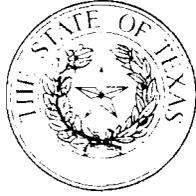


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 17, 2011

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

VIA REGULAR MAIL

RE: Docket No. 458-11-5066, TABC Case No. 600722; The Trae Group Inc. d/b/a C. Phil's v. TABC

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(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

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

Stephen Burger
Administrative Law Judge

SB/ell

Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
(with Certified Evidentiary Record and Hearing CD/s)

Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL

The Trae Group, Inc. d/b/a C. Phil's, Respondent, 3124 Arbor, Houston, TX 77004 - VIA REGULAR MAIL

RECEIVED

AUG 19 2011

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

ASB HOUSTON
LEGAL

June 24, 2011, for the TABC to submit the administrative notice. The TABC appeared and was represented by Ramona Perry, Staff Attorney. Protestant City of Houston was represented by attorneys J. Robert Huntley and Yolanda Woods. Claire Phillips, *pro se*, appeared for Respondent.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal 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. (Code) § 11.46(a)(8). The Commission or Administrator may also refuse to issue a permit if a permit holder or their employees “rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment” in violation of Code §§ 104.01 (3) and 11.61(b)(2), or if a permit holder possesses a narcotic on the licensed premises in violation of Code §§ 104.01 (9) and 11.61(b)(2).

III. DISCUSSION OF EVIDENCE AND ANALYSIS

A. Protestants' Case

The Protestants oppose renewal of Respondent's permits due to the Respondent's owner, Ms. Phillips, shooting and killing of a customer and Respondent's owner's possession of cocaine, both incidents occurring on Respondent's premises. Protestants also contend that the shooting caused panic and alarm, and Respondent's owner's actions indicate that the bar was being operated in a manner detrimental to the safety and peace of the public.

Sean Porter testified that on August 7, 2010, he attended a birthday party for Ladonna Hale at Respondent's establishment, C. Phil's. He arrived about 10:00 p.m. and noted

there were about 25 friends and family members in attendance. He was behind Albert Randle, III (A.J.), who had ordered a drink at the bar. Mr. Porter noticed A.J. had his hand hanging over the tip jar, and he observed an argument between A.J. and a bartender. About 30 minutes later, Mr. Porter heard a gunshot and saw A.J. and another man on the floor. He also observed Ms. Phillips with a gun and saw her go outside, where he observed A.J. receiving CPR. After the gunshot, Mr. Porter saw patrons in the bar panicking.

Ladonna Hale testified that she arrived at the party about 9:00 p.m. She saw A.J., with whom she was acquainted, and danced with him. At some point thereafter, she saw Ms. Phillips walk up to A.J. and point a gun at him. She could not hear what was being said and she was not aware of any previous argument between A.J. and anyone else. She then heard a gunshot and helped A.J. through the door where he collapsed. (A.J. later died as a result of the gunshot wound.) Ms. Hale did not know of any panic among patrons inside the bar. Ms. Hale observed Ms. Phillips outside the bar after the shooting and saw her return inside, with the gun. Ms. Hale testified that A.J. did not grab for the gun.

Donta Randle, A.J.'s cousin, arrived at the party about 8:00 p.m. He testified that he did not see any arguments that evening but heard the gunshot about 11:45 p.m., and then saw Ms. Phillips standing with a gun in her hand at her side. He grabbed her gun arm, and Ms. Phillips said "he stole from the tip jar."

Keeyah Jones was also at the party on August 7, 2011, and she testified she did not observe any arguments that evening. She observed Ms. Phillips approach the dance floor and heard a gunshot. Ms. Jones jumped up and headed for the door; she noticed people were in a panic and there was "lots of commotion" as people headed for the exit doors.

Myesha Porter testified that she was at the party and observed Ms. Phillips walk up to A.J. and shoot him. Ms. Porter observed Ms. Phillips talking to a bartender before the shooting. Ms. Porter testified that after the shooting people in the bar were "running and screaming."

Officer Don Henry of the Houston Police Department arrived at the bar soon after the shooting and testified that the scene was chaotic, with a lot of shouting, pushing and shoving. He began to restore order and observed A.J. on the ground and Ms. Phillips in handcuffs. Ms. Phillips told him that A.J. “shouldn’t have been stealing from the tip jar.” She also stated that she had had an argument with A.J., and had wanted him to come to the office.

Officers Nina Sharp and Nathaniel Wackman went to the bar on August 17, 2010, to serve an arrest warrant for murder on Ms. Phillips. A baggie containing .63 grams of cocaine was found on Ms. Phillips. Officer Wackman was also at the bar on the night of the shooting, and observed a chaotic scene, with chairs turned over and glasses broken. A .357 Magnum revolver was found at the scene, and Ms. Phillips admitted it was her gun. Ms. Phillips also told him that “the gun went off.” Officer Wackman stated that the murder charge was “no-billed.”

David Giannavola is a homicide investigator for the Houston Police Department. He found the .357 Magnum pistol in Ms. Phillips office, and it was subsequently determined it was the weapon used in the shooting of A.J.

Albert Randle, Jr., father of A.J., gave a public comment on behalf of his family that they believe Respondent’s bar should be shut down because his son was killed by Ms. Phillips. He was at the party that night and stated that Ms. Phillips should have told his 23 year-old son to leave rather than shoot and kill him.

B. Respondent’s Case

Ms. Phillips is the owner of C. Phil’s, which is a neighborhood bar. On August 7, 2010, she had arranged for a birthday party to be held at her bar and hired two female bartenders to attend to patrons. She had been at the bar earlier that evening and had left for home about 11:00 p.m. when she received a text from one of her bartenders that a patron was bothering her

and had attempted to steal from a tip jar. Ms. Phillips returned to the bar and, before leaving her vehicle, she placed a pistol in her waistband behind her back under her blouse. She stated that she had been a police officer and, for more than 20 years, had kept the gun on her at night for protection. She entered the bar and spoke with one of the waitresses, who told her that A.J. had been the man bothering the bartender and that he had stolen money from the tip jar.

Ms. Phillips testified that she then walked up to A.J. who was on the small dance floor. She had seen A.J. before and intended to tell him to leave. She testified that she did not intend to pull the gun out, but someone nearby grabbed the gun and it went off. She testified that the pistol is a large weapon and presents a visible bulge under her blouse. An individual nearby could have seen it and attempted to take the gun out of her waistband. She did not know who grabbed the gun. She also stated that A.J. grabbed for the gun, and the gun went off.

Ms. Phillips claims that this is not the first time someone had stolen out of the tip jar and said she would never shoot someone for that reason. She asserts that it was just an accident. She argued that it was not illegal for her to have the gun and noted she was “no-billed” on the murder charge. She also testified that the bar is her source of income and believes the gun was not “rudely displayed.” She believes her permit should not be cancelled but, instead, should be suspended for 60 days.

C. Analysis

The ALJ’s weighing of all the evidence convinces him that the Respondent’s owner, Claire Phillips, “rudely displayed” a weapon on August 7, 2010, when she shot A.J., a patron of her bar. In making this determination the ALJ considered all the attendant circumstances, especially the testimony of eye-witnesses to the shooting, and compared their testimony to the Ms. Phillips’ testimony. Two eye-witnesses, Myesha Porter and Ladonna Hale, testified that they observed Ms. Phillips walk up to A.J., point a gun at him and fire it. Ms. Phillips was reported to have stated immediately after the shooting that “he had stolen from the tip jar.”

Although Ms. Phillips testified that immediately prior to the shooting another individual had attempted to grab the gun and during the struggle the gun went off and hit A.J., the evidence does not support her version of the events. The evidence shows that Ms. Phillips returned to the bar after receiving a text from a bartender that someone had stolen from the tip jar and was bothering a bartender. Ms. Phillips took a loaded gun partially hidden beneath her blouse into the bar, talked to the bartender, approached A.J., and pointed the gun at him. The only reason for Ms. Phillip's actions was a report that A.J. had stolen tip jar money. Ms. Phillips did not pull the gun out to defend herself or someone else, but rather took it upon herself to approach A.J. with a loaded weapon merely because she thought he had stolen money from the bar. Such uncalled-for action by Ms. Phillips constitutes rudely displaying a deadly weapon in a manner calculated to disturb persons in the bar pursuant to Code §§ 104.01 (3) and 11.61(b)(2). The evidence also shows that Ms. Phillips' actions caused panic when the shot was fired, as patrons ran from the bar.

Regarding the allegation that Ms. Phillips possessed a narcotic on the licensed premises, the evidence is unrefuted that on August 17, 2010, officers arrived at Respondent's bar to arrest her for murder and found .63 grams of cocaine on her person.

Therefore, the ALJ agrees with the Protestants that Respondent's permits should not be renewed.

IV. FINDINGS OF FACT

1. The Trae Group Inc., d/b/a C. Phil's (Respondent) filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit Nos. MB 214008 and LB 214009, for the premises located at 4701 Almeda, Houston, Harris County, Texas.
2. A Notice of Hearing dated May 23, 2011, was issued notifying the parties that a hearing would be held on the renewal application and informing the parties of the time, place, and nature of the hearing.

3. On June 10, 2011, and concluding on June 24, 2011, 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 Ramona Perry, Staff Attorney. Protestant City of Houston was represented by attorneys J. Robert Huntley and Yolanda Woods. Respondent was represented by Claire Phillips, *pro se*.
4. On August 7, 2010, Claire Phillips, owner of Respondent, received a text message from a bartender that an individual was bothering her and taking money from a tip jar.
5. Claire Phillips drove to C. Phil's with a loaded .357 pistol in her waistband under her blouse, and she spoke to the bartender regarding the complaint.
6. The bartender identified Albert Randle III (A.J.) as the individual who had taken money from the tip jar.
7. Claire Phillips walked up to A.J. on the dance floor, pointed the pistol at him, and shot and killed him.
8. Immediately after the shooting, patrons ran out of the bar in panic and disarray.
9. On August 17, 2010, Claire Phillips was in possession of .63 grams of cocaine at C. Phil's.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§ 1.06 and Subchapter B of Chapter 5.
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 pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was affected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. On August 7, 2010, Respondent's owner Claire Phillips rudely displayed a loaded pistol in a manner calculated to disturb persons in a retail establishment in violation of Code §§ 104.01 (3) and 11.61(b)(2).
5. On August 17, 2010, Respondent's owner Claire Phillips was in possession of a narcotic in violation of Code §§ 104.01 (9) and 11.61(b)(2).

6. The place or manner in which Respondent conducts its business warrants the refusal of Respondent's permit renewals 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. §11.46(a)(8).
7. The Respondent's renewal application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises known as C. Phil's located at 4701 Almeda, Houston, Harris County, Texas, should be denied.

SIGNED August 17, 2011.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

IT IS THEREFORE ORDERED that the application for renewal of Permits MB214008 and LB214009 is hereby **DENIED**.

Unless a Motion for Rehearing is filed by the 14th day of May, 2012, this Order will become final and enforceable on the 15th day of May, 2012.

SIGNED this the 20th day of April, 2012, at Austin, Texas.



Alan Steen, 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 20th day of April, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Stephen J. Burger
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VIA FACSIMILE: (512) 322-0474

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Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Division