
VIA FACSIMILE: (817) 337-3706

Donald T. Fulton
ATTORNEY FOR RESPONDENT
227 North Sylvania Avenue
Fort Worth, Texas 76111
VIA FACSIMILE: (817) 870-1225

Abdel Rahman Hamad
d/b/a Jude Food & Grill
RESPONDENT
2912 Vaughn Boulevard
Fort Worth, Texas 76105
VIA U.S. FIRST CLASS MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 4, 2010

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

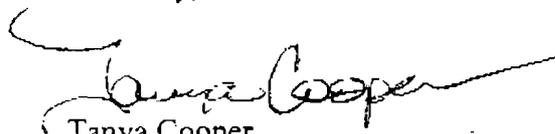
**Re: Docket No. 458-10-2293; Texas Alcoholic Beverage Commission ,
v, Abdel Rahman Hamad, d/b/a Jude Food & Grill (TABC 584864)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

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,


Tanya Cooper

TC/ll
attachments

DOCKET NO. 458-10-2293

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

V.

ABDEL RAHMAN HAMAD D/B/A
JUDE FOOD & GRILL,
Respondent

§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Abdel Rahman Hamad d/b/a Jude Food & Grill (Respondent), alleging violations of the Texas Alcoholic Beverage Code (the Code). In TABC Staff's notice of hearing, it alleged that Respondent or Respondent's employee possessed an alcoholic beverage that Respondent was not authorized by his permit or license to purchase and sell on the licensed premise,¹ possessed an illicit beverage on the licensed premise,² and operated his business in a place and manner contrary to the general welfare of the public.³ TABC Staff requested that Respondent's permit and license be cancelled⁴ in relation to these violations. The Administrative Law Judge (ALJ) finds the evidence supports TABC Staff's request and recommends that Respondent's permit and license be cancelled.

¹ TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.61(b)(15), 24.01, 24.06, and 71.01.

² TEX. ALCO. BEV. CODE ANN. §§ 1.04, 11.61(b)(2), 24.06, and 103.01.

³ TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.61(b)(7), and 24.06.

⁴ 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 the permittee/retail dealer violated a provision of this Code or rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 61.71(a)(1).

* * * * *

Permittee means a person who is the holder of a permit provided for in this Code, or an agent, servant, or employec of that person. TEX. ALCO. BEV. CODE ANN. § 1.04(11).

I. PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction in this proceeding. Therefore, those issues are addressed only in the Findings of Fact and Conclusions of Law.

On April 16, 2010, a hearing convened before ALJ Tanya Cooper at the State Office of Administrative Hearings (SOAH) offices located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. TABC Staff was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent appeared in person and was represented by his attorney, Donald T. Fulton. The record closed on that same day.

II. EVIDENCE

Respondent holds Wine Only Package Store Permit Q-640510 and Beer Retailer's Off Premise License BF-640511 for a premise located at 2912 Vaughn Blvd., Fort Worth, Texas, issued from TABC. Respondent's permit and license were initially issued on September 27, 2006, and have been continuously renewed since that date. TABC Staff's Exhibit 2, the violation history for Respondent's permit and license, reveals one other Code violation for which Respondent received a written warning. Sgt. J. Graham, Jennifer Jeter, and Respondent testified at the hearing.

A. TABC Staff's Evidence

Sgt. Graham testified that he was investigating a complaint that Respondent was receiving and selling stolen property at his licensed premise. In order to investigate this complaint, Sgt. Graham organized a "sting" operation that was conducted on January 22, 2009, in cooperation with other law enforcement agencies, and a CVS Pharmacy (CVS) loss prevention investigator, Jennifer Jeter. According to Sgt. Graham, Respondent's employees, Suzie Casiano and Mohammed Jadallah, purchased several items⁵ that were purportedly stolen, including ½ gallon of Crown Royal whiskey,

⁵ TABC Staff produced a photograph of property confiscated (TABC Staff's Exhibit 3) and numerous "Seized Property Report" forms (Exhibit 4), listing 37 different items of varying quantities seized during this "sting" operation.

from a confidential informant (CI).⁶ These items were later confiscated on Respondent's licensed premise. The Crown Royal whiskey was provided by CVS for use in the sting operation and was in its original packaging. Items were purchased with \$20 from the licensed premise's cash register. According to Sgt. Graham, Respondent's permit and license did not allow the higher alcohol content whiskey to be on the licensed premise; thus, the whiskey was deemed an illicit beverage in this instance.

Ms. Jeter said that she provided a number of items⁷ for use in this sting operation from CVS. These items were marked by her with a "DNA" substance⁸ in order to identify their presence at the licensed premise if Respondent or Respondent's employees purchased items from a CI.

Ms. Jeter testified that she placed the marked items in the CI's vehicle and searched the CI to ensure that he had no other items or money on his person before he entered Respondent's licensed premise. She stated that she and another officer watched as the CI left them and made his way into Respondent's licensed premise. For her vantage point, she was able to observe as a man working at the licensed premise came out and took merchandise from the CI's car and gave the CI money in exchange for the goods. Once the exchange occurred, Ms. Jeter and other law enforcement officials entered Respondent's licensed premise and seized numerous items. Some of the items seized were the items used in this sting operation bearing the CVS DNA marker, but other retailers' items were located bearing these retailers' DNA markers. Ms. Jeter opined that these items indicated Respondent was frequently dealing in stolen goods. Respondent's manager on duty at the time, Mohammed Jadallah, admitted having bought merchandise from the CI used in this sting on previous occasions.

⁶ This CI was in law enforcement custody for theft of property from CVS.

⁷ Items included Crown Royal whiskey, a telephone, and various medications.

⁸ Ms. Jeter testified that the DNA substance is a product commonly used by retail outlets to track their merchandise in these types of investigations.

B. Respondent's Evidence

Respondent stated that he was not at the licensed premise when the sting operation occurred. It was his understanding that Ms. Casiano and Mr. Jadallah had bought items from the CI, but he said the purchases must have been for their personal use because neither of them was authorized to make purchases for Respondent's business. According to Respondent, he purchased business inventory from authorized vendors only. The only exception to that practice was if he heard of any store closings. Respondent characterized himself as a bargain-hunter and said he would occasionally make purchases of those stores' inventories. Respondent opined that if there were items bearing other retailers' DNA markings, those items must have been acquired in those inventory purchases.

III. ANALYSIS

TABC Staff produced a preponderance of evidence in this case to support the allegations. As the holder of a Wine Only Package-Store Permit and a Beer Retailer's Off Premise License, Respondent is only permitted to purchase beer, ale, wine, and vinous liquors in this state from the holder of a winery, wine bottler's, wholesaler's, or class B wholesaler's permit. Whiskey is defined as liquor and cannot lawfully be possessed or stored at a licensed premise possessing a Wine Only Package-Store Permit or Beer Retailer's Off Premise License. In addition, the possession of whiskey at Respondent's licensed premises is deemed an illicit beverage.⁹

Respondent's employees purchased property from the trunk of a motor vehicle. The \$20 payment retrieved from the CI after the sales transaction is less than one would have reasonably expected to pay for the number of items purchased in a legitimate business transaction. This conduct suggests knowledge that these items were stolen property. Money to purchase these items was taken from the cash register at Respondent's licensed premise. Respondent's assistant manager acknowledged having purchased property from this individual on occasions prior to the sting

⁹ "Illicit beverage" means an alcoholic beverage bought or possessed in violation of the Code. TEX. ALCO. BEV. CODE ANN. § 1.04(4).

operation. Respondent is responsible for the actions of his employees while they are engaged at work on the licensed premise. These employees engaged in a criminal offense, theft;¹⁰ and by Mr. Jadallah's admission, this was not the first instance of such conduct. Lastly, Ms. Jeter's testimony concerning the number of items seized bearing "DNA" markings from her employer, CVS, and other retailers suggest that there was a pattern of conduct in purchasing stolen property for resale at Respondent's licensed premise. Because a pattern of conduct for engaging in criminal activity on the licensed premise was established, TABC has shown that Respondent or his employees are engaging in conduct that is contrary to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.¹¹

IV. RECOMMENDATION

Due to the seriousness of the violations established by TABC Staff, the ALJ recommends that Respondent's permit and license be cancelled.

V. FINDINGS OF FACT

1. Abdel Rahman Hamad d/b/a Jude Food & Grill (Respondent) holds Wine Only Package Store Permit Q-640510 and Beer Retailer's Off Premise License BF-640511 for a premise located at 2912 Vaughn Blvd., Fort Worth, Texas, issued from the Texas Alcoholic Beverage Commission (TABC).
2. A Notice of Hearing dated April 7, 2010, was issued by TABC Staff notifying Respondent of an enforcement action against Respondent for violations of the Texas Alcoholic Beverage Code (the Code); said Notice of Hearing set out the time, place, and nature of the hearing.
3. On January 22, 2009, TABC Agent John Graham conducted a "sting" operation in

¹⁰ TEX. PENAL CODE ANN. § 31.03.

¹¹ TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7).

cooperation with other law enforcement agencies and CVS Pharmacy (CVS) Investigator, Jennifer Jeter, investigating a complaint that stolen property was being purchased and sold at Respondent's licensed premise.

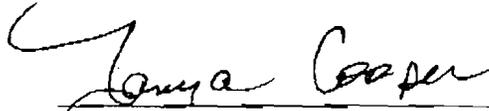
4. A confidential informant (CI) was sent to Respondent's licensed premise with several items of CVS property, including a ½ gallon of Crown Royal whiskey.
5. Respondent's employees, Suzie Casiano and Mohammed Jadallah, purchased numerous items, including the ½ gallon of Crown Royal whiskey, with money (\$20) from the licensed premise's cash register from the CI.
6. Numerous items of CVS property, including the ½ gallon of Crown Royal whiskey, and property of other retailers, were seized when officers from the sting operation entered and searched the licensed premise.
7. Mr. Jadallah admission of having previously purchased stolen items from this CI and the presence of other retailers' property on the licensed premise indicates a pattern of conduct in the operation of this licensed premise for purchasing stolen property for resale at the licensed premise.
8. Purchasing stolen property is a criminal offense and contrary to the general public's interests.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 1, 5, 11, 24, 71, and 103. TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with 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 to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.401.
4. Based upon the Findings of Fact, Respondent's operation of the licensed premise is contrary to the general welfare, peace, or morals of the people or violates the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.61(b)(7), and 24.06.
5. Based upon the Findings of Fact, Respondent or Respondent's employees possessed an alcoholic beverage, whiskey, that Respondent was not authorized to purchase or sell pursuant to Respondent's TABC-issued permit or license. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.61(b)(15), 24.01, 24.06, and 71.01.

6. Based upon the Findings of Fact, Respondent or Respondent's employees possessed an illicit beverage, whiskey, on the licensed premise. TEX. ALCO. BEV. CODE ANN. §§ 1.04, 11.61(b)(2), 24.06, and 103.01.
7. Based upon the Findings of Fact and Conclusions of Law Nos. 4 - 6, Respondent's Wine Only Package Store Permit Q-640510 and a Beer Retailer's Off Premise License BF-640511 should be cancelled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 and 61.71.

SIGNED May 4, 2010.



TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE

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SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: ABDEL RAHMAN HAMAD / JUDE FOOD & GRILL
SOAH DOCKET NUMBER: 458-10-2293
REFERRING AGENCY CASE: 584864

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ TANYA COOPER

REPRESENTATIVE / ADDRESS

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