

DOCKET NO. 613752

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
MAJDEE MAJED NASSAR	§	
D/B/A IN AND OUT, Respondent	§	
	§	ALCOHOLIC
	§	
PERMIT Q653229, LICENSE BF653230	§	
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-13-1713)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 8th day of November, 2013, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge (ALJ) Timothy Horan presiding. The hearing convened on April 26, 2013 and the SOAH record closed on that date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on June 12, 2013. The 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. Respondent filed an Exception and Replies to Proposal for Decision on June 27, 2013. Petitioner filed a Reply to Respondent’s Exceptions to Proposal for Decision on July 9, 2013. On August 8, 2013, the ALJ filed a Response to Respondent’s Exceptions to Proposal for Decision, recommending that no changes be made to the Proposal for Decision.

After review and due consideration of the Proposal for Decision, Respondent’s Exceptions, Petitioner’s Reply and the ALJ’s Response, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, with the following modification to Conclusion of Law No. 4 only, and incorporate those Findings of Fact and Conclusions of Law as modified into this Order, as if such were fully set out and separately stated herein.

**Conclusion of Law No. 4 is modified to read:**

Respondent or Respondent's agent, servant or employee possessed or permitted others to possess a narcotic on the licensed premise and violated Code §§104.01(9), 11.61(b)(2) and 24.06, Texas Alcoholic Beverage Commission Rule 16 T.A.C. §35.41(b), and Health & Safety Code §481.002(5).

This modification to Conclusion of Law No. 4 is made pursuant to Government Code §2001.058(e) to correct a technical error. The reference in the Proposal for Decision to Alcoholic Beverage *Code* §35.41(b) should instead be to Commission *Rule* §35.41(b).

All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**THEREFORE, IT IS ORDERED** that Respondent's Wine Only Package Store Permit and Beer Retailer's Off Premise License be **CANCELLED**.

This Order will become **final and enforceable** on the 3rd day of December, 2013, **unless a Motion for Rehearing is filed by the 2nd day of December, 2013.**

**SIGNED** this the 8th day of November, 2013, at Austin, Texas.

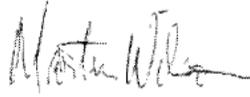


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Sherry K-Cook, Administrator  
Texas Alcoholic Beverage Commission

**CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 8th day of November, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Timothy Horan  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (512) 322-2061**

Majdee Majed Nassar  
d/b/a In And Out  
**RESPONDENT**  
2735 Rev Dr Ransom Howard St  
Port Arthur, Texas 77640  
**VIA FIRST CLASS MAIL, CMRRR #70120470000133006978**

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**and**  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006961**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [ramona.perry@tabc.state.tx.us](mailto:ramona.perry@tabc.state.tx.us)**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

June 12, 2013

RECEIVED

JUN 13 2013

FABC HOUSTON  
LEGAL

Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-13-1713; Texas Alcoholic Beverage Commission vs. Majdee Majed Nassar d/b/a In and Out**

Dear Ms. Cook:

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(c), 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, appearing to read "Timothy Horan", with a long horizontal flourish extending to the right.

Timothy Horan  
Administrative Law Judge

TH/mr  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008  
- VIA REGULAR MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)  
Bryan Laine, Attorney at Law, 1045 S. Redwood, Kountze, TX 77625 -VIA REGULAR MAIL

2020 North Loop West Suite 111 Houston, Texas 77018  
713.957.0010 (Telephone) 713.812.1001 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



## II. DISCUSSION

### A. Applicable Law

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including but not limited to, any of the following acts: possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so. Code § 104.01(9). Further, 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 the Code or a rule of the Commission. Code § 11.61(b)(2). Additionally, Code § 24.06 authorizes the suspension or cancellation of both the wine only package and the retail dealer's off premise license for the premises where the violation was committed. A narcotic is any substance defined in the Texas Controlled Substances Act. 16 Tex. Admin. Code § 35.41. Tex. Health & Safety Code 481.002(5).

### B. Evidence

Respondent holds Wine Only Package Store Permit Q-653229 (Permit), which includes the Beer Retailer's Off Premise License BF-653230 (License), for Respondent's premises located at 2735 Rev. Dr. Ransom Howard Street, Port Arthur, Jefferson County, Texas. Respondent owns and operates the In and Out convenience store (Store). On October 5, 2011, Respondent possessed and delivered drugs. These two violations resulted in suspensions of the Permits/Licenses and/or civil penalties.<sup>1</sup>

Officer Elie Van Horn of the Port Arthur Police Department testified that he has been a police officer for twenty-one years and is assigned to the Street Crimes Division, which includes narcotics crimes. On November 30, 2011, the Port Arthur Police Department conducted a narcotics investigation at the store because they had received previous complaints regarding

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<sup>1</sup> TABC Ex. 3.

narcotics, specifically synthetic marijuana, being sold at the store. Officer Van Horn had an informant, a member of the Citizens on Patrol Watch, go into the store and attempt to purchase synthetic marijuana from the clerk. The informant was given money from the officers and was instructed to ask the clerk for the synthetic marijuana. The informant was successful in purchasing a substance from the clerk, exited the store, and gave the substance to the officers.

Officer Van Horn testified that according to his experience as a police officer, the substance purchased was a controlled substance, commonly called synthetic marijuana. Officer Van Horn and the other officers on his team entered Respondent's store and met the clerk, who identified himself as Amjad Nassar, the brother of Majdee Majed Nassar, the owner of the store. Mr. Amjad Nassar was the only employee in the store. The officers secured the clerk and found a gun behind the counter. They asked the clerk if he would consent to a search of the premises and he agreed. The officer went to a small back room and found a ceiling tile that appeared to have been moved and observed that directly underneath the area were two stacking crates on top of each other. According to Officer Van Horn, the officers stood on top of the crates to look up in the ceiling and found hundreds of packages labeled "Space Cadet" tobacco. Four hundred twenty nine packages were sent to the Jefferson County Crime Laboratory for analysis and the substance tested positive as MPPP, a controlled substance.<sup>2</sup>

### **C. Discussion and Recommendation**

The evidence clearly establishes that Respondent or Respondent's agent, servant, or employee possessed or permitted to possess on the licensed premises, a narcotic, in violation of the Code. Respondent did not offer any evidence to rebut the occurrence of the alleged violation.

Respondent argues that the search was not valid. Officer Van Horn stated that the clerk was the brother of the owner of the store. It is clear from the testimony of Officer Van Horn that Amjad Nassar gave his consent for the police to search the premises of the store. Amjad Nassar was the only employee at the store. At the time of the violation, the licensed premises were under his care, custody, and control. Further, § 101.04 of the Code allows a peace officer to

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<sup>2</sup> TABC Ex. 6.

enter the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by the Code. In the instant case, it is clear from the testimony of Officer Van Horn that they also had consent to search the premises from the clerk. The search was consensual and valid.

Respondent also argues that there is no evidence that Respondent knew about the drugs on the licensed premises. Respondent's brother was working at the store as a clerk when he sold a package containing the controlled substance to the police informant. Hundreds of bags of the controlled substances, seized by the police on November 30, 2011, were found in the ceiling of Respondent's office, an area not accessible to the public. Clearly, this was an area that was in direct control of the Respondent and his employee-brother. Further, Respondent had two prior violations for possession and delivery of drugs, both occurring in October 2011. The two violations included suspensions of the Permits/Licenses and/or civil penalties. Finally, the Jefferson County Crime Laboratory confirmed the seized substance as MPPP, a narcotic and penalty group 2 controlled substance.

After considering the arguments and evidence, the ALJ finds that Respondent should have known about the narcotics on the premises. At a minimum, Respondent knew or should have known of the likelihood of these facts and failed to take reasonable steps to prevent narcotics on the licensed premises. Respondent did not exercise due diligence in controlling his premises or his employee.

Based upon the evidence presented, Respondent's Permit and License should be cancelled.

### III. FINDINGS OF FACT

1. Majdee Majed Nassar d/b/a In and Out (Respondent) holds a Wine Only Package Store Permit Q-653229 (Permit), which includes the Beer Retailer's Off Premise License BF-653230, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2735 Rev. Dr. Ransom Howard Street, Port Arthur, Jefferson county, Texas.
2. The permit was originally issued on March 5, 2007.

3. On November 30, 2011, Officer Elie Van Horn and officers of the Port Arthur Police Department conducted a drug investigation at Respondent's premises.
3. Amjad Nassar was a clerk at the store and was employed by Respondent on November 30, 2011.
4. On November 30, 2011, an informant for the Port Arthur Police purchased a package containing a substance believed to be synthetic marijuana from Respondent's employee.
5. Amjad Nassar consented to have Port Arthur Police Department officers search the licensed premises.
6. Officer Van Horn and other officers searched the ceiling tile in Respondent's office and found 429 of bags of a substance labeled "Space Cadet" tobacco.
7. Officers seized the bags and sent it to the Jefferson County Crime Laboratory for analysis.
8. Jefferson County Crime Laboratory confirmed the substances seized as MPPP, a narcotic and penalty group 2 controlled substance.
9. On November 30, 2011, Respondent or Respondent's agent, servant, or employee, possessed a narcotic on the permitted premises.
10. Respondent's licensing history contains two prior Code Violations for possession and delivery of drugs. Respondent accepted penalties for both violations.
11. On March 20, 2013, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
12. The hearing in this matter convened on April 26, 2013, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Ramona M. Perry, staff attorney, represented TABC at the hearing. Bryan Laine, attorney, represented Respondent. The hearing concluded and the record closed the same day.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code (Code) ch. 5 and §§ 11.61 (b) (2), 24.06, and 104.01 (9).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating 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 ch. 2003.

- 3 Respondent received notice of the proceedings and hearing, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052 and 1 Tex. Admin. Code ch. 155.
4. Respondent or Respondent's agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premise and violated Code §§ 104.01(9), 11.61 (b)(2), 35.41 (b), 24.06, and Tex. Health & Safety Code 481.002 (5).
5. The ALJ recommends cancellation of Respondent's permit and license.

**SIGNED June 12, 2013.**

  
TIMOTHY HORAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 613752**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
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<b>VS.</b>	§	
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<b>MAJDEE MAJED NASSAR D/B/A IN AND OUT, Respondent</b>	§	
	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT Q653229, LICENSE BF653230</b>	§	
	§	
	§	
<b>JEFFERSON COUNTY, TEXAS (SOAH DOCKET NO. 458-13-1713)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER DENYING MOTION FOR REHEARING**

**CAME ON FOR CONSIDERATION** this 18th day of December, 2013, Respondent’s Motion for Rehearing in the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge (ALJ) Timothy Horan presiding. The hearing convened on April 26, 2013 and the SOAH record closed on that date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on June 12, 2013. The 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. Respondent filed an Exception and Replies to Proposal for Decision on June 27, 2013. Petitioner filed a Reply to Respondent’s Exceptions to Proposal for Decision on July 9, 2013. On August 8, 2013, the ALJ filed a Response to Respondent’s Exceptions to Proposal for Decision, recommending that no changes be made to the Proposal for Decision.

On November 8, 2013, I issued an Order adopting the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, with the single exception of a modification to Conclusion of Law No. 4, and incorporating those Findings of Fact and Conclusions of Law as modified into my Order, as if such were fully set out and separately stated therein.

The Administrative Law Judge's proposed Conclusion of Law No. 4 was modified to read:

Respondent or Respondent's agent, servant or employee possessed or permitted others to possess a narcotic on the licensed premise and violated Code §§104.01(9), 11.61(b)(2) and 24.06, Texas Alcoholic Beverage Commission Rule 16 T.A.C. §35.41(b), and Health & Safety Code §481.002(5).

This modification to Conclusion of Law No. 4 was made pursuant to Government Code §2001.058(e) to correct a technical error. The reference in the Proposal for Decision to Alcoholic Beverage *Code* §35.41(b) should instead have been to Commission *Rule* §35.41(b).

On November 27, 2013, Respondent filed a Motion for Rehearing. On December 3, 2013, Petitioner's Reply to Respondent's Motion for Rehearing was filed.

Respondent's assertions in the Motion for Rehearing mirror those in Respondent's Exception and Replies to Proposal for Decision. These assertions were considered and rejected when my November 8, 2013 Order was issued. On the merits of the argument, I am persuaded that Petitioner's responses in the Reply to Respondent's Motion for Rehearing are correct.

**THEREFORE**, Respondent's Motion for Rehearing is **DENIED**..

**SIGNED** this the 18th day of December, 2013, at Austin, Texas.



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Sherry K-Cook, Administrator  
Texas Alcoholic Beverage Commission

**CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 18th day of December, 2013.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Timothy Horan  
**ADMINISTRATIVE LAW JUDGE**  
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