

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF ALCOHOLIC BEVERAGES )  
AND TOBACCO, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 07-3107  
 )  
TINY'S LIQUOR, d/b/a LITTLE )  
LIQUOR STORE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on August 17, 2007, by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes (2007).

APPEARANCES

For Petitioner: Michael J. Wheeler, Esquire  
Department of Business and  
Professional Regulation  
Northwood Centre, Suite 40  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: Phillip Meditto, Esquire  
2756 East Atlantic Boulevard  
Pompano Beach, Florida 33062

STATEMENT OF THE ISSUES

The issues are as follows: (a) whether Respondent violated Sections 562.11(1) (a) and 561.29 (1) (a), Florida Statutes,<sup>1</sup> by selling an alcoholic beverage to Petitioner's undercover investigative aide on November 17, 2006; and (b) if so, what penalty, if any, should be imposed.

PRELIMINARY STATEMENT

On or about January 8, 2007, Petitioner Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Petitioner) issued an Administrative Action, alleging that Respondent Tiny Liquor, d/b/a Little Liquor Store (Respondent) had failed to comply with the beverage law by selling an alcoholic beverage to an underage investigative aide. According to the Administrative Action, Respondent had violated Sections 562.11 (1)(a) and 561.29 (1)(a), Florida Statutes.

On or about February 13, 2007, Respondent requested a hearing disputing the issues of material fact. Petitioner referred the request to the Division of Administrative Hearings on July 10, 2007.

On August 1, 2007, the undersigned issued an Order scheduling the hearing. The order scheduled the hearing for August 17, 2007, at Palm Beach County Courthouse.

On August 6, 2007, the undersigned issued an Amended Notice of hearing changing the location of the hearing to Lauderdale Lakes.

On August 8, 2007, the undersigned issued an Amended Notice of Hearing by Video Teleconference. The final hearing was held by video teleconference on August 17, 2007.

At hearing, Petitioner presented the testimony of Investigative Aide #0045 and Sgt. Relias Thompson. Petitioner's Exhibits numbered 1 through 2 were admitted into evidence. Respondent presented the testimony of Special Agent Darren Cover and Nashat Nasser.

The proceeding was recorded but not transcribed. The parties were given until September 6, 2007, to file proposed recommended orders. Both the Petitioner and Respondent filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent holds License No. 16-00664, Series 3-PS. The license authorizes Respondent to sell packaged wine, liquor and beer at the licensed premises, which is located at 1701 West Atlantic Boulevard, Lauderdale Lakes, Florida. Mr. Nasser is

the owner of Tiny's Liquor, a relatively small liquor store. He has been licensed to sell at that store for approximately three years. Mr. Nasser has held a beverage license for approximately 10 years, and is not aware of an incident where he personally sold alcohol to an underaged person prior to this case.

2. Mr. Nasser has a personal and business rule not to sell alcohol to underaged persons. His policy is to always check an individual's identification before selling him or her alcohol and tobacco. Mr. Nasser trains his employees to check each patron's age and not to sell alcohol to underaged persons. He also posts signs in the store regarding the prohibition of underaged sales.

3. On November 17, 2006, Petitioner performed an undercover compliance check of Respondent based on an anonymous complaint that underage beverage sales were taking place at Tiny's Liquor.

4. Investigative Aide #0045, acted as Petitioner's underage operative/investigative aide on November 17, 2007. The Investigative Aide #0045, who was born on June 7, 1988, was an 18-year-old female, who wore braces at the time of the incident.

5. Investigative Aide #0045 entered Tiny's Liquor, walked straight to the beer cooler and took out a 16-ounce can of Budweiser beer. She then went to the line to purchase the beer and walked to the counter to wait her turn in line. One

customer was in front of the aide and one was behind her when she got in line.

6. A clerk took care of the customer in front of Investigative Aide #0045 with his or her purchase. The owner of Tiny's Liquor, Mr. Nasser, took over the clerk's duties at the counter after the sale to the person in front of Investigative Aide #0045. Mr. Nassar assisted Investigative Aide #0045 with her purchase of beer. The aide placed the can of beer on the counter and handed Mr. Nasser the money to pay for it.

7. Mr. Nasser accepted the money, selling the aide the beer. Mr. Nassar did not ask the aide's age or check her identification. Mr. Nasser placed the beer in the bag and gave it to the aide.

8. After the purchase, the Investigative Aide exited the store and gave the can of beer to Petitioner's agent, who had witnessed the transaction in the store.

9. Petitioner's agents entered the store and spoke with Respondent. As soon as they identified themselves, Mr. Nasser apologized and said, "I made a mistake and should have checked ID but I was trying to help the clerk out." Mr. Nasser was very cooperative and polite during his arrest.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this

proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2007).

11. Petitioner has the burden of proving by clear and convincing evidence that Respondent violated Sections 562.11(1)(a) and 561.29(1)(a), Florida Statutes. See Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987); Pic N' Save Central Florida, Inc. v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, 601 So. 2d 245, 249 (Fla. 1st DCA 1992).

12. Section 562.11(1)(a), Florida Statutes, provides as follows in relevant part:

(1)(a) It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises.

13. Section 561.29(1)(a), Florida Statutes, provides:

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(a) Violation by the licensee or his or her or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, or violation of any municipal or county regulation in regard to the hours of sale, service, or consumption of alcoholic beverages. . . .

14. In construing Subsection 561.29(1), Florida Statutes, Florida's appellate courts have consistently held a licensee liable only for his or her personal misconduct. In Pic N' Save, supra, at 250, the court stated:

Although the statutory language in section 561.29(1) has since 1957 spoken in terms of the Division's power to revoke or suspend a beverage license for violation of the beverage law committed by a licensee or "its agents, officers, servants, or employees," the courts of this state have consistently construed and applied this disciplinary authority only on the basis of personal misconduct by the licensee. Thus, while an employee may violate the beverage law in making illegal sales of alcoholic beverages to minors, the licensee's culpable responsibility therefore is measured in terms of its own intentional wrongdoing or its negligence and lack of diligence in training and supervising its employees regarding illegal sales. This limitation on the licensee's liability is consistent with the notion, also long recognized by the courts of this state, that one's license to engage in a occupation is not to be taken away except for misconduct personal to the license.

15. The facts in this case demonstrate that Mr. Nassar sold beer to an underaged individual, Investigative Aide #0045 without checking her identification, even though Mr. Nassar had a business policy not to sell alcohol to minors.

16. Mr. Nassar's own actions on November 17, 2007, demonstrate misconduct. As the owner of Tiny's Liquors, who was aware of the law and had trained employees not to sell alcohol

to minors, Mr. Nassar did not make any effort to check the minor's identification or make an inquiry as to the age.

17. Mr. Nassar was working independently when he sold and made the transaction of the 16-ounce beer to the minor. The transaction occurred between Mr. Nassar and the minor without any type of interference. And, Mr. Nassar admitted his wrongdoing immediately when the agents spoke to him about the incident.

18. The circumstances of Mr. Nassar's conduct during the minor's purchase of the beer demonstrate that he took no care to diligently attempt to prevent the sale to the minor. Mr. Nassar is personally responsible for the violation as a result of his own negligence and failure to check the Investigative Aide's identification.

19. Petitioner has met the burden to show by clear and convincing evidence that the licensee failed to demonstrate both diligence and culpable responsibility. Further, it has been shown that the violation is due to the licensee's own negligence and wrongdoing.

20. There is sufficient evidence in this matter to sustain a sanction of the beverage license at issue. The misconduct is personal to the licensee.



RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Petitioner enter a final order finding Respondent to have committed one violation of Subsection 562.11(1)(a), Florida Statutes, and imposing an administrative penalty of a seven-day suspension of Respondent's license and a \$1000.00 fine.

DONE AND ENTERED this day 20th of September, 2007, in Tallahassee, Leon County, Florida.



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JUNE C. MCKINNEY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of September, 2007.

ENDNOTE

<sup>1/</sup> Unless otherwise indicated, all references are to the 2006 Florida Statutes.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.