

DOCKET NO. 458-03-1545

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
<i>Petitioner</i>	§	
V.	§	OF
	§	
ERIC RAY GIL D/B/A CLUB PRIMO'S	§	
PERMIT NO. BG419906 LICENSE NO.	§	
BL419907 TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 600942),	§	ADMINISTRATIVE HEARINGS
<i>Respondent</i>	§	

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) brought this action against Eric Ray Gil d/b/a Club Primo's (Respondent), alleging that Respondent is not qualified or suitable to hold a permit based upon Respondent's sentence of deferred adjudication for a felony offense. Staff requests that Respondent's license be canceled. The Administrative Law Judge (ALJ) concludes that Staff has failed to establish a lawful justification for cancellation of Respondent's license and, therefore, recommends that Staff's requested cancellation be denied.

**I. Jurisdiction, Notice and Procedural History**

The TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) §§ 6.01 and 61.71. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On February 3, 2003, Staff issued its original Notice of Hearing to Respondent. Thereafter, on February 19, 2003, Staff issued its Second Amended Notice of Hearing to Respondent. On March 26, 2003, a hearing convened before ALJ Tommy L. Broyles at the State Office of Administrative Hearings, 300 West 15<sup>th</sup> Street, Austin, Texas. Staff appeared and was represented by Gayle Gordon, TABC Staff Attorney. Respondent appeared and was represented by his attorney, Lisa Zintsmaster. After presentation of evidence, the hearing concluded that same day. The record closed on April 16, 2003, after the parties submitted written closing arguments.

## **II. Background Facts**

Respondent owns and operates a nightclub in Austin, Texas. Respondent holds two licenses from the TABC, which allow him to operate the nightclub: (1) a Wine and Beer Retailer's Permit; and (2) a Retail Dealer's on Premise Late Hours License. These licenses were originally issued to Respondent in 1997 and have not been suspended or revoked since their issuance, but have been continuously renewed annually.

On August 9, 2002, TABC investigator Mark Gohlke questioned Angelica Marie Cano regarding an application that she had pending for a TABC license. During the course of the questioning, Ms. Cano indicated that she had received money from Respondent in regard to her application for a license. Agent Gohlke questioned Ms. Cano further and learned that Respondent had been placed on deferred adjudication on November 27, 2001, in relation to the charge of Possession of a Controlled Substance, a felony. After learning this information, Agent Gohlke met with Respondent and informed him that, because of the alleged "conviction," Respondent was no longer eligible to hold the two licenses issued by TABC. Respondent then signed an Agreement and Waiver of a Hearing regarding the matter and agreed to surrender his licenses. On August 20, 2002, TABC relied on the waiver signed by Respondent and issued an order canceling Respondent's licenses. On August 28, 2002, Respondent requested a rehearing in the matter, contending that he had agreed to the waiver in error. On September 5, 2002, TABC issued an order granting a rehearing to Respondent and allowing the withdrawal of his earlier waiver.

On September 11, 2002, Respondent submitted his application to renew his licenses. On his renewal application, Respondent clearly identified the felony charge against him and the fact that he had been placed on deferred adjudication in relation to the charge. Shortly thereafter, TABC processed Respondent's renewal application and approved the renewal of Respondent's licenses, effective September 16, 2002. However, TABC continued to pursue the enforcement action and cancellation of Respondent's licenses. This matter was referred to SOAH on December 18, 2002, for a hearing and the issuance of a proposal for decision.<sup>1</sup>

## **III. Discussion**

### **A. Staff's Arguments and Evidence**

In its Second Amended Notice of Hearing, Staff alleged that "[t]hree years have not elapsed since the termination, by pardon or otherwise, of a sentence or probation imposed on the Licensee, Eric Ray Gil, for the conviction of a felony and or deferred adjudication of a felony." In support of its contention, TABC offered, among other things, the testimony of Agent Gohlke and the renewal application submitted by Respondent. In his renewal application, Respondent affirmatively indicated that he had been placed on deferred adjudication for a felony offense. There is simply no dispute of

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<sup>1</sup> Apparently, the issuance of licenses is handled by a separate section of TABC than the section which handles enforcement and license revocation. In this case, one section approved the renewal of the licenses, knowing of the deferred adjudication, while the enforcement section was pursuing cancellation of the licenses on that ground.

that. Staff also presented evidence that it is the policy of the TABC to deny any renewal application in which the applicant had been convicted or placed on deferred adjudication for a felony or crime of moral turpitude. Staff presented evidence that Respondent's renewal application was processed by a TABC employee with only four months experience and the licenses were renewed by that employee, contrary to TABC's past policies and/or practices.

Staff argues that the fact that the licenses were renewed in error does not estop or bar it from subsequently seeking cancellation of the licenses. Staff notes that conviction of, or placement on deferred adjudication for, a felony is an appropriate ground to deny the issuance of an original or renewal permit. Staff contends that, because the licenses would not have been renewed if the TABC's practices and policies had been followed by its employee, it is now justified in canceling the licenses. Moreover, Staff urges that the term "cancel" in § 61.71 of the Code should have the same meaning as the term "deny" in § 109.532 of the Code and § 33.1 of the TABC rules. Under this argument, Staff asserts that the placement of Respondent on deferred adjudication for a felony is a justifiable basis for cancellation of his licenses.

Staff primarily relies on Respondent's placement on deferred adjudication for its position that Respondent is not suitable to hold a license. However, in addition, Staff presented evidence implying that Respondent wrongfully gave money to Angelica Cano to support her application for a license from TABC. The Code and TABC's rules prohibit such types of arrangements. Given the deferred adjudication and the evidence implying that Respondent wrongfully gave money in relation to Ms. Cano's application for a license, Staff argues that Respondent is not suitable nor qualified to hold his licenses.

## **B. Respondent's Arguments and Evidence**

Respondent does not dispute that he was placed on deferred adjudication for a felony offense, but argues that does not support the cancellation of his licenses. Respondent contends that once the licenses were renewed, Staff can only cancel them under the terms of the Code that allow for cancellation. Respondent points out that deferred adjudication is not a final conviction and would not qualify as a ground for cancellation under the Code. Moreover, Respondent presented testimony indicating that Agent Gohlke has a personal vendetta against him and has harassed and retaliated against him. Further, Respondent presented testimony from numerous character witnesses who testified that Respondent was of good moral character and was fit to hold the licenses in question.

In particular, in support of his character, Respondent presented his own testimony and the testimony of Detective William Blackmon, Louis Limon, Rick Wallen, and Mary Esquivel. Respondent testified that he previously worked for the City of Austin in providing social services to the east Austin community in the Montopolis area. After leaving his employment with the City of Austin, Respondent has continued to volunteer with the Capitol Area Food Bank in distributing food to the community and regularly donates turkeys to local community centers for Thanksgiving dinners. Further, Respondent donates time and money to the local Catholic Church in the community and sponsors a baseball team in the Greater East Austin Youth League.

Detective William Blackmon, who has been employed with the Austin Police Department for 10 years, testified that he has known Respondent for approximately four to five years. They met while working together at the Montopolis Neighborhood Center. Detective Blackmon testified about Respondent's duties in working with youth at the Montopolis Neighborhood Center. Detective Blackmon also testified that he was familiar with Respondent's character and that Respondent had a good work ethic and was generally known as a "good guy." Further, Detective Blackmon testified that he never heard a single negative comment regarding Respondent in the time that he was employed at the Montopolis Neighborhood Center.

Mr. Limon, who has worked as the Director of Operations for the Texas Association of Realtors for approximately 40 years, testified that he has known Respondent for approximately six years. Mr. Limon testified that Respondent has volunteered time and money to numerous charitable organizations and discussed the nature of some of those volunteer activities, which included donating toys and food and supporting a local little league team. Mr. Limon testified that he respected and trusted Respondent, and that Respondent's character was good.

Mr. Wallen, who operates a local vending company, testified that he has known Respondent for seven years. In his business, Mr. Wallen testified that he is accustomed to seeing the types of persons who normally operate bars and that Respondent is exceptional in his character in comparison to most individuals who operate bars. He testified that Respondent has never failed to honor his commitments and has an impeccable personal reputation in the community.

Ms. Esquivel, who works at Respondent's nightclub, testified that she has known Respondent for four years. Ms. Esquivel testified that Respondent "is a good person, is a good family man, and he takes care of all of his employees." She also testified that Respondent's reputation in the community is good and that "he is very well known; he is loved by everybody."

## **C. ALJ's Analysis and Recommendation**

### **1. The Code's Cancellation Provisions Apply**

The parties disagree on which provisions of the Code apply. Staff contends that this matter should be reviewed under the *renewal/denial* provisions of the Code and TABC's rules.<sup>2</sup> Staff argues that, although the Respondent's licenses had been renewed already, they were renewed in error. As such, Staff argues that it is not estopped from taking action to cancel the licenses. Respondent disagrees, arguing that the licenses were properly renewed and any action to cancel them now must be based on the *cancellation* provisions of the Code and TABC rules.

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<sup>2</sup> Staff's current position is not entirely clear. At the hearing and in its initial closing briefing, Staff contended that Respondent's placement on deferred adjudication was an appropriate ground for cancellation, relying on the denial/renewal provisions of the Code. In its final written briefing, however, Staff appears to concede that the cancellation provisions of the Code apply, but argues that "cancel" should have the same meaning as "deny" in certain parts of the Code and the TABC rules.

After considering the parties' arguments and the facts of this case, the ALJ concludes that Staff is required to rely on the cancellation provisions of the Code and TABC rules. It is undisputed that the licenses were renewed effective September 16, 2002, by TABC. Moreover, there is no evidence of wrongdoing in the process; rather, Staff simply argues that the person who issued the licenses was relatively new and was not as familiar with the general policies of TABC and the grounds for which TABC typically would not issue a renewal permit. To accept Staff's argument under the circumstances of this case would allow it virtually unfettered discretion in second-guessing itself or reversing its prior decisions. There must be some level of certainty and finality when agencies make licensing decisions, and parties should have some assurance that, once a license is issued, it will not be canceled absent compliance with the procedures set forth in the law for cancellation of the license. Here, the Code and TABC's rules provide methods for cancellation of licenses under circumstances where they have been issued already, and those statutes and rules provide the appropriate method by which Staff may cancel a license that it believes should not be held by a licensee. Staff should be required to follow those requirements, and it has presented no authority to the contrary. Therefore, the ALJ concludes that, while Staff may pursue an action to cancel Respondent's licenses, it must do so under the cancellation provisions of the Code.<sup>3</sup>

## **2. No Lawful Justification for Cancellation of the Licenses**

Under the cancellation provisions of the Code, TABC may cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee engaged in certain types of conduct. Among other things, a license may be canceled if the licensee:

- (1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period;
- (2) was finally convicted for violating a penal provision of this code;
- (3) was finally convicted of a felony while holding an original or renewal license;
- (4) made a false statement or a misrepresentation in his original application or a renewal application;<sup>4</sup>

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<sup>3</sup> As noted previously, in its final closing briefing Staff appears to recognize that it is required to rely on the cancellation provisions of the Code in this case.

<sup>4</sup> TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1)-(4); *see also* TEX. ALCO. BEV. CODE ANN. §11.61(b) which provides similar grounds for cancellation of a permit but was not relied upon by the Staff in this case as evidenced by its omission from the notice of hearing.

The cancellation provisions of the Code do not provide for cancellation of a license on the basis that a licensee has been placed on deferred adjudication. This is significantly different from the original licensing and renewal provisions of the Code, which allow for denial of an original or renewal permit if “the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit.”<sup>5</sup> Despite Staff’s contention, the ALJ does not agree that the term “cancel” in § 61.71 of the Code should have the same meaning as “deny” in § 109.532 of the Code and § 33.1 of the TABC rules. The ALJ must give effect to the plain meaning of the words used in the statute and, under ordinary usage, “cancel” and “deny” do not have the same meaning.<sup>6</sup> Also, the Code provides entirely different grounds for cancellation versus denial of licenses; and, if the Legislature intended for § 109.532 to apply to cancellations, it could have clearly stated so, as it did a few sections later in § 109.56 of the Code (providing for suspension or cancellation of license for certain types of convictions).

Further, § 33.1 of the TABC rules provides that “current permit or license holders who previously qualified for a permit or license and have not been *subsequently* convicted or received deferred adjudication for any offense listed in this rule are not disqualified from holding a permit or license under the Alcoholic Beverage Code, §109.532.”<sup>7</sup> The ALJ interprets this section of the rule as providing that deferred adjudication or conviction will not later disqualify a license-holder if the conviction or deferred adjudication occurred *prior* to the issuance of the current license. This is logical, for there would be some inherent unfairness if TABC were allowed to later attempt to cancel a license based on criminal history information that it knew when it previously decided to issue the license. In this case, Respondent was placed on deferred adjudication prior to receiving his renewed licenses, so he would fall within this section of the rule and would not be disqualified from holding his licenses.

So, then, the ALJ concludes that the question in this case is whether Staff has shown the existence of any of the grounds listed in § 61.71 of the Code for cancellation of Respondent’s licenses. Ultimately, the undisputed evidence shows that Staff has not met the requirements for cancellation.

First, Staff has not shown any Commission rule or provision of the Code that Respondent violated by engaging in the conduct for which he was placed on deferred adjudication. While the Code and the Commission’s rules prohibit many types of conduct, Respondent’s possession of a controlled substance—away from his licensed business—does not appear to be within such prohibitions. Further, there is no dispute that Respondent clearly identified in his renewal application the criminal charge against him and the fact that he was placed on deferred adjudication

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<sup>5</sup> TEX. ALCO. BEV. CODE ANN. § 109.532(b)(1).

<sup>6</sup> According to the *Merriam Webster Dictionary*© (2003), to cancel is to “to destroy the force, effectiveness, or validity of” that which has already been granted, while to deny is to “refuse to grant.” Clearly, “cancel” refers to the annulment of something already granted, while “deny” refers to the decision to withhold the right in the first place. The two are not synonymous.

<sup>7</sup> TEX. ADMIN. CODE § 33.1(b) (Emphasis added).

for such charge, so there is no basis for concluding that Respondent made a false statement or misrepresentation in his renewal application. Therefore, the issue is whether Respondent's placement on deferred adjudication is the equivalent of being "finally convicted of a felony" under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(3). Under the applicable law, it is not.

According to the Code of Criminal Procedure, a judge "may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision."<sup>8</sup> Following a deferred adjudication of guilt, there has been no conviction.<sup>9</sup> No actual conviction occurs unless there is a revocation of defendant's probation.<sup>10</sup> Finally, the probation that follows deferred adjudication does not constitutionally or statutorily equal the probation that follows the release of a convicted defendant.<sup>11</sup> Therefore, the case law is clear that deferred adjudication is not a final conviction.

Also, nothing in the applicable statutes or rules defines "final conviction" to include deferred adjudication. To the contrary, the Code and TABC's rules discuss final convictions separately from deferred adjudication. For example, § 109.532 of the Code refers to "criminal conviction *or* deferred adjudication" (emphasis added) as a basis for denying or non-renewing a license. Similarly, § 33.1 of TABC's rules refers to "[f]inal conviction *or* deferred adjudication" (emphasis added) regarding suitability to hold a license. Clearly, the separate identification of deferred adjudication and a final conviction, with the connector "or" between them, indicates that the two are not interpreted the same within the Code and TABC's rules. Because there is no evidence that Respondent has been "finally convicted of a felony," Staff has failed to establish a legitimate ground on which to cancel Respondent's licenses.

### **3. Respondent is Qualified or Suitable to Hold a License**

Even if § 109.532 of the Code and § 33.1(a) of TABC's rules applied, those sections do not automatically dictate that Respondent's licenses should be canceled. Rather, placement on deferred adjudication is just a factor to consider when determining whether an applicant is qualified or suitable for a license or permit. Whereas certain types of conduct act as an absolute bar to the issuance of a license, placement on deferred adjudication is merely a permissive ground for denial if it reflects unsuitability or lack of fitness to hold a license. Based on the evidence in the record—even in light of Respondent's deferred adjudication—the ALJ finds that Staff has failed to

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<sup>8</sup> TEX. CODE CRIM. P. ANN. art 42.12 § 5(a) (West 2002).

<sup>9</sup> *Ex parte Shillings*, 641 S.W.2d 538 (Tex.Crim.App. 1982); see also *McNew v. State*, 608 S.W.2d 166 (Tex.Crim.App. 1978) (stating that "conviction" always involves an adjudication of guilt, so a judicial action that defers the finding of guilt cannot be a conviction).

<sup>10</sup> *Rodgers v. State*, 744 S.W.2d 281 (Tex.App.--Fort Worth 1987).

<sup>11</sup> *Price v. State*, 866 S.W.2d 606 (Tex.Crim.App. 1993).

show by a preponderance of the evidence that Respondent is not suitable nor qualified to hold a license.

In the notice of hearing, Staff relied solely on Respondent's placement on deferred adjudication for its position that Respondent is not suitable to hold a license.<sup>12</sup> Respondent rebutted this charge with numerous character witnesses, including an Austin Police Department Detective, all found to be credible by the ALJ. These witnesses held positions of respect within the community and testified that Respondent was of good moral character and contributed significantly to the East Austin community.<sup>13</sup> After considering Respondent's work history, the charitable contributions of time and money that he makes to the local community, the evidence regarding his character, the lack of criminal convictions in his past, and the limited number of administrative violations (only one minor violation in five years) for his club, the ALJ concludes that Respondent is suitable and qualified to hold his licenses, despite his placement on deferred adjudication. Therefore, the ALJ concludes that, even if § 109.532 of the Code and § 33.1(a) of TABC's rules applied to this case, Staff has failed to establish that Respondent is not qualified or suitable to hold a license from TABC.

For all of the reasons set forth above, the ALJ concludes that Staff's request to cancel Respondent's licenses should be denied, and that Respondent be entitled to retain his licenses.

#### **IV. Findings of Fact**

1. Respondent, Eric Ray Gil d/b/a Club Primo's, owns and operates a nightclub located at 1700 E. Sixth Street, Austin, Texas. Respondent holds two licenses from the Texas Alcoholic Beverage Commission (TABC), which allow him to operate the nightclub: (1) Wine and Beer Retailer's Permit No. BG419906; and (2) Retail Dealer's on Premise Late Hours License No. BL419907. These licenses were originally issued to Respondent in 1997 and have not been suspended or revoked since their issuance, but have been continuously renewed annually.
2. Respondent was placed on deferred adjudication on November 27, 2001, in relation to the charge of Possession of a Controlled Substance, a felony.
3. In his renewal application signed on August 9, 2002, Respondent affirmatively indicated that he had been placed on deferred adjudication for the felony offense described in the previous finding.
4. The deferred adjudication for this offense will not expire until the year 2004.

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<sup>12</sup>During the hearing, Staff presented evidence implying that Respondent wrongfully gave money to Angelica Cano to support her application for a license from TABC, in violation of the Code and TABC's rules. Since this allegation was not included in the notice of hearing, the ALJ will not address it other than to note he found Ms. Cano to be a credible witness and accepts her testimony that the money was for child support.

<sup>13</sup>See Section III. B. for a more detailed discussion of the testimony offered by these witnesses.

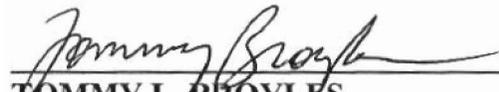
5. TABC processed Respondent's renewal application and approved the renewal of Respondent's licenses, effective September 16, 2002, despite being aware of the fact that Respondent was placed on deferred adjudication for a felony offense.
6. Respondent is qualified or suitable to hold a license or permit from TABC.
  - A. Respondent previously worked for the City of Austin in providing social services to the east Austin community in the Montopolis area.
  - B. After leaving his employment with the City of Austin, Respondent has continued to volunteer with the Capitol Area Food Bank in distributing food to the community and regularly donates turkeys to local community centers for Thanksgiving dinners.
  - C. Respondent donates time and money to the local Catholic Church in the community and sponsors a baseball team in the Greater East Austin Youth League.
  - D. Respondent is of good moral character.
  - E. Respondent has never been finally convicted of a felony
  - F. Respondent has been cited for only one minor violation in his five years of operating the licensed premises.
7. On February 3, 2003, Staff issued its original Notice of Hearing. Thereafter, the hearing in this matter was continued and Staff issued its Second Amended Notice of Hearing on February 19, 2003.
8. On March 26, 2003, a hearing convened before Administrative Law Judge Tommy L. Broyles at the State Office of Administrative Hearings, 300 West 15<sup>th</sup> Street, Austin, Texas. Staff appeared and was represented by Gayle Gordon, TABC Staff Attorney. Respondent appeared and was represented by his attorney, Lisa Zintsmaster. After presentation of evidence, the hearing concluded that same day. The record closed on April 16, 2003, after the parties submitted written closing arguments.

#### **V. Conclusions of Law**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. §§ 6.01, 11.61, and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Proper and timely notice of the hearing was effected upon Respondent, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Staff has the burden of proving by a preponderance of the evidence that sufficient grounds exist for cancellation of Respondent's licenses.
5. The cancellation provisions of the Code do not provide for cancellation of a license on the basis that a licensee has been placed on deferred adjudication. TEX. ALCO. BEV. CODE ANN. ch. § 61.71
6. Based on the Findings of Fact, Staff failed to establish sufficient lawful grounds to cancel Respondent's licenses pursuant to TEX. ALCO. BEV. CODE ANN. ch. § 61.71 .
7. Based on the foregoing finding and conclusions, the cancellation of Respondent's licenses is not warranted.

**SIGNED on the 3<sup>rd</sup> day of June 2003.**

  
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**TOMMY L. BROYLES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 3, 2003

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

**HAND DELIVERY**

**RE: Docket No. 458-03-1545; Texas Alcoholic Beverage Commission v. Eric Ray Gil d/b/a Club Primo's Permit No. BG419906 License No. BL419907 Travis County, Texas (TABC Case No. 600942)**

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 Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Lisa Zintsmaster, Attorney representing the Respondent in this matter. The Administrative Law Judge concludes that Staff has failed to establish a lawful justification for cancellation of Respondent's license and, therefore, recommends that Staff's requested cancellation be denied.

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 "Tommy L. Broyles".

Tommy L. Broyles  
Administrative Law Judge

TLB:ls

Enclosure

xc: **Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY**  
Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731- **VIA HAND DELIVERY**  
Lisa Zintsmaster, Attorney, 3307 Northland, Ste. 470, Austin, Texas 78731 - **VIA REGULAR MAIL**  
Eric Ray Gil, d/b/a Club Primo's, 1700 East 6th St., Austin, Texas 78702-3216 - **VIA REGULAR MAIL**

**William P. Clements Building**

**Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025**

**(512) 475-4993**

**Docket (512) 475-3445**

**Fax (512) 475-4994**

**<http://www.soah.state.tx.us>**

**DOCKET NO. 600942**

IN RE ERIC RAY GIL	§	BEFORE THE
D/B/A CLUB PRIMOS	§	
PERMIT NO. BG419906	§	
LICENSE NO. BL419907	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1545)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 18th day of August, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tommy L. Broyles. The hearing convened on March 26, 2003, and adjourned April 16, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 3, 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.

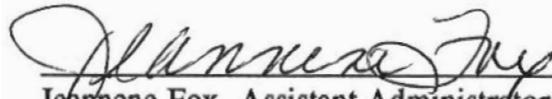
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the requested cancellation is hereby **DENIED**.

**This Order will become final and enforceable on September 8, 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.

**SIGNED** on this the 18th day of August, 2003.

On Behalf of the Administrator,



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Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (512) 475-4994**

Lisa Zintsmaster  
**ATTORNEY FOR RESPONDENT**  
**VIA FAX (512) 458-2826**

Eric Ray Gil  
**RESPONDENT**  
d/b/a Club Primo's  
1700 E. 6<sup>th</sup> Street  
Austin, Texas 787023216  
**VIA CERTIFIED MAIL 7001 2510 0003 8687 3094**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Regulatory Division

Austin District Office