

**DOCKET NO. 506502**

GSN PETROLEUM CORPORATION	§	BEFORE THE TEXAS
D/B/A ON THE WAY EXXON	§	
PERMIT/LICENSE NO(s). BQ555919	§	
	§	ALCOHOLIC
LIBERTY COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2393)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 23<sup>rd</sup> day of February 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith . The hearing convened on December 8, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 5, 2007. The Proposal For Decision, attached hereto as Exhibit "A", was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

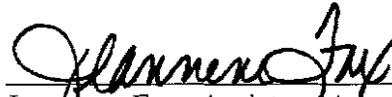
**IT IS THEREFORE ORDERED** by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that the renewal of Respondent's permits and licenses be **GRANTED**.

This Order will become final and enforceable on March 23, 2007 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** on this 23rd day of February 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
***VIA FAX TRANSMISSION TO (713) 812-1001***

Ronald Monshaughen  
**ATTORNEY FOR RESPONDENT**  
1225 North Loop West, Suite 640  
Houston, Texas 77008  
***VIA FAX TRANSMISSION TO (713) -880-5297***

GSN Petroleum Corporation  
d/b/a On The Way Exxon  
**RESPONDENT**  
10006 Territory Ln.  
Humble, Texas 77064  
***VIA FIRST-CLASS MAIL***

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Conroe Outpost

SOAH DOCKET NO. 458-06-2393

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
	§	
V.	§	OF
	§	
GSN PETROLEUM CORPORATION	§	
D/B/A ON THE WAY EXXON,	§	
LIBERTY COUNTY, TEXAS	§	
(TABC CASE NO. 506502),	§	ADMINISTRATIVE HEARINGS
Respondent	§	

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Commission or TABC) seeks the revocation of the permit and denial of the renewal application of GSN Petroleum Corporation d/b/a On The Way Exxon (Respondent), because Respondent's agent Bhupinder Singh Gill pled no contest to a charge of False Statement To Obtain Credit, a third degree felony, and received three years deferred adjudication of guilt. Mr. Gill argues that the permit should not be revoked because the business has never violated a Commission rule, and the business has received a letter of commendation from TABC for a job well done every year since Respondent received its permit. Further, Mr. Gill argues that he has good moral character, and that the crime to which he pled no contest was the result in an error in his judgment in signing documents placed in front of him without reviewing the documents, an event which is unlikely to occur again. The Administrative Law Judge (ALJ) finds that the Staff failed to prove that Respondent's permit should be revoked, and finds that the renewal application should be granted.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action

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and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## **II. HEARING AND EVIDENCE**

On December 8, 2006, a hearing was convened before ALJ Don Smith, at the State Office of Administrative Hearings, Houston, Harris County, Texas. Petitioner was represented by its attorney Ramona Perry. Respondent was represented by its attorney Ronald Monshaugen. The hearing concluded and the record closed the same day.

## **III. LEGAL STANDARDS AND APPLICABLE LAW**

Pursuant to TEX. ALCO. BEV. CODE (the Code) § 109.532(b)(1), the Commission may deny a license or permit or the renewal of a permit for the applicant if the Commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for the permit. 16 Texas Administrative Code (TAC) § 33.1 states that a deferred adjudication for any felony offense may indicate that the applicant is not qualified to hold a permit or license and may be grounds for cancellation or denial unless five years have elapsed since the termination of a sentence, parole, or probation served by the applicant.

## **IV. EVIDENCE**

### **A. Documentary Evidence**

Petitioner offered into evidence three exhibits: Respondent's permit history, the green card showing proof of service of the Notice of Hearing, and a Certificate of Disposition. The Certificate of Disposition states that on August 24, 2005, Bhupindere Sengh Gill was placed on deferred adjudication of guilt for three years and fined \$5,000.00 for the offense of False Statement To Obtain Credit, a 3<sup>rd</sup> degree felony. Respondent offered twenty-two documents into evidence.

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Respondent's exhibits one, two, and three are letters from TABC congratulating Respondent for a job well done for refusing to sell minors alcoholic beverages in 2004, 2005, and 2006.

Respondent's exhibits four through twenty-two are letters that Bhupinder Singh Gill is of good moral character. The business is located in Dayton, Texas. There are letters from the Dayton Chamber of Commerce, the Dayton Police Department, the Dayton First Assembly of God, and the surrounding businesses. There is a recommendation letter from a past employer with the Ft. Worth Star-Telegram Newspaper. There are letters from friends, relatives, and persons in his Sikh Church.

**B. Investigator Bruce Boardman, TABC Homeland Security Division**

Mr. Boardman testified that he was contacted by the Small Business Administration (SBA) about an ongoing criminal investigation concerning Noman Tabani, the Broker for Bhupinder Gill's SBA loan application. The SBA had found a discrepancy in the value of a house Mr. Gill sold. The SBA loan application reported the value of the house in the State of Washington to be \$275,000.00. Mr. Boardman explained that Mr. Gill needed \$100,000.00 equity in the house to obtain a \$1.5 million loan from the SBA. The discrepancy was that the house was reported as being valued at \$175,000.00 in the TABC application. Also the house was reported as being valued at \$175,000.00 for the Washington State excise tax when sold. The Broker, Noman Tabani, was indicted in Federal Court, and fled the Country with warrants out for his arrest. The SBA did not file charges against Bhupinder Gill. Mr. Boardman filed a complaint with the Harris County District Attorneys office, and a felony information issued against Mr. Gill. Mr. Boardman did not know if the matter ever went before the Grand Jury for indictment, because defendant quickly pled to a third degree felony False Statement To Obtain Credit, and was placed on deferred adjudication for three years. Mr. Boardman acknowledged that Respondent did not make any false statements or misrepresentations in the original or renewal TABC applications. It was Mr. Boardman's opinion that the deferred adjudication for the felony, False Statement To Obtain Credit, should by itself, disqualify Respondent from holding a permit.

**C. Bhupinder Sehgh Gill**

Mr. Gill testified that he is the President and major stockholder (64%) of GSN Petroleum Corporation. He is a United States citizen, and has been in the United States for over twenty-five years. His family originated from Punjab, India. He is from a very respectable family in India and is emotionally embarrassed about the criminal matter.

Mr. Gill testified that he did not know that the house in Washington State was listed as being valued at \$275,000.00 in the SBA loan application. The Broker prepared the SBA loan application, and he testified that he trusted the broker, Noman (Shawn) Tabani, to put the correct information into the loan package. Noman Tabani presented him with a big stack of documents and said "sign here." He testified that he did not look through the information in the documents, that he just signed where he was told too. He is sorry. He did not have the money to hire an attorney to fight the matter, or the will to go through a trial, so he pled guilty. He testified that he has paid the \$5,000.00 fine, that the court did not order any community service, and his probation officer has told him that the case will probably be dismissed in February 2007. He did not get the SBA loan, but he did get a conventional loan.

Mr. Gill testified that he is a good family man supporting a wife and six children. He is active in his community and in his church. Presently, his wife has breast cancer, and he has a child with spinal bifida. Respondent has never had any TABC violations. Mr. Gill testified that the SBA loan application was a mistake and the first time he has ever been in trouble with the law, for which he is truly sorry.

**D. Other Witnesses**

Four witnesses testified that Mr. Gill is a good, honest person who does a lot for his family, his community, his church, and for charity. All testified that he is known to have a good reputation.

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His pastor testified that he is very active in the Sikh Church and was the President of the Church in 2004-2005.

## V. ANALYSIS

The evidence does not show that Mr. Gill is unqualified or unsuitable to hold a permit and indeed demonstrates quite the opposite. Mr. Gill has a lot of support from the community, and a reputation as a good honest person. The evidence demonstrates that he is the type of person the Commission wants to have a permit. Since the permit issued, every year the business has received a commendation from TABC for a job well done.

The Code and Rules sections dealing with the issue of a permit holder or applicant having a deferred adjudication for a felony offense use discretionary language that the felony offense may indicate that the applicant is not qualified. Mr. Boardman, the TABC investigator testified that his decision to protest the renewal application was based solely on the deferred adjudication. Mr. Gill testified that he deeply regretted his actions that led to the deferred adjudication and explained the circumstances which, while not an excuse for his actions, at least demonstrate the extenuating nature of the incident. The evidence of the exemplary manner in which Mr. Gill has conducted his life and business are much more compelling evidence that he is and will continue to be an asset as a permittee of the Commission.

The evidence was insufficient to prove that Respondent is unqualified or unsuitable to hold a permit and the renewal application should be renewed.

## VI. PROPOSED FINDINGS OF FACT

1. GSN Petroleum Corporation d/b/a On The Way Exxon, Liberty County, Texas, holds Permit No. BQ-555919, issued by the TABC for the premises located at 2095 FM 1960, Dayton, Liberty County, Texas.

2. Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated August 9, 2006.
3. The hearing on the merits convened December 8, 2006, at the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Harris County, Texas. The TABC was represented by attorney Ramona Perry. The Respondent was represented by Ronald Monshaugen, attorney. The record closed on the same day.
4. Bhupinder Sehgh Gill is President and a major stockholder of GSN Petroleum Corporation, owning 64 % of the stock.
5. On August 24, 2005, Bhupinder Sehgh Gill was placed on deferred adjudication of guilt for three years for the offense of False Statement To Obtain Credit, a 3<sup>rd</sup> degree felony.
6. The offense for which Mr. Gill received the deferred adjudication arose out of a Small Business Loan (SBA) application that was improperly prepared by Noman Tabani, a broker who is under federal indictment, and has fled the country.
7. The SBA did not file criminal charges against Mr. Gill.
8. An information issued from the Harris County District Attorneys Office charging Mr. Gill with the offense of False Statement To Obtain Credit.
9. The broker, Noman Tabani, presented Mr. Gill with a large stack of documents, which Mr. Gill signed without carefully reading.
10. The SBA application misrepresented the value of a house owned by Mr. Gill.
11. Mr. Gill did not make any false statements or misrepresentations in the original or renewal TABC applications.
12. Respondent has received a commendation from TABC for a job well done for every year since the permit issued.
13. Mr. Gill has a reputation with the communities of Houston and Dayton, Texas, as a good businessman with integrity and a commitment to the community.

#### **VII. PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 61.71, and 61.73.
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2. 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 pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Findings of Fact No. 4-13, the Commission did not prove that sufficient grounds exist to prove that Respondent is not qualified or suitable to hold a permit.
5. Based on the foregoing, the renewal permit should be granted, and the cancellation of Respondent's permit is not warranted.

SIGNED: January 5, 2007



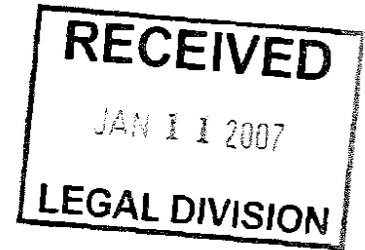
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Don Smith  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



January 05, 2007

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

VIA REGULAR MAIL

**RE: Docket No. 458-06-2393/Texas Alcoholic Beverage Commission vs.  
GSN Petroleum Corporation d/b/a On the Way Exxon**

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

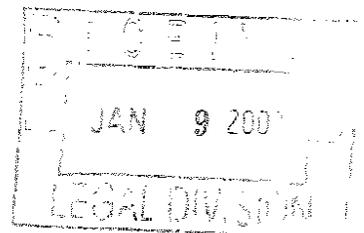
Sincerely,

A handwritten signature in black ink that reads "Don Smith".

Don Smith  
Administrative Law Judge

DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
VIA REGULAR MAIL  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
VIA REGULAR MAIL  
Ron Monshaughen, Attorney, 1225 North Loop West, Suite 640, Houston, TX 77008 -VIA REGULAR MAIL



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