

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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AUG 13 2012

TABC HOUSTON
LEGAL

August 10, 2012

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

VIA REGULAR MAIL

RE: Docket No. 458-12-6615; Texas Alcoholic Beverage Commission vs. Wajdi Zahi Hammad D/B/A Maawg's Liquor

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.

Sincerely,

A handwritten signature in cursive script that reads "Lindy Hendricks".

LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- VIA REGULAR MAIL (with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Wajdi Zahi Hammad d/b/a Maawg's Liquor, P.O. Box 1205, Port Arthur, Texas 77641 -VIA REGULAR MAIL

Chief Mark Blanton, Port Arthur Police Department, 545 4th Street, Port Arthur, Texas 77641 -- **VIA**
REGULAR MAIL

SOAH DOCKET NO. 458-12-6615
(TABC CASE NO. 609812)

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner and Protestant	§	
	§	
PORT ARTHUR POLICE DEPARTMENT,	§	
Protestant	§	
v.	§	OF
	§	
ORIGINAL APPLICATION OF	§	
WAJDI ZAHY HAMMAD	§	
D/B/A MAAWG'S LIQUOR	§	
(P, BF)	§	
Applicant	§	
	§	
JEFFERSON COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

This matter was scheduled for hearing at the request of the Texas Alcoholic Beverage Commission (the referring agency or Commission). Despite being sent proper notice, Applicant did not appear and was not represented at the hearing. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by the referring agency should be granted on a default basis.

FINDINGS OF FACT

1. The notice of hearing was mailed to the Applicant at the Applicant's address of record at least ten days prior to the scheduled hearing.
2. The notice of hearing contained a statement of the time, place, and nature of the hearing; 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.

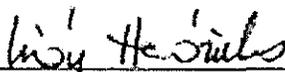
3. The notice of hearing contained a statement in at least 12-point, boldface type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against a party that failed to appear at the hearing.
4. An Order No. 2 Setting Hearing Date was sent to Applicant at the Applicant's address of record, advising Applicant that the hearing was scheduled for August 10, 2012, at 9:00 a.m.
5. The hearing was held and the record closed on August 10, 2012.
6. Applicant did not appear at the scheduled hearing and was not represented at the hearing.
7. The referring agency's staff moved for a default, which was granted.
8. Applicant is residentially domiciled with Najwa Hammad who holds a financial interest in a permit or license authorizing the sale of beer at retail as the individual owner under permits issued by the Commission for B.J.'s Food Store, Permit Nos. Q227602 and BF272323.
9. Applicant is residentially domiciled with Majdi Hemad who holds a financial interest in a permit or license authorizing the sale of beer at retail as the individual owner under permits issued by the Commission for Club Swagga, Permit No. MB743630.
10. Applicant failed to answer or falsely or incorrectly answered a question in an original application.
11. Applicant directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a mixed beverage establishment, to wit: Mixed Beverage Permit No. MB743630, issued to Majdi Hemad d/b/a Club Swagga.
12. Applicant conducts his business in a manner that 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.

CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Applicant in accordance with Tex. Gov't Code ch. 2001 and 1 Tex. Admin. Code ch. 155.

4. The allegations in the notice of hearing were properly deemed admitted. 1 Tex. Admin. Code § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. Residentially domiciling with someone who holds a financial interest in a permit or license authorizing the sale of beer at retail is a violation of Texas Alcoholic Beverage Code (Code) § 11.47.
7. Failing to answer or falsely or incorrectly answering a question in an original application is a violation of Code § 11.46 (a)(4).
8. Owning an interest of any kind in the premises, business, or permit of a mixed beverage establishment, directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, is a violation of Code §§ 22.06 (a)(2) and 11.46 (b).
9. Conducting his business in a manner that 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 is a violation of Code § 11.46 (a)(8).
10. The referring agency is entitled to the relief requested in its notice of hearing and Applicant's original application should be denied.

SIGNED August 10, 2012



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 609812

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner/Protestant	§	BEFORE THE TEXAS
	§	
	§	
PORT ARTHUR POLICE DEPARTMENT, Protestant	§	
	§	
	§	
VS.	§	
	§	
WAJDI ZAHY HAMDAD D/B/A MAAWG'S LIQUOR, Respondent/Applicant	§	ALCOHOLIC
	§	
	§	
ORIGINAL APPLICATION FOR P PERMIT & BF LICENSE	§	
	§	
	§	
JEFFERSON COUNTY, TEXAS (SOAH DOCKET NO. 458-12-6615)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of December, 2012, 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 Lindy Hendricks presiding. The hearing convened on August 10, 2012 and the SOAH record closed that same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 10, 2012. 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. As of this date no exceptions have been filed.

After review and due consideration of the Proposal for Decision, with the following exception only to Conclusion of Law No. 8, 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.

Substitute the following as Conclusion of Law No. 8:

Owning an interest of any kind in the premises, business, or permit of a mixed beverage establishment, directly or indirectly, through a subsidiary,

affiliate, agent, or employee, or through an officer, director or firm member, is a violation of Code §§22.06(a)(2) and 11.48(b).

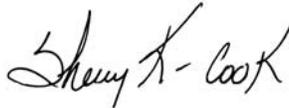
The modification to Conclusion of Law No. 8 is made pursuant to Government Code §2001.058(e)(3) to change the incorrect citation “11.46(b)” to the correct citation “11.48(b)”.

All 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 are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that Respondent’s application for a Package Store Permit and a Beer Retail Dealer’s Off-Premise License be **DENIED**.

This Order will become final and enforceable on the 11th day of January, 2013, unless a Motion for Rehearing is filed by the 10th day of January, 2013.

SIGNED this the 21st day of December, 2012, at Austin, Texas.



Sherry K-Cook, 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 21st day of December, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (713) 812-1001

Wajdi Zahi Hammad
d/b/a Maawg's Liquor
RESPONDENT
P.O. Box 1205
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VIA REGULAR MAIL

Chief Mark Blanton
Port Arthur Police Department
PROTESTANT
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Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Division