

DOCKET NO. 613773

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ISLAND OF TREASURE LLC D/B/A TREASURE ISLAND PIRATE BAR, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT NO(s). MB-408990, LB TRAVIS COUNTY, TEXAS (SOAH DOCKET NO. 458-13-0908)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of January, 2013, the above styled and numbered cause.

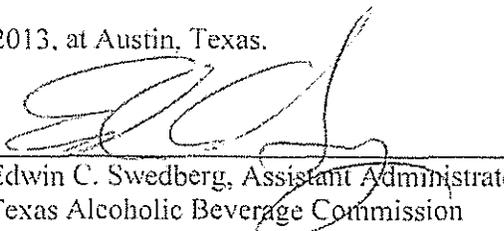
After proper notice was given and time for responses, two TABC Motions for Summary Disposition in this case were considered by Administrative Law Judge William G. Newchurch of the State Office of Administrative Hearings (SOAH). The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on December 20, 2012. The Proposal for Decision was properly served on Respondent, who was given an opportunity to file exceptions and replies as part of the record herein. Exceptions were filed by Respondent on January 4, 2013. On January 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, 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 Respondent's Mixed Beverage Permit No. MB-408990 and Mixed Beverage Late Hours Permit are hereby cancelled.

This Order will become final and enforceable on the 1st day of February, 2013, unless a Motion for Rehearing is filed before that date.

SIGNED this the 8th day of January, 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 8th day of January, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE: (512) 322-2061

Kent E. Wymore IV
ATTORNEY FOR RESPONDENT
130 Hall Professional Center
Kyle, Texas 78640
VIA REGULAR MAIL and
VIA FACSIMILE: (866) 211-4235

John W. Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Division

TABC Licensing Division

Capt. Harold Nanos
TABC Austin District Office

SOAH DOCKET NO. 458-13-0901

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § §	BEFORE THE STATE OFFICE
V.	§	OF
607 L.L.C. dba FUEL, Respondent	§	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-13-0902

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § §	BEFORE THE STATE OFFICE
V.	§	OF
ACOUSTIC CAFÉ LLC dba SPILL, Respondent	§ § §	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-13-0903

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § §	BEFORE THE STATE OFFICE
V.	§	OF
PURE AUSTIN NIGHTCLUB dba PURE, Respondent	§ § §	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-13-0904

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § §	BEFORE THE STATE OFFICE
V.	§	OF
BLUE WATER CONCESSIONS, INC. dba STACK BURGER, Respondent	§ § §	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-13-0905

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	OF
V.	§	
	§	ADMINISTRATIVE HEARINGS
VICCI INC. dba KISS & FLY,	§	
Respondent	§	

SOAH DOCKET NO. 458-13-0906

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	OF
V.	§	
	§	ADMINISTRATIVE HEARINGS
DOWNTOWN AUSTIN GROUP dba	§	
ROLAL, Respondent	§	

SOAH DOCKET NO. 458-13-0907

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	OF
V.	§	
	§	ADMINISTRATIVE HEARINGS
WALACHI INC. dba MALAIA,	§	
Respondent	§	

SOAH DOCKET NO. 458-13-0908

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	OF
V.	§	
	§	ADMINISTRATIVE HEARINGS
ISLAND OF TREASURE LLC dba	§	
TREASURE ISLAND PIRATE BAR,	§	
Respondent	§	

SOAH DOCKET NO. 458-13-0909

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	OF
V.	§	
	§	ADMINISTRATIVE HEARINGS
WAREHOUSE ENTERTAINMENT dba	§	
HYDE, Respondent	§	

PROPOSAL FOR DECISION

I. INTRODUCTION

The Staff (Petitioner) of the Texas Alcoholic Beverage Commission (TABC or Commission) asks the Commission to cancel the permits the Commission has issued to the following entities (collectively Respondents) to do business in Travis County, Texas:

ENTITY	DOING BUSINESS AS	PERMIT NUMBERS
607 L.L.C.	Fuel	MB-487203, LB & PE
Acoustic Café LLC	Spill	MB-511581, LB
Pure Austin Nightclub	Pure	MB-714126, LB
Blue Water Concessions, Inc.	Stack Burger	MB-472041, CB, LB & PE
Vicci Inc.	Kiss & Fly	MB-442009, LB & PE
Downtown Austin Group	Roial	MB-736234, LB & PE
Walachi Inc.	Malaia	MB-689862, LB & PE
Island of Treasure LLC	Treasure Island Pirate Bar	MB-408990, LB
Warehouse Entertainment	Hyde	MB-631474, LB & PE

The above cases (Current Cases) were referred to the State Office of Administrative Hearings (SOAH) on November 1, 2012, for hearing. Another set of closely related TABC enforcement cases against the same Respondents (Earlier Cases)¹ have been pending at SOAH

¹ TABC v. 607 L.L.C. dba FUEL, et al., SOAH DOCKET NOS. 458-12-5376, -5377; -5378; -5379; -5380; -5381; -5382; -5383; & -5516. At the request of the Respondents and without objection from the Petitioner, the hearing on the merits of the Earlier Cases was continued on July 13, 2012, to a date to be determined. Since then, no party has moved to reset the hearing on the merits of the Earlier Cases.

since March 2012. This Proposal for Decision (PFD) addresses only the Current Cases and not the Earlier Cases.

In the Current Cases, the Petitioner alleges two grounds for canceling the Respondents' permits:

(1) Each Respondent, or Respondent's owner, officer, agent, servant, or employee, is physically unable to carry on the management of his establishment, in violation of Alcoholic Beverage Code² § 11.61(b)(10) (Ability Violation); and

(2) Each Respondent, or Respondent's owner, officer, agent, servant, or employee, is not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad, in violation of Alcoholic Beverage Code § 11.61(b)(6) (Character/Law-abiding Violation).

On November 30, 2012, the Petitioner filed a motion for summary disposition (MSD) of each of the Current Cases (First MSD), which alleged only the Ability Violation. On December 4, 2012, the Petitioner filed a second MSD of each of them (Second MSD), which alleged only the Character/Law-abiding Violation.

On December 18, 2012, the Respondents filed a response objecting to both MSDs, arguing that the Petitioner had not established that there are no disputed issues of material fact concerning the alleged violations, and that suspending³ their permits without a full and fair hearing on the disputed facts would violate their due process rights.

Because the relevant facts and applicable law are nearly identical for each of the Current Cases, a single Proposal for Decision (PFD) is being issued for all of them. The SOAH Administrative Law Judge (ALJ) finds that the Second MSD should be granted, and the Commission need not reach the merits of the First MSD. The MSD evidence clearly shows that the Respondents' principal, sole member, and general manager, Hussein Ali Yassine (Mr. Yassine), is not law-abiding. The Respondents have not shown that there is a genuine issue

² Tex. Alco. Bev. Code (Alcoholic Beverage Code).

³ Actually, the Petitioner seeks cancelation of the Respondents' permits, not merely suspension.

concerning that material fact, and it alone shows that the Second MSD should be granted. The ALJ recommends that the Commission cancel all of the Respondents' permits.

II. EVIDENCE

A party's motion for summary disposition 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.⁴ For purposes of ruling on the motions for summary disposition, the following are officially noticed and admitted into evidence:

EXHIBIT NO.	DESCRIPTION
1	Notices of Violation (NOVs) that were filed with SOAH ⁵ for each Current Case on November 1, 2012.
2	Notices of Hearing (NOHs) that were filed with SOAH for each Current Case on November 1, 2012.
3	Respondents' Motion for Continuance that was filed with SOAH for each Current Case on November 9, 2012.
4	First Amended Notices of Hearing (FANOHs) that were filed with SOAH for each Current Case on December 4, 2012.
5	First MSD and attached exhibits that were filed with SOAH on November 30, 2012.
6	Second MSD and attached exhibits that were filed with SOAH on December 4, 2012.
7	Petitioner's Motion For Earlier Ruling in each Current Case and attached exhibits (Service exhibits) that were filed with SOAH on December 6, 2012.

III. JURISDICTION

There is no dispute concerning the Commission's or SOAH's jurisdiction. Nevertheless, the ALJ will analyze the provision of notices to the Respondent, due to the complexity of that provision.

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

⁵ All case related documents filed with SOAH are accessible at <http://www.soah.state.tx.us/> by clicking the "Electronic Case Files" link. Some documents pertaining to all of the cases are only accessible under the first docket number, 458-13-0901.

A. Applicable Law

The Commission has jurisdiction over the Current Cases under Chapters 5 and 11 of the Alcoholic Beverage Code. The Commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in the Alcoholic Beverage Code.⁶ SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a PFD with findings of fact and conclusions of law.⁷

At least 10 days' notice shall be given when a hearing is provided by the Alcoholic Beverage Code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee.⁸

In every contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than 10 days; and to respond and to present evidence and argument on each issue involved in the case.⁹ Notice of a hearing 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.¹⁰

⁶ Alcoholic Beverage Code § 5.35.

⁷ Tex. Gov't Code (Government Code) ch. 2003 and Alcoholic Beverage Code § 5.43.

⁸ Alcoholic Beverage Code § 11.63.

⁹ Government Code § 2001.051.

¹⁰ Government Code § 2001.052(a).

B. Notices

1. Related Evidence

By facsimile on October 24, 2012, the Petitioner sent the NOV's concerning the Current Cases to each Respondent.¹¹ In the NOV's, the Petitioner alleged that the Respondents had committed both the Ability and the Character/Law-abiding Violations. The NOV's were sent to Dewey Brackin, attorney, who at that time was representing the Respondents in the Earlier Cases.

By facsimile to Mr. Brackin on November 1, 2012, the Petitioner sent the NOH's to the Respondents, informing them that the hearing on the merits of the Current Cases would be held on November 13, 2012.¹² The NOH's alleged the Inability Violation, but not the Character/Law-abiding Violation.

On November 5, 2012, Mr. Brackin filed an unopposed motion to withdraw as attorney for the Respondents in the Earlier Cases. That motion was granted on November 6, 2012.¹³ The Respondents are now represented by Kent E. Wymore IV, attorney, who first appeared for them on December 13, 2012.

Mr. Yassine is the principal, sole member, and general manager of each of the Respondents.¹⁴ On November 9 and 12, 2012, Mr. Yassine filed motions to continue the hearings on the merits of the Current Cases, then scheduled for November 13, 2012.¹⁵ In the November 9, 2012 motion, Mr. Yassine stated that Respondents' former attorney had received

¹¹ Ex. 1. The NOV sent to Walachi Inc. is dated March 22, 2012, but contains allegations dated October 22, 2012. The ALJ concludes that this NOV contains a typographical error and that it, like the other NOV's, was issued on October 24, 2012.

¹² Ex. 2.

¹³ See *TABC v. 607 L.L.C. dba FUEL, et al.*, SOAH DOCKET NOS. 458-12-5376, et al. (Earlier Cases), Order No .5, Granting Motion To Withdraw As Counsel (Nov. 6, 2012).

¹⁴ Ex. 5, subex. 1 at 3 & subex. 2 at 3; Ex. 6, subex. 1 at 3 & subex. 2 at 2 & 3.

¹⁵ Ex. 3; Ex. 5, subex. 2 & Ex. 6, subex. 2.

the NOHs on November 1, 2012, and Mr. Yassine asked that the hearing on the merits of the Current Cases be continued to February 11, 2013. In the November 12, 2012 motion, Mr. Yassine signed as the “General Manager” and stated that he was “[the] sole member and manager for respondent,” “an inmate in the Bastrop County Jail,” and “served with notice of hearing on Friday [sic] 2nd of November,” and “no notice of violation has been provided.”

On November 12, 2012, the ALJ convened a teleconference at the request of the Petitioner. The Petitioner’s attorney, John Sedberry, and Mr. Brackin attended the teleconference. Mr. Brackin noted that he had already been allowed to withdraw as Respondents’ attorney in the Earlier Cases. The Petitioner argued that it had not, in fact, consented to Mr. Brackin’s motion to withdraw as attorney for the Respondents in the Earlier Cases and urged the ALJ to reconsider his order granting Mr. Brackin’s motion. The Petitioner also objected to the continuance of the hearing on the merits of the Current Cases, arguing:

1. The Earlier and Current Cases were essentially the same matters;
2. Mr. Brackin had represented the Respondents in the Earlier Cases for several months;
3. Mr. Brackin also represented the Respondents in the Current Cases; and
4. Further delay was not warranted.

Mr. Brackin and the Petitioner’s attorney agreed that they had conferred before Mr. Brackin filed the motion to withdraw and agreed that Mr. Brackin could assume that the motion to withdraw was uncontested unless Mr. Brackin was later informed otherwise by the Petitioner. Mr. Brackin also stated that he had not been retained by or appeared for the Respondents in the Current Cases. Nothing in the records of the Current Cases indicates that Mr. Brackin has appeared for the Respondents in the Current Cases.

The ALJ denied the Petitioner’s motion to reconsider the order allowing Mr. Brackin to withdraw from the Earlier Cases. The ALJ also concluded that Mr. Brackin did not and had not

represented the Respondents in the Current Cases. The ALJ granted the Respondents' motion to continue the hearings on the merits of the Current Cases until February 11, 2013.¹⁶

On December 4, 2012, the Petitioner filed its First Amended Notices of Hearing (FANOHS).¹⁷ They were personally served on the Respondents, through Mr. Yassine, on December 5, 2012.¹⁸ The FANOHS alleged that the Respondent had committed both the Inability and the Character Violations. They also stated that the hearing on the Current Cases would occur at SOAH, located at 300 W. 15th Street Suite 502, Austin, Texas 78701 at 9:00 a.m. on February 11, 2013.¹⁹ The FANOHS also 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.

2. Analysis of Notice

The evidence is clear that the Respondent were served with the FANOHS through Mr. Yassine on December 5, 2012. While the sequence of events is more complex, the ALJ concludes that the Respondents actually received the NOV's and the NOH's prior to that date.

When the NOV's were sent to Mr. Brackin on October 24, 2012, and the NOH's were sent to him on November 1, 2012, Mr. Brackin was still representing the Respondents in the Earlier Cases that are closely related to the Current Cases. He was not allowed to withdraw from the Earlier Cases until November 6, 2012. Moreover, Mr. Brackin communicated with Mr. Yassine concerning the Current Cases until at least November 2, 2012. In the November 9, 2012 motion for continuance, Mr. Yassine quoted nearly verbatim from the November 1, 2012 NOH's that had been sent to Mr. Brackin. Mr. Yassine referred to the place, time, and date of the hearing on the merits, which was then scheduled for "the State Office of Administrative Hearings located at 300

¹⁶ Current Cases, Order No. 1 (Nov. 12, 2012).

¹⁷ Ex. 4 at 1 (unnumbered).

¹⁸ Ex. 7, subex. 3.

¹⁹ Ex. 4.

W. 15th Street Suite 502, Austin, Texas 78701 at 9:00 a.m. on November 13, 2012.”²⁰ Further, in his November 12, 2012 motion for continuance, Mr. Yassine stated that he was served with the NOHs on November 2, 2012,²¹ though the Petitioner had sent those NOHs to Mr. Brakin.

Given the total circumstances, the ALJ concludes that the Respondents actually received the NOVs and NOHs sent to Mr. Brackin before Mr. Brackin was allowed to withdraw from the representing the Respondents in the Earlier Cases. Based on the above, the ALJ finds that the Respondents actually received the NOVs and the NOHs by November 2, 2012, and the FANOHs on December 5, 2012. He also concludes that the FANOHs complied with the notice requirements of the Alcoholic Beverage Code and the Government Code.

3. Jurisdictional Conclusion

Based on the above, the ALJ concludes that the Commission has jurisdiction over the subject matter of the Current Cases and over the Respondents to take action against their permits based on the violations alleged in the Current Cases.

IV. MOTIONS FOR SUMMARY DISPOSTION

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.²² A motion for summary disposition must be filed at least thirty days before the hearing on the merits unless otherwise ordered by the judge.²³ 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.²⁴ A response

²⁰ Ex. 2 at 3 (unnumbered). *Compare to* Ex. 3 at 4. Mr. Yassine added one comma and moved another.

²¹ Ex. 5, subex. 2 at 2.

²² 1 TAC § 155.505(a).

²³ 1 TAC § 155.505(b)(1).

²⁴ 1 TAC § 155.505(b)(2).

to a motion for summary disposition is due by the fourteenth day after a respondent receives the motion.²⁵

As set out in Order No. 1 and the FANOHS, the hearing on the merits of the Current Cases is currently scheduled for February 11, 2013. The Petitioner filed its First MSD on November 30, 2012,²⁶ and mailed it to Mr. Yassine on that same date.²⁷ In the First MSD, the Petitioner asked that the Respondents' permits be cancelled due to the Ability Violation.²⁸ The First MSD was delivered to Mr. Yassine's residence on December 4, 2012.²⁹ On December 4, 2012, the Petitioner filed its Second MSD.³⁰ It was personally served on Mr. Yassine, on December 5, 2012.³¹ In the Second MSD, the Petitioner asked that the Respondents' permits be cancelled due to the Character/Law-abiding Violation.³²

Accordingly, the thirtieth day before the scheduled hearing on the merits of the current case is January 12, 2013. The First and Second MSDs were timely filed more than thirty days before that date. Further, the deadline for the Respondents to file any response to the First MSD was December 18, 2012, and the deadline to file a response to the Second MSD was December 19, 2012. On December 18, 2012, the Respondents timely filed a response to both MSDs.

The ALJ concludes that both the First and the Second MSDs are ripe for ruling.

²⁵ 1 TAC § 155.505(d)(1).

²⁶ Ex. 5 at 1 (unnumbered).

²⁷ Ex. 5 at 8 (as numbered).

²⁸ Ex. 5 at 5 through 6 (as numbered).

²⁹ Ex. 7, subex. 1.

³⁰ Ex. 6 at 1 (unnumbered).

³¹ Ex. 7, subex. 2.

³² Ex. 6 at 5 & 6 (as numbered).

V. VIOLATIONS

A. Applicable Law

Alcoholic Beverage Code § 11.61(a) and (b)(6) and (10) provide, in relevant parts, as follows:

(a) As used in Subsection (b) of this section, the word “permittee” also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. . . .

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

...

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

...

(10) the permittee is insolvent or mentally or physically unable to carry on the management of his establishment;

....

Section 11.03 of the Alcoholic Beverage Code states that “a permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. . . .” “Permittee” is further defined by Section 1.04(11) of the Alcoholic Beverage Code as “a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.”

B. Character/Law-abiding Violation

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 one count of Conspiracy to

Launder Monetary Instruments and three counts of Laundering Monetary Instruments.³³ In the Second MSD, the Petitioner contends “[t]he permittee’s money laundering conviction justifies the revocation of the personal privilege of holding a Texas alcohol permit,”³⁴ and “establishes as a matter of law that the permittee of all nine Respondent entities is not of good moral character.”³⁵

The Respondents argue that the Second MSD must be denied because Mr. Yassine’s convictions alone do not show that he lacks good moral character. To prove that, according to the Respondents, the Petitioner must also show that Mr. Yassine’s crimes are crimes of moral turpitude, which shock the public conscious as being inherently base, vile, or depraved and contrary to the accepted rules of morality and duties owed between persons and society in general.³⁶ Because the Petitioner has not even claimed that Mr. Yassine has committed crimes of moral turpitude, the Respondents contend the Second MSD must be denied.

The ALJ need not analyze Respondents’ contention that only a crime of moral turpitude shows that a permittee lacks good moral character. That is because Alcoholic Beverage Code § 11.61(b)(6), on which the Petitioner relies in the Second MSD, sets out two independent bases for canceling a permit: (1) the permittee is not of good moral character or (2) his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad. The ALJ concludes that there is no genuine dispute concerning the second basis, and the Second MSD should be granted on that basis.

While not disputing that Mr. Yassine was convicted as set out in the Second MSD, the Respondents claim those convictions are insufficient to show that his reputation for being peaceable and law abiding is bad. They claim that the Petitioner has made no effort to put forth evidence of Mr. Yassine’s reputation in the community and argue it is quite likely that

³³ Ex. 5, subex. 3 & Ex. 6, subex. 3.

³⁴ Ex. 6 at 6 (as numbered).

³⁵ Ex. 6 at 5 (as numbered).

³⁶ *Citing Smalley V. Ashcroft*, 354 F.3d 336 (5th Cir. 2003).

Mr. Yassine has a reputation for being a good and law-abiding citizen because he has operated late-night downtown bars in Austin for over 15 years without having a criminal record.

The ALJ does not agree with this argument by the Respondents. Because Mr. Yassine has been convicted of four federal offenses, he is not a peaceable and law-abiding citizen and his community reputation could not reasonably be otherwise. Given that, the ALJ concludes there is no genuine factual dispute and, as a matter of law, Mr. Yassine's reputation for being a peaceable and law-abiding citizen in the community where he resides is bad.

As the principal, sole member, and general manager of each Respondent, Mr. Yassine is the permittee, as defined by Alcoholic Beverage Code §§ 1.04(11) and 11.61(a), for each Respondent. Accordingly, Mr. Yassine's reputation and the Respondents' reputations are the same. For that reason, the ALJ concludes, as a matter of law, that the Respondents' reputations for being peaceable and law-abiding citizens in the community where they reside are bad. Based on that, the ALJ concludes that the Commission may and should cancel the Respondents' permits, in accordance with Alcoholic Beverage Code § 11.61(b)(6).

C. Inability Violation

Mr. Yassine is incarcerated at the Bastrop County Jail, where he awaits sentencing on January 25, 2013, for his crimes detailed above.³⁷ Additionally, the Petitioner contends that after Mr. Yassine was arrested, the Respondents abandoned and no longer have any legal interests in the premises where their establishments were located.³⁸ In the First MSD, the Petitioner contends that these facts are undisputed and show that the Respondents are not physically able to carry on the management of their establishments, thus, their permits should be cancelled in accordance with Alcoholic Beverage Code § 11.61(b)(10).

The Respondents reply that they are ready, willing, and able to operate their establishments using other employees while Mr. Yassine is absent. They argue that whether they

³⁷ Ex. 5, subex. 2 at 2 & subex.4 & Ex. 6, subex. 2 at 2 & subex. 4.

³⁸ Ex. 5, subexs. 5 through 24.

are able to manage their establishments is disputed, and the First MSD should be denied because this factual dispute that can only be resolved following a full hearing.

The ALJ sees no need to determine whether the First MSD should be granted or whether or not there is a genuine issue of material fact concerning the Respondents' ability to manage their establishments. That is because, as set out above, the evidence shows that the Second MSD should be granted because Mr. Yassine's and the Respondents' reputation for being law-abiding and peaceable is bad. Given that, there is no need to determine whether the First MSD should also be granted.

VI. PROPOSAL

The ALJ recommends that the Commission grant the Second MSD, adopt the following Findings of Fact and Conclusions of Law, and revoke all of the Respondents' permits.

VII. FINDINGS OF FACT

1. The following entities (Respondents) hold permits issued by the Texas Alcoholic Beverage Commission (TABC or Commission) to do business in Travis County, Texas:

ENTITY	DOING BUSINESS AS	PERMIT NUMBERS
607 L.L.C.	Fuel	MB-487203, LB & PE
Acoustic Café LLC	Spill	MB-511581, LB
Pure Austin Nightclub	Pure	MB-714126, LB
Blue Water Concessions, Inc.	Stack Burger	MB-472041, CB, LB & PE
Vicci Inc.	Kiss & Fly	MB-442009, LB & PE
Downtown Austin Group	Roial	MB-736234, LB & PE
Walachi Inc.	Malaiia	MB-689862, LB & PE
Island of Treasure LLC	Treasure Island Pirate Bar	MB-408990, LB
Warehouse Entertainment	Hyde	MB-631474, LB & PE

2. Hussein Ali Yassine (Mr. Yassine) is the principal, sole member, and general manager of each of the Respondents.
3. 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 one count of

Conspiracy to Launder Monetary Instruments and three counts of Laundering Monetary Instruments.

4. Mr. Yassine is incarcerated at the Bastrop County Jail where he awaits his January 25, 2013 sentencing hearing for his crimes detailed above.
5. The cases that are the subject of this Order are referred to as the Current Cases.
6. Another set of closely related TABC enforcement cases against the same Respondents [*TABC v. 607 L.L.C. dba FUEL, et al.*, SOAH DOCKET NOS. 458-12-5376, -5377; -5378; -5379; -5380; -5381; -5382; -5383; & -5516 (Earlier Cases)] have been pending at the State Office of Administrative Hearings (SOAH) since March 2012.
7. On October 24, 2012, Dewey Brackin, attorney, was representing the Respondents in the Earlier Cases.
8. Mr. Brackin never represented the Respondents in the Current Cases; however, while representing the Respondents in the Earlier Cases, he communicated with Mr. Yassine concerning the Current Cases until at least November 2, 2012.
9. By facsimile on October 24, 2012, the Commission Staff (Petitioner) sent Notices of Violation (NOVs) to each Respondent, through Mr. Brackin, and proposed to cancel their permits.
10. In the NOVs, the Petitioner alleged two grounds for canceling the Respondents' permits:
 - a. Each Respondent, or Respondent's owner, officer, agent, servant, or employee, was not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resided was bad, in violation of Tex. Alco. Bev. Code. (Alcoholic Beverage Code) § 11.61(b)(6) (Character/Law-abiding Violation); and
 - b. Each Respondent, or Respondent's owner, officer, agent, servant, or employee, was physically unable to carry on the management of his establishment, in violation of Alcoholic Beverage Code § 11.61(b)(10) (Inability Violation).
11. Based on the above Findings of Fact, the Respondents received actual notice of the NOVs sent to Mr. Brackin.
12. The Current Cases were referred to SOAH on November 1, 2012, for hearing.
13. By facsimile to Mr. Brackin on November 1, 2012, the Petitioner sent Notices of Hearing (NOHs) to the Respondents, informing them that the hearing on the merits of the Current Cases would be held on November 13, 2012. The NOHs alleged the Inability Violation, but not the Character/Law-abiding Violation.

14. On November 2, 2012, Mr. Yassine received from Mr. Brackin the NOHs for the Current Cases that had been sent to Mr. Brackin on November 1, 2012.
15. On November 5, 2012, Mr. Brackin filed an unopposed motion to withdraw as attorney for the Respondents in the Earlier Cases. That motion was granted on November 6, 2012.
16. On November 9 and 12, 2012, Mr. Yassine filed motions to continue the hearings on the merits of the Current Case, then scheduled for November 13, 2012.
17. On November 12, 2012, the SOAH Administrative Law Judge (ALJ) granted the Respondents' motions to continue the hearings on the merits of the Current Cases and continued the hearing until February 11, 2013.
18. On November 30, 2012, the Petitioner filed a motion for summary disposition (MSD) of each of the Current Cases (First MSD) and mailed it to Mr. Yassine on that same date.
19. The First MSD was delivered to Mr. Yassine's residence on December 4, 2012.
20. In the First MSD, the Petitioner asked that the Respondents' permits be cancelled due to the alleged Inability Violation.
21. On December 4, 2012, the Petitioner filed its First Amended Notices of Hearing (FANOHs) concerning the Current Cases.
22. The FANOHs alleged that the Respondents had committed both the Inability and the Character/Law-abiding Violations.
23. The FANOHs stated that the hearing on the merits of the Current Cases would occur at SOAH, located at 300 W. 15th Street Suite 502, Austin, Texas 78701 at 9:00 a.m. on February 11, 2013.
24. The FANOHs also 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.
25. The FANOHs were personally served on the Respondents, through Mr. Yassine, on December 5, 2012.
26. The thirtieth day before the scheduled hearing on the merits of the Current Cases is January 12, 2013.
27. On December 4, 2012, the Petitioner also filed a second motion for summary disposition of each of the Current Cases (Second MSD).
28. The Second MSD was personally served on Mr. Yassine, on December 5, 2012.

29. In the Second MSD, the Petitioner asked that the Respondents' permits be cancelled due to the Character/Law-abiding Violation.
30. On December 18, 2012, the Respondents, represented by Kent E. Wymore IV, attorney, timely filed a response objecting to both MSDs.

VIII. CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has subject matter jurisdiction over the Current Cases under Chapters 5 and 11 of the Tex. Alco. Bev. Code. (Alcoholic Beverage Code).
2. The Commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in the Alcoholic Beverage Code. Alcoholic Beverage Code § 5.35.
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. At least 10 days' notice shall be given when a hearing is provided by the Alcoholic Beverage Code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee. Alcoholic Beverage Code § 11.63.
5. In every contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than 10 days; and to respond and to present evidence and argument on each issue involved in the case. Government Code § 2001.051.
6. Notice of a hearing 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).
7. Based on the above Findings of Fact and Conclusions of Law, the Respondents actually received the NOV's and the NOH's by November 2, 2012, and the FANOH's on December 5, 2012.
8. Based on the above Findings of Fact and Conclusions of Law, the FANOH's complied with the notice requirements of the Alcoholic Beverage Code and the Government Code.

9. Based on the above Findings of Fact and Conclusions of Law, the Commission has jurisdiction over the Respondents to take action against their permits based on the violations alleged in the Current Cases.

Motions for Summary Disposition

10. In a case before SOAH, an ALJ may issue a PFD on all or part of a contested case without an evidentiary hearing. The evidence must show 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).
11. 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).
12. Based on the above Findings of Fact and Conclusions of Law, the First and Second MSDs were timely filed more than thirty days before the scheduled hearings on the merits of the Current Cases.
13. A party's motion for summary disposition 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 TAC § 155.505(c)(1).
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. 1 TAC § 155.505(b)(2).
15. 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).
16. Based on the above Findings of Fact and Conclusions of Law, the deadline for the Respondents to file any response to the First MSD was December 18, 2012, and the deadline to file a response to the Second MSD was December 19, 2012.
17. Based on the above Findings of Fact and Conclusions of Law, the Respondents timely filed a response to the First and Second MSDs.
18. Based on the above Findings of Fact and Conclusions of Law, the First and the Second MSDs are ripe for ruling.

Violations

19. Alcoholic Beverage Code § 11.61(a) and (b)(6) provide, in relevant parts, as follows:

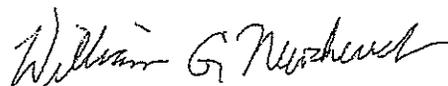
(a) As used in Subsection (b) of this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. . . .

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

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

20. Section 11.03 of the Alcoholic Beverage Code states that "a permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. . . ."
21. "Permittee" is further defined by Section 1.04(11) of the Alcoholic Beverage Code as "a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person."
22. Because Mr. Yassine has been convicted of four federal offenses, he is not a peaceable and law-abiding citizen and his community reputation could not reasonably be otherwise.
23. Based on the above Findings of Fact and Conclusions of Law and as a matter of law, Mr. Yassine's reputation for being a peaceable and law-abiding citizen in the community where he resides is bad.
24. As the principal, member, and general manager of each Respondent, Mr. Yassine is the permittee, as defined by Alcoholic Beverage Code §§ 1.04(11) and 11.61(a), for each Respondent.
25. Based on the above Findings of Fact and Conclusions of Law and as a matter of law, Mr. Yassine's reputation and the Respondents' reputations are the same.
26. Based on the above Findings of Fact and Conclusions of Law and as a matter of law, the Respondents' reputations for being peaceable and law-abiding citizens in the community where they reside are bad.
27. Based on the above Findings of Fact and in accordance with Alcoholic Beverage Code § 11.61(b)(6), all of the Respondents' TABC permits should be cancelled.

SIGNED December 20, 2012.



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