

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge  
July 16, 2015

**RECEIVED**

JUL 23 2015

TABC HOUSTON  
LEGAL DEPT.

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

**VIA REGULAR MAIL**

**RE: SOAH Docket No. 458-15-1926; Texas Alcoholic Beverage Commission vs. Jay Enterprises, Inc. d/b/a M & A Supermarket**

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 that reads "S. Burger".

Stephen Burger  
Administrative Law Judge

SJB/mr  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008  
- **VIA REGULAR MAIL**  
Martin Wilson, 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**  
Bryan Laine, Attorney at Law, 1045 S. Redwood, Kountze, TX 77625 - **VIA REGULAR MAIL**  
Chief Mark Blanton, Port Arthur Police Department, P.O. Box 1089, Port Arthur, TX 77641-1089 **VIA  
REGULAR MAIL**



Houston, Texas. Staff was represented by attorney Ramona Perry. Respondent was represented by attorney Bryan Laine. The record closed at the conclusion of the hearing.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that certain circumstances exist.<sup>1</sup> Staff alleges that Respondent: (1) Failed to answer or falsely or incorrectly answered a question in an original application;<sup>2</sup> (2) During the 6 months preceding the filing of the application, operated, used, or frequented the premises for which the permit is sought for a purpose or in a manner that is lewd, immoral, or offensive to public decency;<sup>3</sup> and (3) Will sell liquor in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so.<sup>4</sup>

Staff also alleges that the place or manner in which Respondent may conduct business warrants the refusal of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.<sup>5</sup>

Staff has the burden of proof by a preponderance of the evidence.<sup>6</sup>

## III. EVIDENCE

### A. Staff's Evidence

#### 1. Testimony

Nicole Walker is a sergeant with the Texas Alcoholic Beverage Commission (TABC).

1 Tex. Alco. Bev. Code (Code) § 11.46(a).

2 Code § 11.46(a)(4).

3 Code § 11.46(a)(15).

4 Code § 11.46(a)(10).

5 Code § 11.46(a)(8).

6 1 Tex. Admin. Code (TAC) § 155.427.

She reviewed Respondent's application and found discrepancies. She testified that the location of Respondent's store is the same as a prior permit holder named In and Out Food Store (In and Out). In and Out's permit was canceled pursuant to a November 8, 2013 TABC order, which was affirmed by a district court order dated February 5, 2014. The holder of In and Out's permit was Majdee Nasser, the brother of Amjad Nasser, the current applicant. In that case, on November 2011, hundreds of bags of synthetic marijuana, a controlled substance, were found and Amjad Nasser was the employee at the store.

Ms. Walker has been at the store location about 17 times over the past several years, had observed Amjad Nasser behind the register in 2013, and had observed Majdee Nasser working there as well. Amjad Nasser was behind the register in an October 2013 incident when a sale of a beer to a minor occurred.

Elie Van Horn is an officer with the Port Arthur Police Department. He testified that there had been an excessive number of calls for service to this store, but since its permit was cancelled and liquor is no longer sold at that store there have been very few calls for service. He is familiar with the individuals who work at the store, and they are all in the Nasser family, a father and three sons. Amjad Nasser was the clerk when 429 packages of synthetic marijuana were found in November 30, 2011. He confirmed that the indictment for possession of synthetic marijuana against Majdee Nasser was dismissed October 1, 2012.

Mark Blanton is the Chief of the Port Arthur Police Department. He testified that he is very familiar with Respondent's store and that for many years prior to the store's liquor permit cancellation he had fielded numerous complaints from parents that their children were buying synthetic marijuana and alcohol at the store. He testified that in his 39 years of law enforcement no other store had as many complaints as Respondent's. The numerous calls for service at this location, for fights, prostitution, obstructing traffic, and other incidents, stressed his department's resources. He believes that issuing an alcoholic beverage permit will increase calls for service at the store.

The documentary evidence submitted by Staff generally comports with the witnesses' testimony. The ALJ notes that from January 21, 2010, to February 5, 2014, the date the prior permit's cancellation was upheld, there were approximately 313 calls for service to the Port Arthur Police Department. The calls for service covered a myriad of activities, including but not limited to disturbances, fights, forgeries, alarms, public intoxication, assaults, thefts, vice, and miscellaneous activities. This averages to about 78 calls for service per year.

The report also shows that from February 5, 2014, through March 23, 2015, there were 15 calls for service to the police department.

The April 17, 2014 application by Amjad Nasser states that for the past 5 years he was self-employed in a landscape business and as a clerk at M & M Auto.

Majdee Nasser, the brother of Amjad Nasser, was the owner of In and Out, and held a Wine Only Package Store Permit and a Beer Retail Dealer's Off-Premise License originally issued March 5, 2007, for the premises located at 2735 Rev. Dr. Ransom Howard Street, Port Arthur, Jefferson County, Texas, which was cancelled on February 5, 2014.

In an Incident Report by a TABC agent dated October 4, 2013, Amjad Nasser was identified as the clerk who sold a beer to a minor at In and Out on October 3, 2013. In the same report, Amjad Nasser admitted that he had been working the register. The report also indicated he was not TABC alcoholic beverage seller server trained.

According to a February 25, 2014 incident report, Akram Nasser sold alcoholic beverages to TABC agents on February 21, 2014, after the store's alcoholic permit had been canceled.

In a Proposal for Decision dated June 12, 2013, concerning the same location under the prior permit held by Majdee Nasser, a finding of fact held that Amjad Nasser was the clerk who sold synthetic marijuana to a customer on November 30, 2011.

In an affidavit dated May 23, 2012, Majdee Nasser admitted that his father, Majed, and his brother, Akram, work at the store.

#### **B. Respondent's Evidence**

Amjad Nasser is the owner of Respondent and is the applicant for the permit. Majdee is his brother and was the prior owner. Amjad Nasser testified that he was not a full-time employee when his brother owned the store, but he did help out. He stated that on the present application for a permit he did not indicate he was an employee of In and Out because he only "helped out" at that store. He testified that he and his brothers all help at the store. He admits selling alcohol to a minor at In and Out and was at the store when the packages of synthetic marijuana were found.

He claims that his brother does not work at the store now. He also asserts that he has no felony convictions. Regarding the numerous calls for service to the police, he claims many did not originate from the store.

### **IV. ANALYSIS**

The evidence shows that on November 30, 2011, Amjad Nasser, the applicant, was a clerk at In and Out when 429 packages of synthetic marijuana were found, and he sold a package of synthetic marijuana to a customer. Although Amjad Nasser contends he was not an employee but only "helped out," the ALJ does not find his testimony credible. Therefore, because Amjad Nasser did not disclose that he had been an employee at In and Out on the present application, the ALJ finds that he falsely answered a question in his application.

The evidence also shows that while In and Out held an alcoholic beverage permit, which was at the identical location listed for Respondent's present application, it had over 300 calls for service over 4 years. The Chief of Police testified that this presents a burden to his department, and stresses its resources. After the permit was canceled it had only about 15 calls for service the following year. The ALJ makes the reasonable inference that if a new alcoholic beverage

permit is issued, the selling of alcoholic beverages at this location will present the same enforcement problems that were evident prior to the cancellation of the previous permit.

The evidence also shows that after In and Out, the prior holder, had its permit and license cancelled by a district court order on February 5, 2014, an employee, Akram Nasser, on February 21, 2014, sold alcoholic beverages to a customer. This is a violation of the Code.

Although Respondent argued that there were no criminal convictions of Amjad Nasser, and that Amjad Nasser and not his brother Majdee will be running the business, the ALJ does not agree that the former is determinative, and finds the latter not credible, based on the history of the business and the testimony of Amjad Nasser.

Viewing the evidence *in toto*, the ALJ finds more than sufficient evidence that if Respondent's permit and license is granted, Respondent may conduct the business to the detriment of the general welfare, peace, and safety of the people.

The ALJ therefore finds that Respondent's application for a permit and license should be denied.

## V. RECOMMENDATION

The ALJ recommends that Respondent's application be denied.

## VI. FINDINGS OF FACT

1. On April 17, 2014, Amjad Nasser signed an application on behalf of Jay Enterprises, Inc., d/b/a M & A Supermarket (Respondent) for a Wine Only Package Store Permit and a Beer Retail Dealer's Off-Premise License for the premises located at 2735 Rev. Dr. Ransom Howard Street, Port Arthur, Jefferson County, Texas.
2. On the April 17, 2014 application, Amjad Nasser stated that over the last 5 years he was self-employed in a landscape business and as a clerk at M & M Auto.
3. Majdee Nasser, the brother of Amjad Nasser, was the owner of In and Out Food Store (In

- and Out), and held a Wine Only Package Store Permit and a Beer Retail Dealer's Off-Premise License for the premises located at 2735 Rev. Dr. Ransom Howard Street, Port Arthur, Jefferson County, Texas; said permit and license was originally issued on March 5, 2007, and cancelled pursuant to a district court order dated February 5, 2014.
4. From January 21, 2010, to February 5, 2014, there were about 313 calls for service to the Port Arthur Police Department to In and Out's location for activities such as but not limited to disturbances, fights, forgeries, alarms, public intoxication, assaults, theft, and vice.
  5. On October 3, 2013, Amjad Nasser was a clerk at In and Out and sold beer to a minor. Amjad Nasser had not received seller-server training from the Texas Alcoholic Beverage Commission (TABC).
  6. On November 30, 2011, Amjad Nasser was a clerk with In and Out and sold synthetic marijuana to a customer; on the same day 429 packages of synthetic marijuana, a controlled substance, were found at the premises of In and Out.
  7. The TABC issued a notice of hearing on July 28, 2014, to all parties that stated the time, place, and nature of the hearing; legal authority and jurisdictions under which the hearing was to be held; statutes and rules involved; and matters asserted.
  8. The hearing on the merits convened on May 29, 2015, in Houston, Texas. Staff attorney Ramona Perry represented the Commission, and attorney Bryan Laine represented Respondent. The record closed the same day.

## VII. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter. Tex. Alco. Bev. Code (Code) ch. 5 and § 11.61.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law. Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was given to all parties. Tex. Gov't Code §§ 2001.051-.052.
4. Respondent's application for a Wine Only Package Store Permit and Beer Retail Dealer's Off-Premise License should be denied because Respondent falsely answered a question on its application. Code § 11.46(a)(4).
5. Respondent's application for a Wine Only Package Store Permit and Beer Retail Dealer's Off-Premise License should be denied because it is more likely than not that Respondent will sell liquor in a manner contrary to law or will knowingly permit an agent, servant, or

employee to do so. Code § 11.46(a)(10).

6. Respondent's application for a Wine Only Package Store Permit and Beer Retail Dealer's Off-Premise License should be denied because the place or manner in which Respondent may conduct business warrants the refusal of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Code §§ 11.46(a)(8).

**SIGNED July 15, 2015.**

  
**STEPHEN J. MÜRGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DOCKET NO. 627933**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE TEXAS</b>
<b>COMMISSION,</b>	§	
<b>Jurisdictional Petitioner and Protestant</b>	§	
	§	
<b>PORT ARTHUR POLICE DEPARTMENT,</b>	§	
<b>Protestant</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>ORIGINAL APPLICATION OF JAY</b>	§	
<b>ENTERPRISES, INC., D/B/A</b>	§	<b>ALCOHOLIC</b>
<b>M &amp; A SUPERMARKET, Respondent</b>	§	
<b>applying for Q, BF Permits</b>	§	
	§	
	§	
	§	
<b>JEFFERSON COUNTY, TEXAS</b>	§	
<b>(SOAH DOCKET NO. 458-15-1926)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of December, 2015, 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 Stephen J. Burger presiding. The hearing convened on May 29, 2015 and the SOAH record closed the same date. The Administrative Law Judge filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 16, 2015. 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 exceptions on August 7, 2015. Petitioner replied on August 11, 2015. The Administrative Law Judge filed a letter on August 11, 2015 adopting Petitioner's Reply and making no changes to the Proposal for Decision.

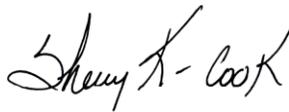
After review and due consideration of the Proposal for Decision, Respondent's exceptions, Petitioner's reply, and the Administrative Law Judge's August 11, 2015 letter, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order as if such were fully set out and separately stated herein.

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.

**IT IS THEREFORE ORDERED** that Respondent's original application for Q and BF permits be **DENIED**.

This Order will become **final and enforceable** on the 12th day of January, 2016, **unless a Motion for Rehearing is filed by the 11th day of January, 2016.**

**SIGNED** this the 17th day of December, 2015, at Austin, Texas.



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Sherry K-Cook, Executive Director  
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 17th day of December, 2015.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

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

Bryan Laine  
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