

**DOCKET NO. 584432**

TEXAS ALCOHOLIC BEVERAGE COMMISSION, <b>Petitioner</b>	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
YOGI BAPA INC. D/B/A SUNMART #129 PERMIT/LICENSE NO(s). BQ632946 <b>Respondent</b>	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS <i>(SOAH DOCKET NO. 458-10-0634)</i>	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

The above referenced matter is before the Assistant Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen Burger, presiding. The hearing convened on December 11, 2009 and the record was closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on February 8, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Assistant Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

The recommendation of the Administrative Law Judge regarding the appropriate penalty for the violation that was found to have occurred is adopted by the Assistant Administrator as the penalty imposed by the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that Respondent shall pay a civil penalty in the amount of **\$9,000.00** on or before **the date this order will be enforced**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above license or permit by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **April 14, 2010** and shall remain suspended for **thirty (30) consecutive days**.

This is a Final Order of the Commission. **This Order will be enforced without further notice to the Respondent on April 6, 2010, unless a Motion for Rehearing is filed before that date.**

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** the 11th day of March, 2010



---

Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

Hon. Stephen J. Burger  
Administrative Law Judge  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
***VIA FACSIMILE: (713) 812-1001***

Yogi Bapa Inc.  
**RESPONDENT**  
d/b/a Sunmart #129  
22315 Bellow Glen Drive  
Katy, Texas 77449  
***VIA U. S. FIRST CLASS MAIL***

Sandra Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER:** 584432

**REGISTER NUMBER:**

**NAME:** YOGI BAPA INC.

**TRADENAME:** SUNMART #129

**ADDRESS:** 9404 NORTH FREEWAY, HOUSTON, TEXAS 77037

**DUE DATE:** MAY 4, 2010

**PERMITS OR LICENSES:** BQ632946

**AMOUNT OF PENALTY:** \$9,000.00

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**P.O. Box 13127**

**Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City              State              Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

February 8, 2010

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-10-0634; Texas Alcoholic Beverage Commission v. Yogi Bapa Inc. d/b/a Sunmart #129**

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 § 155.507, a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Stephen Burger".

Stephen Burger  
Administrative Law Judge

SB/rjm  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra Patton Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and cd)  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Yogi Bapa Inc. d/b/a Sunmart #129, 22315 Bellow Glen Drive, Katy, TX 77449 -**VIA REGULAR MAIL**



## II. LEGAL STANDARDS AND APPLICABLE LAW

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 the permittee violated a provision of this code or a rule of the commission, or the place or manner in which the permittee conducts his business warrants the cancellation or suspension based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 11.61(b)(7).

The offenses that are subject to this rule are any law, regulation, or ordinance of the federal, county, or municipal government on which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) and TEX. ADM. CODE ANN. § 35.31(c)(16).

## III. EVIDENCE

### A. Petitioner's Evidence

#### 1. Petitioner's Witnesses

##### **Steve Roskey**

Steve Roskey is an agent for the TABC. He accompanied the Houston Police Department on an inspection of Respondent's premises (a convenience store) on March 4, 2009. He noted the following conditions at the premises:

Overflowing trash.

Dead bird at a window.

Electrical hazards.

Bathroom out of service.

Broken soda machine.  
Dirty microwave.  
Trash in the cooler.  
Water leaking behind ice machine.  
Electrical cord near a water leak.

Agent Roskey testified that the Houston Police Department issued 80 municipal code violations of Respondent's premises. Agent Roskey spoke to the owner by phone, and to the manager on site, but no explanation was given for the condition of the convenience store.

## **2. Petitioner's Exhibits**

Petitioner submitted exhibits which included photos taken at the inspection by Agent Roskey.

## **IV. ANALYSIS**

The evidence presented clearly shows that on March 4, 2009, Respondent's premises, a convenience store, was inspected by the TABC and the Houston Police Department. At the March 4, 2009, inspection, approximately 80 violations were found by the Houston Police Department.

The ALJ finds sufficient evidence that on March 4, 2009, Respondent was conducting its business against the public's general welfare, health, safety, and sense of decency.

## **V. RECOMMENDATION**

The ALJ agrees with Petitioner's request that Respondent's permit be suspended for 30 days, or in lieu of suspension Respondent be allowed to pay a \$300.00-per-day penalty, based on the number of violations.

## VI. FINDINGS OF FACT

1. Yogi Bapa, Inc., (Respondent), d/b/a Sunmart #129, 9404 N. Freeway, Houston, Harris County, Texas, is the holder of a Wine and Beer Retailer's Off Premise Permit, BQ-632946, issued by the Texas Alcoholic Beverage Commission (TABC).
2. A Notice of Hearing dated October 13, 2009, was issued by the TABC and sent to Respondent.
3. The December 11, 2009, Notice of Hearing gave the location and nature of the hearing and contained 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 statement of the allegations and the relief sought by the TABC.
4. On December 11, 2009, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Sandra Patton, attorney. Respondent did not appear. Evidence was received and the record closed on the same date.
5. On March 4, 2009, TABC Agent Roskey inspected Respondent's premises and observed the following:
  - Overflowing trash.
  - Dead bird at a window.
  - Electrical hazards.
  - Bathroom out of service.
  - Broken soda machine.
  - Dirty microwave.
  - Trash in the cooler.
  - Water leaking behind ice machine.
  - Electrical cord near a water leak.
6. On March 4, 2009, the Houston Police Department issued to Respondent 80 municipal code violations found at Respondent's premises.

## V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings 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. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above Findings of Fact, on March 4, 2009, Respondent conducted his business against the public's general welfare, health, safety, and sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (b)(7); and TEX. ADMIN. CODE § 35.31(c)(16).
5. Based on Conclusion of Law 4, Respondent's permit is suspended for 30 days. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent is allowed to pay a \$9,000.00 civil penalty (\$300.00-per-day) in lieu of suspension of its permit.

**SIGNED February 8, 2010.**

  
\_\_\_\_\_  
**STEPHEN J. BURGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**