

DOCKET NO. 458-03-0811

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
ESTELA RODRIGUEZ, D/B/A THE CABARET PERMIT NOS. MB-175739 & LB-175740 EL PASO COUNTY, TEXAS (TABC CASE NO. 600796)	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission, TABC) seeks to cancel or suspend for 120 days the permits of Estela Rodriguez, d/b/a The Cabaret (Respondent) based on two incidents of lewd conduct. The Administrative Law Judge (ALJ) recommends the permits be canceled.

I. JURISDICTION AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested in this proceeding; they are addressed in the Findings of Fact and Conclusions of Law.

On January 9, 2003, a hearing convened before ALJ John H. Beeler. Staff appeared and was represented by attorney Dewey Brackin. Respondent appeared and was represented by attorney Charles L. Roberts. The hearing concluded and the record closed on March 20, 2003, after the parties filed closing arguments.

II. DISCUSSION

A. Evidence

1. Testimony of John Valles

John Valles is a police officer employed by the El Paso Police Department. Because of citizen complaints concerning lewd activities occurring around the premises, officer Valles, along with El Paso police officer Leonard Harris, went to The Cabaret on February 22, 2002. After being seated by a waitress, he noticed lap dances occurring on each side of his table. He began to watch the lap dances and saw the dancers rub their buttocks into the crotch area of the male patrons and then to masturbate the patrons. The dancers then performed oral sex on the patrons. One of the

dancers allowed the patron to place a dollar bill in her vagina. The dancers were identified as Erma Dominguez and Deana Marrian.

The events of the evening were recorded by a hidden video camera operated by the officers. The tape has no audio, but accurately recorded what occurred.

2. Testimony of Leonard Harris

Mr. Harris is a police officer employed by the El Paso Police Department and was with officer Valles on the night in question. He observed the dancers place their breasts in the men's mouths and perform oral sex on the men.

3. Testimony of Diana Meraz

Ms. Meraz is the bartender at the club. She is involved in management and is the sister of Respondent. Dancers must obtain her permission to dance at the club. If dancers regularly leave the too early, they are not allowed to continue to work there. The dancers pay the club to dance there.

4. Testimony of Erma Smith

Ms. Smith, formerly know as Irma Dominguez was one of the dancers at the club on the night in question. She did not perform oral sex on anyone that night.

5. Testimony of Deana Marrian

Ms. Marrian was the other dancer at the club on the night in question and did not perform oral sex on anyone that night and did not have inappropriate contact with any customer.

6. Video tape

The video tape shows a dark night club with a dancer on a stage. It also shows two women with their breasts exposed performing lap dances for two males seated in the club. Because of the small amount of light, it is difficult to see some of the activities, but it does appear that at least one of the dancers is performing oral sex on one of the males. It is quite clear from the tape that the dancers were rubbing their exposed buttocks in the crotches of the males, were placing their breasts in the mouths of the males, and were allowing the males to touch their breasts, buttocks, and genital areas.

7. License and Permit File

The License and Permit File contained the violation history for the licensed premises. The history is extensive and includes 15 situations involving lewd conduct and numerous suspensions of the permits. The suspensions periods were from three to 55 days.

B. Analysis and Conclusion

The evidence is clear that dancers working at the club were involved in lewd conduct on the premises. The videotape shows repeated touching of breasts and genital areas and the act of oral sex. This is consistent with the testimony of the police officers. Further, the lewd acts were occurring in an open area of the club with no attempt to hide the activity from management. It is obvious that this type of activity is common and permitted by the Respondent. The violation history is also indicative that lewd behavior is a regular activity at the club.

TEX. ALCO. BEV. CODE ANN. § 104.01 (6) provides that:

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: . . . permitting lewd or vulgar entertainment or acts;

TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (2) provides that:

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: . . . the permittee violated a provision of this code or a rule of the commission.

Because Respondent has a history of allowing lewd behavior on the premises and because the lewd acts were being performed in the open area of the club, indicating that lewd behavior is the norm, the ALJ recommends that Respondent's permits be canceled. The totality of the evidence makes it evident that the purpose of the club is to provide lewd and illegal activities for its patrons. Such an establishment does not deserve a permit.

III. FINDINGS OF FACT

1. Estela Rodriguez, d/b/a The Cabaret (Respondent), located in El Paso, Texas, holds permit nos. MB-175739 & LB-175740 issued by the Texas Alcoholic Beverage Commission (Commission).

2. On August 20, 2002, the Commission's staff (Staff) issued a notice of hearing asserting that Respondent, her agent, servant, or employee engaged in, or permitted an act of sexual contact intended to arouse or gratify sexual desires. The notice also stated the time and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; and the particular sections of the statutes and rules involved.
3. Respondent timely received the notice of hearing.
4. The hearing convened and closed on January 9, 2003, before Administrative Law Judge John H. Beeler. The hearing concluded and the record closed on March 20, 2003, after the parties filed closing argument.
5. On February 22, 2002, on the licensed premises, Respondent, her agent, servant, or employee engaged in, or permitted an act of sexual contact intended to arouse or gratify sexual desires.
6. Respondent has numerous prior violations involving lewd conduct.
7. The lewd conduct described in Finding of Fact No. 5 was done in an open area of the premises.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. §§ 2003.021(b) and 2003.042(5).
3. Respondent received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Based on the above Findings of Fact and pursuant to § 11.61(b)(2) of the Code, Respondent's permits should be canceled.

SIGNED this 16th day of May, 2003.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 600796

IN RE ESTELA RODRIGUEZ	§	BEFORE THE
D/B/A THE CABARET	§	
PERMIT NO. MB-175739 & LB-175749	§	
	§	TEXAS ALCOHOLIC
	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0811)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of June, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on January 9, 2003, and the record was closed on March 20, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 16, 2003. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Mixed Beverage Permit No. MB-175739 and Mixed Beverage Late Hours Permit No. LB-175749 are hereby **CANCELLED**.

This Order will become final and enforceable on July 11, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 20th day of June, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Estela Rodriguez
d/b/a The Cabaret
RESPONDENT
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El Paso, Texas 79936
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Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

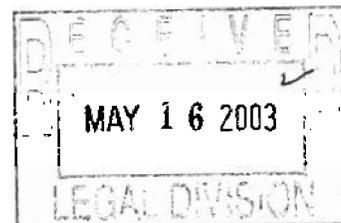
El Paso District Office
Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 16, 2003



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-03-0811; Texas Alcoholic Beverage Commission vs. Estela Rodriguez, d/b/a The Cabaret Permit Nos. MB-175739 & LB-175740 El Paso County, Texas (TABC Case No. 600796)

Dear Ms. Fox:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. A copy of the Proposal for Decision is being sent to Dewey Brackin, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Estela Rodriguez d/b/a The Cabaret, Respondent in this matter. For reasons discussed in the Proposal for Decision, the Administrative Law Judge recommends the permits be canceled..

Pursuant to TEX. GOV'T CODE ANN. §2001.062, each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler
Administrative Law Judge

JHB/sb
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Dewey Brackin, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**
Estela Rodriguez d/b/a The Cabaret, 1841 Agua Dulce, El Paso, TX 79936- **VIA REGULAR MAIL**