

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 3, 2015

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

**VIA REGULAR MAIL**

**RE: SOAH Docket No. 458-15-0959; *Texas Alcoholic Beverage Commission vs. Bread Winners III Café and Bakery Inc. D/B/A Bread Winners Café and Bakery***

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/me  
Enclosure

Xc: Sheila Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008-**VIA REGULAR MAIL**  
Timothy Griffith, Attorney at Law, 101 E. Park Blvd, Suite 600, Plano, Texas 75074- **REGULAR MAIL**

**DOCKET NO. 458-15-0959**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>    Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>BREAD WINNERS III CAFÉ AND BAKERY INC. D/B/A</b>	§	
<b>BREAD WINNERS CAFÉ AND BAKERY,</b>	§	<b>OF</b>
<b>    Respondent</b>	§	
	§	
<b>COLLIN COUNTY, TEXAS</b>	§	
<b>TABC CASE NO. 618119</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff (Petitioner) of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Bread Winners III Café and Bakery Inc. d/b/a Bread Winners Café and Bakery (Respondent), alleging that on or about March 12, 2013, Respondent or Respondent’s agent, servant, or employee was intoxicated on the licensed premises. The Administrative Law Judge (ALJ) finds that Petitioner failed to prove the allegation. The ALJ recommends that no action be taken against Respondent’s permit.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There are no contested issues of notice or jurisdiction in this matter. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

On November 3, 2014, Petitioner issued its notice of hearing, directed to Respondent. On March 25, 2015, a hearing on the merits convened before State Office of Administrative Hearings (SOAH) ALJ Michelle Kallas at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Shelia Lindsey, TABC Staff Attorney. Respondent was

represented at the hearing by attorney Timothy Griffith. The hearing was continued and reconvened on May 14, 2015. Following the submission of written closing arguments, the record closed on July 20, 2015.

## II. DISCUSSION

### A. Applicable Law

Pursuant to Texas Alcoholic Beverage Code § 104.01(5), TABC may suspend a permit if it is found that the permittee, or permittee's agent, servant, or employee was intoxicated on the permitted premises.

"Intoxication" is defined as a person having an alcohol concentration of 0.08 or more. It is also defined as not having the normal use of one's mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body. Tex. Penal Code § 49.01(2).

### B. Evidence

On September 18, 2007, TABC issued a Mixed Beverage Restaurant Permit with FB RM-671555, which included a Food and Beverage Certificate, for Respondent's premises located at 4021 Preston Road, Suite 611, Plano, Collin County, Texas. The permit was renewed on September 18, 2013.

#### 1. Plano Police Officer Steven Van Note

According to Officer Van Note, on March 12, 2013, at approximately 4:23 p.m., the Plano Police Department received a dispatch regarding an accident involving a pedestrian at the intersection of Preston Road and Lorimar, located within the Plano city limits. He estimated that the

accident likely occurred 1-3 minutes prior to the dispatch time due to the time it would take for witnesses to process what had occurred and then place a call for help. He was instructed to proceed to Plano Medical Center where the pedestrian was transported in an effort to identify the pedestrian and ascertain her condition. He identified the pedestrian as Lauren King and learned that she was in critical condition with a severe brain injury and that there was alcohol in her blood. Ms. King died of her injuries on March 13, 2013.

Once Officer Van Note learned of Ms. King's condition and alcohol concentration, the decision was made to determine where Ms. King had been during the day. Officer Van Note was informed that Ms. King was Respondent's employee and was in the habit of walking home when leaving work. Officer Van Note and TABC Agent Tony Browning proceeded to Respondent's premises to investigate Ms. King's activities for the day.<sup>1</sup> Once at the location, Officer Van Note and Agent Browning spoke with Derek Day, Cindy Long, and Rebecca Chenault, all employees of Respondent.<sup>2</sup>

Officer Van Note testified that he also interviewed Respondent's employee, Larry Mack. Mr. Mack claimed to be a kitchen manager and to have worked on March 12, 2013, with Ms. King. Mr. Mack further claimed that, on March 12, 2013, he observed Ms. King behind the bar at approximately 1:00 p.m. However, he added that he did not see Ms. King in an intoxicated state. Mr. Mack voiced his concern that Ms. King was behind the bar and stated that he notified Tamara Patterson, the shift supervisor for that day, of his concern that same day. Mr. Mack claimed that Ms. Patterson knew Ms. King was near the bar and that Ms. King had been swishing vodka as a way to dull pain in her mouth.

On March 26, 2013, Officer Van Note and Agent Browning conducted interviews of Respondent's employees, Nathan Doolin, Ms. Chenault, Ms. Patterson, Madeline Brooks, and

<sup>1</sup> Sgt. Doug Rude and Officer James Forsythe also accompanied Officer Van Note to Respondent's premises.

<sup>2</sup> A recording (TABC Ex. 5) was made of the interviews of Mr. Day, Ms. Long, and Ms. Chenault. Their statements will be addressed later in this decision.

Mr. Day. Officer Van Note testified that, during her interview, Ms. Chenault provided a different description of Ms. King. In her initial interview of March 12, 2013, Ms. Chenault made a statement that Ms. King appeared drunk. However, in her later interview, she denied stating that Ms. King appeared drunk. He also noted that Ms. Chenault appeared more agitated during her second interview.

Officer Van Note also testified regarding Ms. Patterson's March 26, 2013 interview. According to Officer Van Note, Ms. Patterson was aware that Ms. King was in pain due to injuries she suffered in an accident prior to the accident of March 12, 2013. Ms. Patterson informed him that she and Ms. King discussed swishing vodka as a way to numb the pain she was experiencing in her mouth until Ms. King could get more pain medication. She claimed that she was aware that Ms. King had in fact swished vodka in her mouth on the day previous to the fatal accident.

Officer Van Note testified that there was no evidence that Ms. King visited any of the other TABC permitted establishments located in close proximity Respondent's location. He believed it would have been impossible for Ms. King to have gone anywhere else to consume alcohol given the time that elapsed between when she left Respondent's premises and was involved in the accident. In his opinion, Ms. King became intoxicated while working for Respondent on March 12, 2013.

## **2. Agent Browning**

Agent Browning testified that he is assigned to the McKinney TABC office and became involved in this matter after being contacted by Officer Van Note. According to Agent Browning, TABC Agent Powell<sup>3</sup> checked with Seabreeze and Walgreens, both of which held TABC permits, to see if Ms. King had purchased alcohol at those locations. It was reported that she had not been seen at either of those locations.

<sup>3</sup> No evidence was presented as to Agent Powell's first name.

He also participated in the employee interviews on March 26, 2013. He testified that the employees gave consistent statements that Respondent had a policy that an employee was limited to two alcoholic drinks on the premises once the employee was off duty. The drinks were not to be comped and the employee could not be wearing anything that showed he or she was Respondent's employee. He further testified that the employees mentioned that Ms. King was suffering mouth pain from a previous accident and that it was known that she was swishing vodka in her mouth to dull the pain. According to Agent Browning, it was not illegal to swish vodka in the mouth while at the permitted location.

While he admitted that he was not an expert in the area of extrapolation of blood alcohol concentration, in his experience, he did not believe that it would be possible for a person to reach an alcohol concentration three times the legal limit in 10 minutes. He believed that the alcohol consumption likely occurred where Ms. King had spent her previous 8 hours.

### **3. Respondent's Employees**

#### **a. Mr. Day<sup>4</sup>**

Mr. Day was Respondent's manager on duty immediately following the accident. He arrived at the location around 3:00 p.m. He noted that Ms. King clocked in that morning at 6:42 a.m. and was clocked out at 4:04 p.m. He had no information as to what time she actually walked out the door or who actually clocked her out. He denied clocking her out. He noted that servers were bad about clocking themselves out at the end of their shift. He stated that it was not uncommon for them to clock themselves out later than when their shift actually ended or for a manager to clock them out.

Mr. Day was responsible for ordering alcohol and completing a weekly alcohol inventory at the location. He testified that an inventory of Respondent's alcohol was not completed immediately

<sup>4</sup> The following is a summary of Mr. Day's March 12, 2013 interview (TABC Ex. 5) and his testimony at the hearing.

following Ms. King's accident. He further testified that well vodka was Respondent's most used liquor.

He stated that it was normal for Ms. King to have a drink at the bar following her shift. He believed that, on March 12, 2013, she had one drink which Mr. Doolin served her. According to Mr. Day, Ms. King was already off duty when he arrived at the location. He knew that she refused another employee's offer for a ride home. He remembered her asking for his manager's key so that she could get a piece of pie as an employee comp. On that day, he had limited contact with Ms. King, a minute give or take. During his contact with Ms. King, she appeared fine. He did not observe her to show any signs of intoxication, consume alcohol while on duty, or serve herself an alcoholic beverage. He believed that he would have been able to recognize if Ms. King had been intoxicated. He had no knowledge of her visiting any other TABC licensed establishments upon leaving Respondent's premises. He received no complaints regarding Ms. King's ability to do her job on that day. He testified that no employees or managers informed him that Ms. King had been observed consuming alcohol or being intoxicated on the premises on that day or any other day.

**b. Ms. Long<sup>5</sup>**

Ms. Long was Respondent's General Manager and was not present at the location during Ms. King's shift on March 12, 2013. She stated that it was normal for Ms. King to have one or two alcoholic beverages at the bar at the conclusion her shift. She noted that Ms. King had been upset about her mother's death but seemed stable. She knew of no problems with Ms. King using alcohol and was surprised by the situation. She received no complaints about Ms. King smelling of alcohol.

Ms. Long spoke with Mr. Mack. Mr. Mack informed her that he observed Ms. King behind the bar pouring herself a shot of vodka on March 12, 2013, around 1:30-2:00 p.m. He claimed that Ms. King informed him that Ms. Patterson gave her permission to do so to treat her pain. He did not

<sup>5</sup> The following is a summary of Ms. Long's March 12, 2013 interview (TABC Ex. 5) and her written statements (TABC Ex. 14).

follow up with Ms. Patterson to check Ms. King's story.

Ms. Long stated that employees were not to be behind the bar unless they had been trained as a bartender. Managers were responsible for mixing drinks when a bartender was unavailable. According to Ms. Long, Respondent's policy for dealing with an employee being intoxicated or consuming alcohol while on shift was immediate termination of employment.

**c. Ms. Chenault**

During her interview on March 12, 2013,<sup>6</sup> Ms. Chenault stated that she had contact with Ms. King around 4:00 4:15 p.m. They were at the front of the restaurant by the coffee bar and spoke for about 5 minutes. Ms. King mentioned to Ms. Chenault that she was having a hard time dealing with some personal issues. Ms. Chenault stated that Ms. King appeared "messed up" and would not look at her while they were talking. When questioned by Officer Van Note if "messed up" meant Ms. King may have been on something or intoxicated, Ms. Chenault replied "maybe drunk." Ms. Chenault stated that she did not observe any smell of alcohol on Ms. King. Ms. King told Ms. Chenault that she was fine and was going to walk home. On March 13, 2013, Ms. Chenault submitted a sworn written statement.<sup>7</sup> She indicated in this statement that she did not smell alcohol on Ms. King and that Ms. King did not appear drunk. She further claimed that she would have made sure Ms. King had a ride home if she had suspected that Ms. King was intoxicated.

According to Ms. Chenault, employees were allowed to have two alcoholic drinks once they were off duty. They were not allowed to consume alcohol while working. She never observed Ms. King consuming alcohol while on duty.

<sup>6</sup> TABC Ex. 5.

<sup>7</sup> Respondent Ex. 26.

**d. Mr. Doolin**

Mr. Doolin testified that he was employed at the location as a server and occasionally performed bartending duties. He served Ms. King one vodka straight at the bar following her shift on March 12, 2013. He testified that he never saw her serve herself or with an alcoholic beverage during her shift that day. She appeared normal to him. He admitted to comping the drink because it was less than an ounce. He claimed that he had heard that she was using vodka to numb the pain in her mouth, but March 12, 2013, was the first time he had served her alcohol for pain in her mouth.

According to Mr. Doolin, he usually served as a bartender during shift changes or when the regular bartender was not present. He testified that servers typically did not have access to the bar area. He had access to the bar because he was assigned as the last server of the shift that day. He also testified that managers had access to the bar area and could make drinks. At the hearing, Mr. Doolin acknowledged that he was not seller certified on March 12, 2013, and was reprimanded by Respondent for not holding the certification.

Mr. Doolin testified that he worked the entire shift with Ms. King and would pass her throughout the day. He did not hear of any complaints from customers or fellow employees that Ms. King was having problems doing her job. The last time he saw her was while she sat at the bar after her shift drinking the vodka and eating. He was unsure of the exact time Ms. King left the location but believed she sat at the bar for at least 30 minutes before leaving the location. He believed that Ms. King was still at the bar when he clocked out at 4:12 p.m. He testified that she did not appear intoxicated. He further testified that he never would have let her leave if he had thought she was intoxicated.

**e. Ms. Patterson**

Ms. Patterson testified that she has been a manager for Respondent for multiple years and served in that capacity at Respondent's various locations. She was the manager on duty during

Ms. King's shift on March 12, 2013, and had only been assigned to that location for a short period of time. She denied that she clocked out Ms. King and had no knowledge as to who clocked her out.

According to Ms. Patterson, only bartenders and managers were allowed to mix drinks. She believed Mr. Doolin was her bartender for that particular day. She testified that she was not responsible for tracking the location's alcohol inventory and believed Mr. Day held that responsibility. She did not know if an alcohol inventory was taken at the end of the day on March 12, 2013.

She described her duties on that day to include bartending, running food out to tables, taking calls, and seating customers. She testified that her duties on a particular day were dependent upon that day's staffing. She remembered doing a lot of food runs on March 12, 2013. She acknowledged that she was not able to see the bar at all times during that day. She testified that she and the other employees were constantly moving throughout the shift. According to Ms. Patterson, the employees were not allowed to take breaks while they were waiting tables. She further testified that Ms. King never left the location during her shift.

Ms. Patterson remembered discussing with Ms. King about the pain in her mouth. According to Ms. Patterson, Ms. King had been involved in an accident about 1 week prior to her death. Ms. King indicated that she was out of pain medication. They discussed using vodka for pain relief a few days prior to the fatal accident. Ms. Patterson denied ever giving Ms. King permission to consume or swish vodka to dull her pain while on shift. She did not believe that Ms. King was swishing vodka while at work. She further denied that on March 12, 2015, Mr. Mack told her about seeing Ms. King behind the bar on that day. She claimed that he only informed her of that information after Ms. King had died.

On that day, she had several conversations with Ms. King. She did not observe Ms. King serve herself an alcoholic beverage. She also did not observe Ms. King consuming an alcoholic beverage while on duty. She spoke with Ms. King as she was about to leave for the day. According

to Ms. Patterson, Ms. King was sitting at the bar eating lunch. Ms. King was drinking a beverage; however, Ms. Patterson did not know if it contained alcohol. Respondent's Director of Marketing, Lara Dominguez, arrived and briefly spoke with Ms. Patterson and Ms. King. Ms. Patterson was unsure as to when Ms. King left the location. She remembered that Ms. King was still there when she left around 4:00 p.m. Ms. Patterson testified that there were no signs that Ms. King was intoxicated. She further testified that Ms. Dominguez did not express any concern to her that Ms. Dominguez suspected that Ms. King was intoxicated. Ms. Patterson testified that Ms. King appeared attentive during her shift and that she did not receive any complaints regarding Ms. King's ability to do her job. Ms. Patterson further testified that she never would have let Ms. King leave the location on her own if she had suspected that she was intoxicated.

**f. Ms. Brooks's Written Statement<sup>8</sup>**

Ms. Brooks stated that she worked with Ms. King on March 12, 2013. She did not observe Ms. King to be intoxicated. She claimed that she did not observe Ms. King consuming any alcohol on that day or that she was anywhere near the bar. She further claimed that Ms. King never drank at work because it was against Respondent's policy. She acknowledged that, a few days prior to the fatal accident, she did observe Ms. King swishing vodka in her mouth to numb the pain she was suffering. She claimed that Ms. King did not swallow the vodka. Ms. King told Ms. Brooks that she had permission to swish vodka in her mouth.

**g. Itzia Valdez's Written Statement<sup>9</sup>**

Ms. Valdez also worked with Ms. King on March 12, 2013. According to Ms. Valdez, at around 1:00 p.m., she observed Ms. King with an alcoholic beverage while Ms. King was rolling silverware. Ms. King admitted to her that it was an alcoholic beverage. Ms. Valdez did not observe Ms. King pouring herself an alcoholic beverage and had not information on where Ms. King got the

<sup>8</sup> TABC Ex. 9.

<sup>9</sup> TABC Ex. 12.

alcohol. Later, once Ms. Valdez had finished her lunch at the end of her shift, she observed Ms. King with a vodka drink at the bar. Ms. King told her she was drinking vodka for her mouth pain. She offered to give Ms. King a ride, but Ms. King refused. According to Ms. Valdez, Ms. King showed no signs that she was intoxicated.

**h. Brianna Downey's Written Statement<sup>10</sup>**

Ms. Downey arrived for her shift at the location around 6:00 a.m. on March 12, 2013. Around noon, she spoke with Ms. King about the fact that Ms. King was going to see a doctor about her teeth. She spoke to Ms. King again, around 2:30 p.m., while Ms. King was rolling silverware. They discussed that there was cake the employees could take home and she observed Ms. King cut and box two pieces of cake to take home. Ms. Downey claimed that she did not observe Ms. King slurring her words or showing any signs of intoxication. She further claimed that Ms. King acted and worked in a normal manner.

**i. Kendra Shier**

Ms. Shier testified that she is Respondent's Vice President of Operations and held that position on March 12, 2013. She had been at the location earlier in the day but was not present around 4:00 p.m. when Ms. King left the location. She received no information that Ms. King was unable to perform her work, appeared intoxicated, or consumed alcohol while on duty on March 12, 2013.

According to Ms. Shier, Respondent's policy regarding employee consumption of alcohol was that an employee could have a maximum of two alcoholic drinks once his or her shift had ended. The employee was to be clocked out and out of uniform. The employee was also responsible for paying for any alcoholic beverages. Employees were not allowed to consume alcohol during their

<sup>10</sup> TABC Ex. 15.

shift. Only managers or bartenders were allowed to mix drinks, and all employees were required to be seller certified. She acknowledged that Mr. Doolin was reprimanded for serving Ms. King an alcoholic beverage when he was not seller certified.

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

The preponderance of the evidence does not support a finding that Respondent or Respondent's agent, servant, or employee was intoxicated on the licensed premises. The evidence is undisputed that, on March 12, 2013, Ms. King was Respondent's employee. However, Petitioner has failed to establish that she was intoxicated while on the permitted premises.

Pursuant to Texas Penal Code § 49.01(2) there are two definitions for "intoxication." One definition is that the person had a blood alcohol concentration of 0.08 or more. The second definition is that the person lost the normal use of his or her physical and/or mental faculties due to the introduction of alcohol, a drug, or combination of the two into the person's body. In this case, Petitioner argued that Petitioner was proceeding under the first definition of intoxication, specifically that Ms. King's blood alcohol content following the fatal accident was greater than 0.08. In support of this argument, Petitioner offered a medical record<sup>11</sup> which purported to show that Ms. King had an alcohol concentration of 0.286. During the hearing, Respondent objected to the admission of this exhibit on the basis that it was hearsay and lacked a sufficient showing of reliability for the admission of scientific evidence. Petitioner argued that the document was admissible as an exception to the hearsay rule. The ALJ admitted the document but took Respondent's objections under advisement in determining what weight, if any, should be given to the document. After reviewing all of the evidence presented at the hearing, the ALJ finds that no weight should be given to the alleged blood result. The document is written in a manner making it difficult for the ALJ to decipher what the document actually purports to claim. Some of the information contained in the document is illegible. Furthermore, while the document, which includes a scientific conclusion, may

<sup>11</sup> TABC Ex. 4.

be admissible as an exception to the hearsay rule, Petitioner must still establish that the scientific evidence contained within the document is reliable. “To be considered reliable, evidence based on a scientific theory must satisfy three criteria: (1) the underlying scientific theory must be valid; (2) the technique applying the theory must be valid; and (3) the technique must have been properly applied on the occasion in question.” *Hartman v. State*, 946 S.W.2d 60, 62 (Tex. Crim. App. 1997). In this case, Petitioner provided no evidence to meet the requirements set forth in *Hartman*. There was no evidence presented as to who analyzed Ms. King’s blood sample, the method used to analyze the sample, or even a unit of measure to report the result, i.e., grams of alcohol per 100 milliliters of blood. Given the lack of information regarding the analysis of Ms. King’s blood sample, the ALJ does not find the result to be reliable and gives it no weight.

Although Petitioner argued that it was proceeding under the *per se* definition for intoxication, the ALJ also considered an analysis of the facts of this case under the second definition of intoxication, specifically that Ms. King had lost the normal use of her mental and/or physical faculties. The evidence does not support a finding that Ms. King was intoxicated based upon this definition. While there was evidence presented that Ms. King may have been consuming alcohol while on the premises when she was on and off duty, there was no evidence that she appeared intoxicated on March 12, 2013. In one interview, Ms. Chenault did state that Ms. King appeared “maybe drunk.” However, she later recanted that statement. Even if weight was given to her statement that she felt Ms. King was drunk, this conclusory statement is insufficient to establish that Ms. King was intoxicated. Ms. Chenault was never asked to explain why she felt Ms. King appeared drunk. In fact, Ms. Chenault stated that she could not smell alcohol on Ms. King. With regards to all of the witnesses who had contact with Ms. King on the day of the fatal accident, no one saw her exhibit any of the classic indicators of intoxication, such as smelling of the odor of an alcoholic beverage, bloodshot eyes, slurred speech, or unsteady balance. Furthermore, there was no evidence presented that Ms. King had a difficult time performing her job duties.

Given the facts of this case, the ALJ finds that no action should be taken against Respondent as Petitioner has failed to establish that Respondent’s employee was intoxicated on the premises.

### III. FINDINGS OF FACT

1. Bread Winners III Café and Bakery Inc. d/b/a Bread Winners Café and Bakery (Respondent), holds a Mixed Beverage Restaurant Permit with FB RM-671555, including a Food and Beverage Certificate, issued by Texas Alcoholic Beverage Commission (TABC) for the premises located at 4021 Preston Road, Suite 611, Plano, Collin County, Texas.
2. On March 12, 2013, Lauren King was Respondent's employee at the permitted location.
3. On that date, Ms. King arrived at work at approximately 6:42 a.m. She was clocked out at 4:04 p.m.
4. At 4:23 p.m., the Plano Police Department was dispatched regarding a vehicle accident involving a pedestrian at the intersection of Preston Road and Lorimar within the Plano city limits.
5. Ms. King was the pedestrian involved in the accident and sustained fatal injuries. She died on March 13, 2013.
6. Ms. King had been involved in a previous accident about 1 week prior to her death.
7. As a result of that previous accident, Ms. King suffered from pain in her mouth and was known to use vodka, either by swishing or swallowing, to numb the pain in her mouth.
8. On March 12, 2013, Nathan Doolin served Ms. King a vodka straight while she sat at the bar. He only served her the one drink.
9. Ms. King was off duty when Mr. Doolin served her the alcoholic beverage.
10. There was conflicting evidence presented as to whether or not Ms. King was consuming alcohol during her shift on March 12, 2013.
11. There was insufficient evidence to establish that Ms. King had a blood alcohol concentration of 0.08 or greater.
12. Ms. King did not exhibit any of the classic indicators of intoxication and was able to adequately perform her work duties on March 12, 2013.
13. There was insufficient evidence to establish that Ms. King was intoxicated while on Respondent's premises.
14. On November 3, 2014, Staff (Petitioner) of the 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.

15. The hearing on the merits convened on March 25, 2015, 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. Petitioner was represented at the hearing by Shelia Lindsey, TABC Staff Attorney. Respondent was represented at the hearing by attorney Timothy Griffith. The hearing was continued and reconvened on May 14, 2015. Following the submission of closing arguments, the record closed on July 20, 2015.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code ch. 5 and §§ 11.61(b)(2) and (13) and 104.01(5).
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. Ms. King was Respondent's employee.
5. Ms. King was not intoxicated on the premises as "intoxication" is defined by Texas Penal Code § 49.01(2).
6. Respondent, or its agent, servant, or employee, did not violate Texas Alcoholic Beverage Code § 104.01(5).
7. Respondent's permit should not be suspended.

**SIGNED September 3, 2015.**



Michelle Kallas  
Administrative Law Judge  
State Office of Administrative Hearings

**DOCKET NO. 618119**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
	§	
	§	
<b>VS.</b>	§	
	§	<b>ALCOHOLIC</b>
<b>BREAD WINNERS III CAFÉ AND BAKERY D/B/A BREAD WINNERS CAFÉ AND BAKERY INC., Respondent</b>	§	
	§	
	§	
<b>PERMITS RM671555, FB</b>	§	
	§	
<b>COLLIN COUNTY, TEXAS (SOAH DOCKET NO. 458-15-0959)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 30th day of December, 2015, 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 (ALJ) Michelle Kallas presiding. The hearing on the merits convened on March 25, 2015 and the SOAH record closed July 20, 2015. The Administrative Law Judge issued a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 3, 2015. The Proposal for Decision was properly served on all parties and the parties were given an opportunity to file exceptions and replies as part of the record herein. Exceptions were filed by Petitioner on September 21, 2015. Respondent replied on September 21, 2015. The Administrative Law Judge filed a letter on September 22, 2015 recommending that no changes be made to the Findings of Fact and Conclusions of Law.

After review and due consideration of the Proposal for Decision, Petitioner's exceptions, Respondent's reply, and the Administrative Law Judge's September 22, 2015 letter, 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.

**THEREFORE, IT IS ORDERED** that **NO ACTION** be taken to suspend Respondent's permits.

This Order will become **final and enforceable** on the 23rd day of January, 2016, **unless a Motion for Rehearing is filed by the 22nd day of January, 2016.**

**SIGNED** this the 30th day of December, 2015, at Austin, Texas.



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Sherry K-Cook, Executive Director  
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 30th day of December, 2015.



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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, TX 75235  
**VIA FACSIMILE: (512) 322-2061**

Bread Winners III Café and Bakery Inc.  
d/b/a Bread Winners Café and Bakery Inc.  
**RESPONDENT**  
4021 Preston Road, Suite 611  
Plano, TX 75093  
**VIA FIRST CLASS MAIL, CMRRR #70150640000460343382**

Timothy Griffith  
**ATTORNEY FOR RESPONDENT**  
101 E. Park Blvd., Suite 600  
Plano, TX 75074  
***VIA FIRST CLASS MAIL, CMRRR #70150640000460343399***

Shelia Lindsey  
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