

DOCKET NO. 611454

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
FORTY LLC D/B/A INDRA, Applicant/Respondent	§	ALCOHOLIC
	§	
	§	
ORIGINAL APPLICATION FOR MB, LB & PE PERMITS	§	
	§	
	§	
TRAVIS COUNTY, TEXAS (SOAH DOCKET NO. 458 - 13 -1298)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 11th day of February, 2013, the above styled and numbered cause.

After proper notice was given and time for responses, a Motion for Summary Disposition filed in this case by TABC Staff was considered by Administrative Law Judge William G. Newchurch of the State Office of Administrative Hearings (SOAH). The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on January 7, 2012. The Proposal for Decision was properly served on the Applicant/Respondent, who was given an opportunity to file exceptions and replies as part of the record herein. Exceptions were filed by Applicant/Respondent on January 20, 2013. On February 8, 2013, the Administrative Law Judge filed a letter recommending that Respondent's exceptions be overruled.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, the Exceptions and the ALJ's response, 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 other motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED that Applicant/Respondent's application for a Mixed Beverage Permit, Mixed Beverage Late Hours Permit and Beverage Cartage Permit is hereby **DENIED**.

This Order will become final and enforceable on the 8th day of March, 2013, unless a Motion for Rehearing is filed **on or before the 7th day of March, 2013**.

SIGNED this the 11th day of February, 2013, at Austin, Texas.



Edwin C. Swedberg, Assistant 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 11th day of February, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

William G. Newchurch
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John W. Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Division

TABC Licensing Division

Capt. Harold Nanos
TABC Austin District Office

SOAH DOCKET NO. 458-13-1298
TABC CASE NO. 611454

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
ORIGINAL APPLICATION OF FORTY	§	
LLC D/B/A INDRA (MB LB & PE)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

Forty LLC d/b/a Indra (Forty LLC or Applicant) has applied to the Texas Alcoholic Beverage Commission (TABC or Commission) for mixed-beverage, mixed-beverage-late-hours, and beverage-cartage permits to do business at a location in Travis County, Texas. On November 30, 2012, the TABC Staff (Staff) filed a motion for summary disposition (MSD) alleging that there was no genuine issue of material fact and that the Application should be denied because:

1. The Applicant's reputation for being a peaceable, law-abiding citizen in the community where it resides is bad;
2. The manner in which the Applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; and
3. The Applicant is physically unable to conduct the business for which it seeks permits.

The Applicant has not filed a response to the MSD. The State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) grants the MSD and recommends that the Commission deny the Application.

II. EVIDENCE

A party's MSD may be based on pleadings, affidavits, materials obtained by discovery, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, or other admissible evidence.¹ For purposes of ruling on the motion for summary disposition, the following are officially noticed and admitted into evidence:

EXHIBIT NO.	DESCRIPTION
1	Notice of Hearing (NOH) that was filed with SOAH ² on November 30, 2012.
2	Motion for Summary Disposition and attached exhibits ³ that were filed with SOAH on November 30, 2012.

III. JURISDICTION

On February 13, 2012, Forty LLC filed the Application with the Commission, seeking to do business at 219 W. 4th Street, Austin, Texas (Premises).⁴ Hussein Ali Yassine (Mr. Yassine)⁵ signed the Application, which lists him as the manager and only member of the Applicant.⁶ This case was referred to SOAH on November 29, 2012, for hearing. On November 30, 2012, the NOH was filed with SOAH and personally served on Mr. Yassine.⁷

The Commission has jurisdiction over this case under Chapters 5 and 11 of the Alcoholic Beverage Code.⁸ The Commission may grant, refuse, suspend, or cancel alcoholic beverage

¹ 1 Tex. Admin. Code (TAC) § 155.505(c)(1).

² All case-related documents filed with SOAH are accessible at <http://www.soah.state.tx.us/> by clicking the "Electronic Case Files" link.

³ The ALJ refers to the exhibits attached to the MSD as subexhibits, abbreviated as subex.

⁴ Ex. 2, subex. 1 at P009. The pages in the exhibits were not sequentially numbered. However, the Staff faxed the exhibits to SOAH, and each page was numbered during that faxing process. The ALJ cites to those sequential fax-added page numbers, which appear in the versions of the exhibits accessible through the SOAH website.

⁵ Several TABC enforcement cases involving Mr. Yassine and existing permits are also pending. *TABC v. 607 L.L.C. dba FUEL*, et al., SOAH Docket Nos. 458-12-5376, -5377, -5378, -5379, -5380, -5381, -5382, -5383 & -5516 & 458-13-0901, -0902, -0903, 0904, -0905, -0906, -0907, -0908 & -0909. This Proposal for Decision (PFD) addresses only Forty LLC's Application for a permit and not those other enforcement cases.

⁶ Ex. 2, subex. 1 at P012, P019, P020, P023, P024 & P025.

⁷ Ex. 1 at P001 & P004.

⁸ Tex. Alco. Bev. Code (Alcoholic Beverage Code).

permits and licenses as provided in the Alcoholic Beverage Code.⁹ SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a Proposal for Decision (PFD) with findings of fact and conclusions of law.¹⁰

In a contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than ten days; and to respond to and present evidence and argument on each issue involved in the case.¹¹ An NOH in a contested case must include: a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.¹² The NOH sent to the Applicant complied with those requirements. It also specifically indicated that the Staff opposed the Application because:

1. The Applicant is not of good moral character or its reputation for being a peaceable, law-abiding citizen in the community where it resides is bad;
2. The place or manner in which the Applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; and
3. The Applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated.

The ALJ concludes that the NOH complied with the notice requirements of the Alcoholic Beverage Code and the Government Code. He also concludes that the Commission has jurisdiction to take action on the Application and SOAH has jurisdiction to issue a PFD concerning it.

⁹ Alcoholic Beverage Code § 5.35.

¹⁰ Tex. Gov't Code (Government Code) ch. 2003; Alcoholic Beverage Code § 5.43.

¹¹ Government Code § 2001.051.

¹² Government Code § 2001.052(a).

IV. MOTIONS FOR SUMMARY DISPOSITION

In a case before SOAH, an ALJ may issue a PFD on all or part of a contested case without an evidentiary hearing if the evidence shows that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.¹³ A motion for summary disposition must be filed at least thirty days before the hearing on the merits unless otherwise ordered by the judge.¹⁴ A motion for summary disposition must include a statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, supported by a clear and specific reference to the supporting evidence.¹⁵ A response to a motion for summary disposition is due by the fourteenth day after a respondent receives the motion.¹⁶ However, if SOAH's offices are closed, a deadline is extended to the next day that SOAH's offices are open.¹⁷

As set out in the NOH, the hearing on the merits of this case is currently scheduled for January 9, 2013.¹⁸ Accordingly, December 10, 2012, was the thirtieth day before the scheduled hearing on the merits. The Staff filed its MSD on November 30, 2012,¹⁹ and personally served it on Mr. Yassine on that same date.²⁰ The ALJ concludes that the MSD was timely filed. SOAH's offices were closed on December 24, 25, and 26, 2012; hence, the deadline for the Applicant to file a response to the MSD was December 27, 2012. The ALJ concludes that the MSD is ripe for ruling.

¹³ 1 TAC § 155.505(a).

¹⁴ 1 TAC § 155.505(b)(1).

¹⁵ 1 TAC § 155.505(b)(2).

¹⁶ 1 TAC § 155.505(d)(1).

¹⁷ 1 TAC § 155.7(b)(2).

¹⁸ Ex. 1 at P0003.

¹⁹ Ex. 2 at P001.

²⁰ Ex. 2 at P007.

V. GROUNDS FOR DENIAL

Alcoholic Beverage Code § 11.46(a)(6), (8), and (9) provide:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

...

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

...

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; [or]

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

....

The Applicant is a limited liability corporation, and its sole manager and member is Mr. Yassine, who filed the Application.²¹ Alcoholic Beverage Code § 1.04(9) defines "applicant" to mean "a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit." Accordingly, the ALJ concludes that Mr. Yassine, as well as Forty LLC, is the Applicant.

On October 12, 2012, a jury in the United States District Court for the Western District of Texas, Austin Division, unanimously found Mr. Yassine guilty of three counts of Laundering Monetary Instruments.²² Mr. Yassine remains incarcerated in prison in Bastrop, Texas, without

²¹ Ex. 2, subex. 1 at P012, P016, P019 & P024.

²² Ex. 2, subex. 3. In the MSD, the Staff alleges that Mr. Yassine was convicted of "four counts of money laundering." Ex. 2 at P002-P003. He was convicted of a fourth offense, Conspiracy to Launder Monetary Instruments, but that conspiracy offense is not, strictly speaking, the same as money laundering. Ex. 2, subex. 3 at P040.

bond, awaiting sentencing.²³ As of November 29, 2012, Mr. Yassine remained the sole manager and member of the Applicant.²⁴

Because Mr. Yassine has been convicted of federal offenses, the Staff contends that the Applicant is not a peaceable and law-abiding citizen and the manner in which the Applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. The ALJ agrees with the Staff.

The ALJ concludes, as a matter of law, that Mr. Yassine's reputation for being a peaceable and law-abiding citizen in the community where he resides is bad due to his money-laundering convictions. Because Mr. Yassine is the Applicant, as defined by Alcoholic Beverage Code § 1.04(9), Mr. Yassine's and Forty LLC's reputations are the same. The ALJ concludes that Forty LLC's reputation for being a peaceable and law-abiding citizen in the community where it resides is also bad. In accordance with Alcoholic Beverage Code § 11.46(a)(6), the ALJ concludes that the Commission may and should deny the Application.

Further, given Mr. Yassine's convictions, the ALJ also agrees that it is reasonable to conclude that the manner in which the Applicant may conduct its business warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. For this additional reason and in accordance with Alcoholic Beverage Code § 11.46(a)(8), the ALJ concludes that the Commission may and should deny the Application.

On August 29, 2012, the Applicant and Peyton Riley No. 1, L.P., which owns the Premises for which the Applicant seeks permits, entered into a settlement agreement terminating the lease of the Premises to the Applicant.²⁵ Additionally, Mr. Yassine is incarcerated at the Bastrop County Jail, where he awaits sentencing on January 25, 2013, for his crimes detailed

²³ Ex. 2, subex. 4.

²⁴ Ex. 2, subex. 5.

²⁵ Ex. 2, subex. 2.

above.²⁶ Because the lease for the proposed permitted premises has been terminated and the Applicant's sole member and manager, Mr. Yassine, is incarcerated, the Staff contends that Applicant is physically unable to conduct business under the permits for which it has applied. The ALJ agrees with the Staff. For this additional reason and in accordance with Alcoholic Beverage Code § 11.46(a)(9), the ALJ concludes that the Commission may and should deny the Application.

VI. PROPOSAL

The ALJ recommends that the Commission grant the MSD, adopt the following Findings of Fact and Conclusions of Law, and deny Forty LLC's Application for permits.

VII. FINDINGS OF FACT

1. On February 13, 2012, Forty LLC d/b/a Indra (Forty LLC or Applicant) filed an application with the Texas Alcoholic Beverage Commission (TABC or Commission) for mixed-beverage, mixed-beverage-late-hours, and beverage-cartage permits to do business at 219 W. 4th Street, Austin, Texas (Premises).
2. On August 29, 2012, the Applicant and Peyton Riley No. 1, L.P., which owns the Premises for which the Applicant seeks permits, entered into a settlement agreement terminating the lease of the Premises to the Applicant.
3. Because the lease has been terminated, the Applicant is physically unable to conduct the business at the Premises for which it seeks a permit.
4. Hussein Ali Yassine (Mr. Yassine) signed and filed the Application and is the manager and only member of Forty LLC.
5. On October 12, 2012, a jury in the United States District Court for the Western District of Texas, Austin Division, unanimously found Mr. Yassine guilty of three counts of Laundering Monetary Instruments.
6. Mr. Yassine is incarcerated at the Bastrop County Jail, where he awaits sentencing for his crimes detailed above.
7. Because he is incarcerated, Mr. Yassine is physically unable to conduct the business for which the Applicant seeks a permit.

²⁶ Ex. 5, subex. 2 at 2 & subex.4 & Ex. 6, subex. 2 at 2 & subex. 4.

8. On November 29, 2012, the TABC Staff (Staff) referred this case to the State Office of Administrative Hearings (SOAH) for hearing.
9. On November 30, 2012, the Staff filed a Notice of Hearing (NOH) with SOAH and personally served it on Mr. Yassine.
10. The NOH contained a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. It also specifically indicated that the Staff opposed the Application because:
 - a. The Applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;
 - b. The place or manner in which the Applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; and
 - c. The Applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated.
11. The hearing on the merits of this case is currently scheduled for January 9, 2013.
12. The thirtieth day before the scheduled hearing on the merits of this case was December 10, 2012.
13. On November 30, 2012, the Staff filed a motion for summary disposition (MSD), alleging that there was no genuine issue of material fact and that the Application should be denied because:
 - a. The Applicant's reputation for being a peaceable, law-abiding citizen in the community where it resides is bad due to Mr. Yassine's convictions described in the Findings of Fact;
 - b. Based on Mr. Yassine's convictions described in the Findings of Fact, the manner in which the Applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency; and
 - c. The Applicant is physically unable to conduct the business for which it seeks permits due to the termination of Forty LLC's lease of the Premises and Mr. Yassine's.
14. On November 30, 2012, the Staff personally served the MSD on Mr. Yassine.
15. The Applicant has not filed a response to the MSD.

16. SOAH's offices were closed on December 24, 25, and 26, 2012, and open on December 27, 2012.

VIII. CONCLUSIONS OF LAW

1. The Commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in the Tex. Alco. Bev. Code (Alcoholic Beverage Code). Alcoholic Beverage Code § 5.35.
2. Based on the above Findings of Fact, the Commission has jurisdiction over this case under Chapters 5 and 11 of the Alcoholic Beverage Code.
3. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a Proposal for Decision (PFD) with findings of fact and conclusions of law. Tex. Gov't Code (Government Code) ch. 2003 and Alcoholic Beverage Code § 5.43.
4. In a contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than ten days; and to respond to and present evidence and argument on each issue involved in the case. Government Code § 2001.051.
5. An NOH in a contested case must include: a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. Government Code § 2001.052(a).
6. Based on the above Findings of Fact and Conclusions of Law, the Applicant was properly notified of the hearing in this case.
7. In a case before SOAH, an Administrative Law Judge (ALJ) may issue a PFD on all or part of a contested case without an evidentiary hearing if the evidence shows that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code (TAC) § 155.505(a).
8. A motion for summary disposition must be filed at least thirty days before the hearing on the merits unless otherwise ordered by the judge. 1 TAC § 155.505(b)(1).
9. Based on the above Findings of Fact and Conclusions of Law, the MSD was timely filed.
10. An MSD must include a statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, supported by a clear and specific reference to the supporting evidence. 1 TAC § 155.505(b)(2).
11. A response to a motion for summary disposition is due by the fourteenth day after a respondent receives the motion. 1 TAC § 155.505(d)(1).

12. If SOAH's offices are closed, a deadline is extended to the next day that SOAH's offices are open. 1 TAC § 155.7(b)(2).
13. Based on the above Findings of Fact and Conclusions of Law, the deadline for the Applicant to file a response to the MSD was December 27, 2012.
14. Based on the above Findings of Fact and Conclusions of Law, the MSD is ripe for ruling.
15. Alcoholic Beverage Code § 11.46(a)(6), (8), and (9) provide:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

...
 - (6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

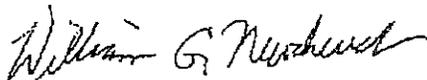
...
 - (8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; [or]

 - (9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;
....
16. Based on the above Findings of Fact and Conclusions of Law, Mr. Yassine's reputation for being a peaceable and law-abiding citizen in the community where he resides is bad due to his money-laundering convictions.
17. Alcoholic Beverage Code § 1.04(9) defines "applicant" to mean "a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit."
18. Based on the above Findings of Fact and Conclusions of Law, Mr. Yassine, as well as Forty LLC, is the Applicant in this case and their reputations are the same.
19. Based on the above Findings of Fact and Conclusions of Law, the Applicant's reputation for being a peaceable and law-abiding citizen in the community where it resides is bad.
20. Based on the above Findings of Fact and Conclusions of Law, the manner in which the Applicant may conduct its business warrants the refusal of the permits based on the

general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

21. Based on the above Findings of Fact and Conclusions of Law, the Applicant is physically incapacitated to conduct business under the permits for which it has applied.
22. Based on the above Findings of Fact and in accordance with Alcoholic Beverage Code § 11.46(a)(6), (8), and (9), Forty LLC's Application for mixed-beverage, mixed-beverage-late-hours, and beverage-cartage permits to do business at 219 W. 4th Street, Austin, Texas, should be denied.

SIGNED January 7, 2013.



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS