

**DOCKET NO. 507456**

IN RE LIZARD'S BILLIARDS LP	§	BEFORE THE TEXAS
D/B/A LIZARD'S BILLIARDS	§	
PERMIT NO(s). MB542337,	§	
PE542338	§	ALCOHOLIC
	§	
WALKER COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-1219)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29<sup>th</sup> day of May 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on January 12, 2007 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 13, 2007. This 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. Exceptions and Replies to Proposal for Decision were filed to which the Administrative Law Judge made no recommendations or changes to the proposal.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision 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 Respondent's permit(s) and/or license(s) are herein **SUSPENDED for seven (7) days**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,050.00** on or before the **17<sup>th</sup> day of July 2007**, all rights and privileges under the above described permits will be **SUSPENDED for a period of seven (7) days beginning at 12:01 A.M. on the 25<sup>th</sup> day of July 2007**.

This Order will become final and enforceable on June 21, 2007 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** on this the 29<sup>th</sup> day of May 2007.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Timothy J. Horan  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FAX (713) 812-1001**

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

Lizard's Billiards LP  
d/b/a Lizard's Billiards  
**RESPONDENT**  
2 Magnolia Dr.  
Huntsville, Texas 77340  
**VIA REGULAR MAIL**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
Legal Services Division

Licensing Division

Conroe Outpost

Beaumont District Office

**SOAH DOCKET NO. 458-07-1219**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>LIZARD’S BILLIARDS LP</b>	§	
<b>D/B/A LIZARD’S BILLIARDS,</b>	§	
<b>Respondent</b>	§	
<b>WALKER COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 507456)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of Texas Alcoholic Beverage Commission (Petitioner/Commission), brought this enforcement action against Lizard’s Billiards LP d/b/a Lizard’s Billiards (Respondent), alleging that the Respondent, his agent, servant or employee, on September 17, 2005, with criminal negligence, permitted a minor to possess and/or consume an alcoholic beverage, in violation of Texas Alcoholic Beverage Code (the Code) § 106.13. The Petitioner recommended that the Respondent’s permits be suspended for seven days or that a civil penalty of \$1,050.00 be assessed against Respondent. Based on the evidence, the Administrative Law Judge (ALJ) finds the Petitioner proved the allegations by a preponderance of the evidence and recommends that the Respondent’s permits be suspended for seven days or a civil penalty paid.

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

On January 12, 2007, a hearing was convened before ALJ Timothy Horan, State Office of Administrative Hearings (SOAH). The Petitioner was represented by Ramona Perry, TABC Staff Attorney. The Respondent appeared and was represented by Ronald Monshaugen, attorney. After receipt of the evidence, the record was left open to receive briefs from the parties. No such briefs were submitted and the record was closed on January 26, 2007.

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 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. DISCUSSION

### A. Testimony

**TABC Agent Michael Scott Zella** is a TABC agent assigned to the Enforcement Division out of Huntsville, Texas, and has six years of experience. On September 17, 2005, as part of his duties, he went to the licensed premises, observed people outside Lizard's Billiards and noticed a certain area had been barricaded to contain the crowd. September 17, 2005, was "Bid Day" for the fraternities at Sam Houston State University. "Bid Day" is the day fraternities have parties for new members, and the school fraternities reserve area bars to celebrate.

Agent Zella observed a youthful-looking female standing outside wearing a fraternity shirt. She was holding a cup which appeared to contain beer. Standing within 15 feet of the youthful-looking female was Ed Delagarza. Agent Zella recognized Mr. Delagarza from previous visits to the bar. Mr. Delagarza and his wife, Lisa Delagarza, owned a bar at one time, and Lisa Delagarza is the current permittee for Lizard's Billiards. According to Agent Zella, Mr. Delagarza appeared to be having a good time and even looked at the minor. Agent Zella testified that nothing was obstructing Ed Delagarza's view and he did nothing to prevent the youthful-looking female from possessing the beer.

Agent Zella approached the female who provided her student identification and identified herself as Angela Zahn. She confirmed her age as 20 years old. Agent Zella contacted the Walker County Communication Center which verified her name and date of birth as 09/21/1985.

Agent Zella smelled alcohol in the cup Zahn was holding. She also admitted to drinking alcohol from the cup. Agent Zella issued her a citation for minor in possession of alcohol. He approached Mr. Delagarza and advised him of the violation. Mr. Delagarza informed Agent Zella that he did not know how she got the beer and was going to question his staff.

**Lisa Jump Delagarza** testified that she is the sole officer for Lizard's Billiards and that her husband, Ed Delagarza is the owner of the building premises. At that time she was, and is still, separated from her husband. She leases the building premises from him and pays him monthly rent. Ms. Delagarza stated that her husband is the landlord of the building and that one of his responsibilities is to ensure maintenance and repair of the premises, so his presence is often required. She testified that Mr. Delagarza has interviewed potential employees for Lizard's Billiards, and that he has made hiring recommendations to her. She pointed out that Ed Delagarza has in the past, fired employees on behalf of Lizard's. Ms. Delagarza stated that all employees at Lizard's are certified by the TABC Seller Training Program. Copies of the employee certifications were admitted into evidence.

**Ed Delagarza** testified that he is separated from his wife, Lisa Delagarza. He owns the building and Lisa pays him rent. In the past, he has done "contract labor" for Lizard's Billiards but mainly performs standard upkeep and maintenance for the club. He testified that September 17, 2005, was "Bid Day," and that he was at the club the day in question, not as an employee, but as a member of the fraternity.

### C. Analysis

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13 (a), the Commission may suspend or cancel a permit if it is found that the permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor. Section 1.04(11) defines a "permittee" as a person who

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is the holder of the permit or an agent, servant, or employee of that person. Pursuant to TEX. PENAL CODE ANN. § 6.03 (a), a person acts with criminal negligence, or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's viewpoint.

The evidence is sufficient to prove that Ed Delagarza was the agent, servant, or employee of Respondent on the date in question. Agent Zella observed a youthful-looking female holding a cup of beer on the premises of Lizard's Billiards. Agent Zella smelled the liquid in the cup and confirmed the liquid as being beer. Angela Zahn admitted drinking beer from the cup. Her age was confirmed as 20 years old. She was given a citation by Agent Zella for minor in possession. Ed Delagarza was at Lizard's Billiards on September 17, 2005. He was standing within 15 feet of the youthful-looking female and was in a position to view her in possession of a beer. He did nothing to prevent the minor from possessing the beer nor did he ask her for any identification to ascertain her age. Agent Zella then approached Ed Delagarza about the infraction and he informed Agent Zella that he did not know how she got the beer but would question his staff at the club.

Ed Delagarza's actions or, in this case, his inactions on that day rise to the level of criminal negligence in that he ought to have been aware that Angela Zahn was a minor by her youthful appearing look and he should have insisted on identification before allowing the minor to possess an alcoholic beverage.

In addition, the Respondent's exhibit, the employee certification list, lists Ed Delagarza as completing the TABC Seller Training Program. Per the testimony of Lisa Delagarza, all employees

of Lizard's are required to take the course. Ed Delagarza is listed as completing the certification for Lizard's Billiards, and this certification is part of Respondent's exhibit.

From all the evidence and testimony presented, it is clear that Ed Delagarza was an agent, servant, or employee of the licensed premises on September 17, 2005.

The evidence was sufficient to prove that Respondent violated the Code and the permits should be suspended or a civil fine paid.

### III. PROPOSED FINDINGS OF FACT

1. Lizard's Billiards LP d/b/a Lizard's Billiards, holds Permit Nos. MB-542337, which includes the Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 1231 Josey Street, Huntsville, Walker County, Texas.
  2. The Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated December 14, 2006.
  3. The hearing on the merits was convened before Timothy Horan, Administrative Law Judge with the State Office of Administrative Hearings, on January 12, 2007. The Petitioner appeared and was represented by attorney Ramona Perry. The Respondent appeared and was represented by Ronald Monshaugen, attorney. The record was closed on January 26, 2007.
  4. Ed Delagarza was an agent, servant, or employee of Lizards's Billiards on September 17, 2005.
  5. On that same date, Angela Zahn, a youthful-looking twenty year old was in possession of a beer on the licensed premises of Lizard's Billiards.
  6. Ed Delagarza was in a position to observe Angela Zahn, a minor, in possession of a beer.
  7. When informed of the violation, Ed Delagarza told Agent Zella that he would get with his staff and find out how the minor, Angela Zahn, came in possession of a beer.
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8. Ed Delagarza failed to asked for any identification from Angela Zahn that day or to ascertain if she was a minor.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 61.71, and 61.73.
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 on the foregoing findings and conclusions, the Commission proved that Respondent violated the Code by having an agent, servant, or employee who, with criminal negligence, permitted a minor to possess or consume an alcoholic beverage on September 17, 2005.
5. Based on the foregoing, the Respondent's permits should be suspended for a period of seven days or the Respondent should be permitted to pay a civil penalty of \$1,050.00 in lieu of suspension of the permit.

SIGNED this 13 day of March, 2007

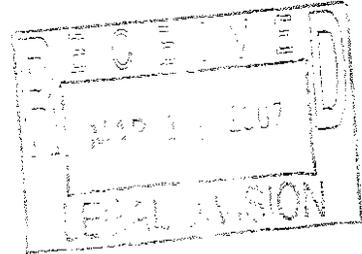
  
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**TIMOTHY HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**



March 13, 2007

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

VIA REGULAR MAIL

**RE: Docket No. 458-07-1219; Texas Alcoholic Beverage Commission vs. Lizard's Billiards LP d/b/a Lizard's Billiards**

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, appearing to read "Timothy J. Horan".

Timothy J. Horan  
Administrative Law Judge

TJH/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona M. 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  
Ronald A. Monshaugen, Attorney for Respondent, 1225 North Loop West, Suite 640, Houston, TX 77008 -VIA  
REGULAR MAIL