



All motions, requests for entry of Proposed Findings of Fact 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 the privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED** beginning at 12:01 A.M. on October 2nd, 2013 and shall remain suspended for a period of **FORTY EIGHT (48) days**, **UNLESS** Respondent pays a civil penalty in the amount of **\$14,400.00 ON OR BEFORE** September 24th, 2013.

**If this Order is appealed and judgment is issued affirming the Order**, the privileges granted by the Commission and activities authorized under the above permit and license by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **eighteenth (18<sup>th</sup>)** day following the date the judgment is signed and shall remain suspended for **FORTY EIGHT (48) days**, unless Respondent pays the civil penalty in the amount of **\$14,400.00** on or before the **tenth (10<sup>th</sup>)** day following the date the judgment is signed.

This Order will become **final and enforceable** on the 19th day of September, 2013, **unless a Motion for Rehearing is filed by the 18th day of September, 2013.**

**SIGNED** this the 29th day of August, 2013, at Austin, Texas.

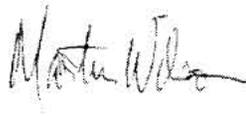


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Sherry K-Cook, Administrator  
Texas Alcoholic Beverage Commission

#### **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 29th day of August, 2013.



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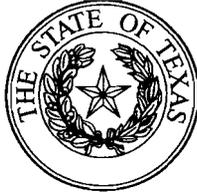
Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Michelle Kallas  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150A  
Dallas, Texas 75235  
**VIA FACSIMILE: (512) 322-2061**

Nga Thi Hoang  
d/b/a 909 Mart  
**RESPONDENT**  
702 Park Street  
Commerce, Texas 75428-2122  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006862**

Lisa D. Crissman  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [lisa.crissman@tabc.state.tx.us](mailto:lisa.crissman@tabc.state.tx.us)**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

**RECEIVED**  
**APR 11 2013**  
**TABC HOUSTON**  
**LEGAL**

April 9, 2013

Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**VIA REGULAR MAIL**

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
NGA THI HOANG d/b/a 909 MART  
SOAH DOCKET NO. 458-13-1014**

Dear Ms. Cook:

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Michelle Kallas".

Michelle Kallas  
Administrative Law Judge

MK/sp  
Enclosure

Xc: ✓ Lisa Crissman, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL, 5806 Mesa Drive, Austin Texas 78731  
Nga Hoang, Respondent, VIA REGULAR MAIL, 702 Park Street, Commerce, Texas 75428

6333 Forest Park Road Suite 150A Dallas, Texas 75235  
214.956.8616 (Telephone) 214.956.8611 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



## II. DISCUSSION

### A. Applicable Law

Pursuant to Texas Alcoholic Beverage Code § 106.13, TABC may suspend a permit if it is found that the permittee, with criminal negligence, sold an alcoholic beverage to a minor.

A permittee acts with criminal negligence when the permittee should have been aware of a substantial and justifiable risk that the circumstances exist or the result will occur. The failure to perceive the risk must constitute a gross deviation from the care an ordinary person would exercise under the same circumstances. Tex. Penal Code § 6.03(d)(4).

### B. Evidence

#### 1. TABC's Evidence

##### a. TABC Agent Barron Carpenter

Agent Carpenter testified that he is assigned to the Greenville TABC office and became involved in this matter after being contacted by Sgt. Vaughn with the Commerce Police Department.<sup>1</sup> Sgt. Vaughn was investigating an aggravated sexual assault which occurred at a party where minors were consuming alcoholic beverages and requested TABC's assistance to determine where the minors at the party were able to acquire the alcoholic beverages.

On April 12, 2012, Agent Carpenter went to the Commerce High School and interviewed fourteen students who were known to have attended the party where the sexual assault occurred.

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<sup>1</sup> Sgt. Vaughn's first name is not in evidence.

According to Agent Carpenter, the interviews were not prearranged, and the students were individually pulled from class and interviewed one at a time. The students interviewed during the investigation were unaware of the identities of the other students being questioned. During the course of the interviews, Agent Carpenter spoke with and received sworn written statements from Dominique Young, Cordryc Shropshire, Christian Henry, and Heather Ray.<sup>2</sup> He testified that the students appeared youthful and well under the age of 21. Based upon their consistent statements, Agent Carpenter determined that Ms. Henry drove Ms. Young, Mr. Shropshire, and Ms. Ray to the 909 Mart where Ms. Young entered the store and purchased alcoholic beverages. The alcoholic beverages were placed in a box which Mr. Shropshire carried out to Ms. Henry's car. Following the investigation, Agent Carpenter served a notice of violation for the sale of an alcoholic beverage to a minor on Respondent. He testified that Respondent refused to sign or accept the notice of violation.

Agent Carpenter also provided testimony regarding a prior sale to minor violation at the 909 Mart. According to Agent Carpenter, on November 11, 2011, TABC conducted a sale to minor sting operation at various permitted locations in Commerce, Texas, including the 909 Mart. On that date a 16-year-old female entered the 909 Mart with an undercover TABC agent and was able to purchase alcoholic beverages without producing age verifying identification. Agent Carpenter testified that there were not any policies or procedures posted regarding the sale of alcohol to minors. As a result of this violation, Respondent's permits were suspended from January 18, 2012, through January 25, 2012.

**b. Sworn Written Statement of Dominique Young**

According to Ms. Young, who was born on March 3, 1994, she, along with Ms. Henry, Ms. Ray, Mr. Shropshire, and Mya Washington, went to the 909 Mart on March 2, 2012, for the sole

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<sup>2</sup> For the purposes of this decision, all of the students riding in Ms. Henry's vehicle will be referred to collectively as the Group.

purpose of purchasing alcoholic beverages for a party. They arrived at the store around 10:45 p.m. Ms. Young stated that she entered the store and purchased approximately twenty Lokos and some juice drinks. She knew the Lokos were alcoholic beverages because she had consumed that brand of beverage in the past. Ms. Young further stated that the female clerk who completed the purchase did not ask to see her identification. The purchased beverages were placed in a box and carried out to Ms. Henry's car. At that point, the Group returned to the party.

**c. Sworn Written Statement of Cordryc Shropshire**

Mr. Shropshire was born February 25, 1994. He stated that he and the rest of the Group left the party to go buy alcohol. After unsuccessful attempts to purchase alcoholic beverages at Wal-Mart and Mr. Minute, they proceeded to the 909 Mart. Mr. Shropshire gave Ms. Young the money for the purchase. According to Mr. Shropshire, Ms. Young entered the store and came out a few minutes later and asked him to carry the purchased beverages out to the vehicle. He entered the store and took the beverages to the car. They then returned to the party.

**d. Christian Henry**

Ms. Henry testified that she was born January 2, 1994, and was 18 years old on March 2, 2012. According to Ms. Henry, she was at a party to celebrate Ms. Young's birthday when Ms. Young and Mr. Shropshire asked her to drive them to the store to purchase alcoholic beverages. They first went to Wal-Mart where Mr. Shropshire and Ms. Washington attempted to purchase alcoholic beverages but were turned away. They then went to Mr. Minute where Mr. Shropshire purchased a drink called a "Monster" but was unable to purchase any alcoholic beverages. Finally, they drove to the 909 Mart. She testified that they proceeded to the 909 Mart because they knew other underage individuals who had been able to purchase alcoholic beverages at the store in the past without showing identification.

Ms. Henry pulled up to the front of the store and was able to see the counter through the glass doors. From the vehicle, she was able to observe Ms. Young purchase Lokos and Tilts. She was unsure of the specific number of alcoholic beverages which were purchased, but testified that they fit in a box which was approximately 24" x 24" in size. During the hearing, she identified Respondent as the clerk who conducted the sale. She testified that that drinks were placed in the box which Mr. Shropshire carried out the car. She further testified that she knew the Lokos were an alcoholic beverage based upon the labeling. According to Ms. Henry, Ms. Young and Mr. Shropshire looked like teenagers.

**e. Heather Ray**

Ms. Ray testified that she was 17 years old on March 2, 2012. On that date, she attended a party to celebrate Ms. Young's birthday. She testified that she rode in Ms. Henry's car with Ms. Young, Ms. Washington, and Mr. Shropshire to go purchase alcoholic beverages. According to Ms. Ray, they first went to Wal-Mart and Mr. Minute where they were unable to purchase any alcoholic beverages. They then went to the 909 Mart, where Ms. Henry parked in front of the glass doors. She testified that she could clearly see inside the store and that there were no obstructions of the counter. She observed Ms. Young place the alcoholic beverages, Lokos and Tilts, on the counter and pay for them. She identified Respondent as the clerk who sold the alcoholic beverages to Ms. Young. She also was unsure of the exact number of beverages purchased but estimated it to be about one case.

**2. Respondent's Evidence**

Respondent denied selling any alcoholic beverages to any minors on March 2, 2012. She believed the Group may have purchased the alcoholic beverages at a location other than her store. She testified that she is very careful to check the identification of any individual she believes to be under the age of 21. According to Respondent, she has angered and lost customers because she

checks identifications multiple times.

With regards to the type of alcoholic beverages purchased, Respondent testified that Tilts are not sold at the 909 Mart. According to her, Tilts have never been sold at her store. However, she admitted that there was a period of time when she was not working at the store, and she was unable to actually remember all the brands of alcoholic beverages sold at the 909 Mart.

### **C. Discussion and Recommendation**

The preponderance of the evidence supports a finding that Respondent, with criminal negligence, sold an alcoholic beverage to a minor. On March 2, 2012, Ms. Young was 18 years old when she entered the 909 Mart and was able to purchase alcoholic beverages. The evidence established that Ms. Young, who appeared to be a teenager and, therefore, underage, was not asked to provide identification to establish that she was at least 21 years old.

Pursuant to Texas Alcoholic Beverage Code § 106.03 (b), it is a defense to a sale to minor violation if the minor falsely displays an apparently valid identification card indicating the minor is 21 years or older and including a description consistent with the minor's appearance for the purpose of inducing the person to sell the minor an alcoholic beverage. In this case, this defense does not apply. According to her sworn written statement, Ms. Young was not asked to and did not produce any identification when she purchased the alcoholic beverages. Since Respondent failed to check Ms. Young's identification, she is precluded from claiming this defense.

Respondent should have been aware that, based upon her failure to check identifications, there was a substantial and unjustifiable risk that she was could be selling alcoholic beverages to a minor. Respondent argued that she diligently checks the identifications of anyone she suspects is younger than 21 years of age. However, the evidence suggests otherwise. On November 11, 2011, during a sale to minor sting operation, Respondent sold an alcoholic beverage to a 16-year-old

without checking for identification. As a result of this violation, her permit was suspended for approximately one week in January 2012. Then, less than six weeks after the end of that suspension, Respondent sold alcoholic beverages to Ms. Young without checking her identification. Also, Ms. Henry testified that the Group specifically went to the 909 Mart because they knew minors had successfully purchased alcoholic beverages at the store in the past without producing age-verifying identification. The evidence presented suggests that Respondent had a habit of selling alcoholic beverages without verifying the purchaser's age.

Given the fact that this is not Respondent's first sale to minor violation, the ALJ agrees with TABC that the proper punishment for this offense is suspension of Respondent's alcoholic beverage permit. As requested by TABC, pursuant to Texas Alcoholic Beverage Code § 106.13 (b), Respondent's permit and license should be suspended for a period of 180 days.

### III. FINDINGS OF FACT

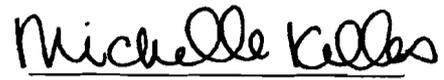
1. Nga Thi Hoang, d/b/a 909 Mart (Respondent), holds a Wine Only Package Store Permit, Q-774410, and a Beer Retailer's Off Premise License, BF-774411, issued by Texas Alcoholic Beverage Commission (TABC) for the premises located at 702 Park Street, Commerce, Hunt County, Texas.
2. On March 2, 2012, Dominique Young, whose date of birth is March 3, 1994, and four of her underage friends (the Group) drove to the 909 Mart for the purpose of purchasing alcoholic beverages for a party.
3. The Group traveled to the 909 Mart because they knew that minors had been successful in purchasing alcoholic beverages without producing identification at that location in the past.
4. Ms. Young entered the 909 Mart and purchased multiple alcoholic beverages.
5. Respondent did not ask Ms. Young, who appeared to be a teenager, to produce identification to verify her age when Respondent sold the alcoholic beverages to Ms. Young.
6. Prior to this incident, Respondent incurred another violation for the sale of alcohol to a minor for which Respondent's license and permit were suspended from January 18, 2012, through January 25, 2012.

7. On November 11, 2011, TABC conducted a sale to minor sting operation at the 909 Mart.
8. On that date, Respondent sold an alcoholic beverage to a 16-year-old female without requesting identification to verify the female's age.
9. There was no evidence that Respondent had any policies or procedures in place to prevent or discourage the sale of alcohol to minors.
10. Respondent should have been aware there was a substantial and unjustifiable risk that she was selling an alcoholic beverage to a minor on March 2, 2012.
11. On November 12, 2012, TABC sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, the matters asserted, and the legal authorities under which the hearing was to be held.
12. The hearing on the merits convened March 14, 2013, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas, before Administrative Law Judge (ALJ) Michelle Kallas. TABC was represented at the hearing by Lisa Crissman, TABC Staff Attorney. Respondent appeared *pro se*. The record closed on March 14, 2013.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code ch. 5 and §§ 11.61(b)(2), 106.03, and 106.13.
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 Texas Government Code ch. 2003.
3. Respondent received proper and timely notice of the hearing pursuant to the Administrative Procedure Act, Texas Government Code ch. 2001, and 1 Texas Administrative Code ch. 155.
4. Respondent sold an alcoholic beverage to a minor with criminal negligence as defined in Texas Penal Code § 6.03(d) thereby violating Texas Alcoholic Beverage Code § 106.03.
5. Respondent's permit and license should be suspended for a period of 180 days. Tex. Alco. Bev. Code § 106.13.

**SIGNED April 9, 2013.**

A handwritten signature in black ink that reads "Michelle Kallas". The signature is written in a cursive style with a horizontal line underneath the name.

Michelle Kallas  
Administrative Law Judge  
State Office of Administrative Hearings