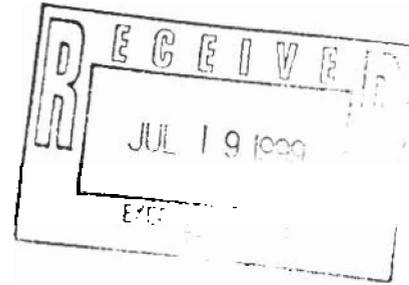


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 15, 1999



Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

Certified Mail No. Z270028967

RE: Docket No. 458-99-0167; Texas Alcoholic Beverage Commission vs. Librada Alicia Trujillo d/b/a Glenwood Bar (TABC Case No. 578743)

Dear Mr. Bailey:

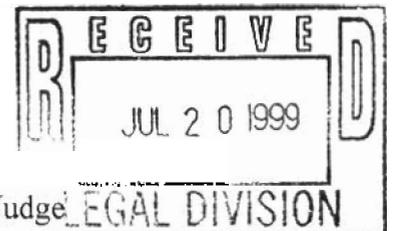
Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, Legal Director for Texas Alcoholic Beverage Commission, and to Eduardo Lerma attorney for Librada Alicia Trujillo d/b/a Glenwood Bar. For reasons discussed in the proposal, I recommend Respondent's suspension of 20 days with an alternative penalty of \$150.00 for each day of suspension.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Louis R. López

Administrative Law Judge



LRL:et
Enclosure

cc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing -CERTIFIED MAIL NO. Z 270029809
Gayle Gordon, Legal Director, Texas Alcoholic Beverage Commission -CERTIFIED MAIL NO. Z 270028966
Eduardo Lerma, Attorney at Law - CERTIFIED MAIL NO. Z 133586603, RETURN RECEIPT REQUESTED

Willows Office Complex
9434 Viscount, Suite 102 ♦ El Paso, Texas 79925
(915) 595-0052 Fax (915) 595-0362

DOCKET NO. 458-99-0167
(TABC NO. 578743)

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

LIBRADA ALICIA TRUJILLO
dba GLENWOOD BAR
PERMIT NO. BG-145083
LICENSE NO. BL-291756
ELPASO COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the TEXAS ALCOHOLIC BEVERAGE COMMISSION (Staff), Petitioner, brought this action against LIBRADA ALICIA TRUJILLO dba GLENWOOD BAR, Respondent, to suspend Respondent's permits and licenses for violations of the Texas Alcoholic Beverage Code [hereinafter Code]. This proposal recommends a suspension of 20 days with an alternative penalty of \$150.00 for each day of suspension.

A hearing was held before an administrative law judge in El Paso, Texas. Both sides were represented by counsel. There was no significant dispute over jurisdiction, venue, or the notice of hearing.

Discussion

A. Statutory Provisions

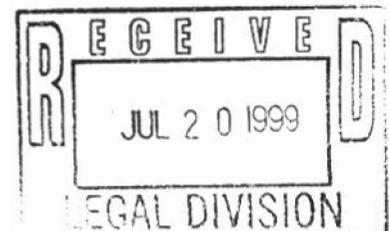
The following provisions are relevant in the consideration of this cause of action:

Code Section 105.04:

HOURS OF SALE: WINE AND BEER RETAILER. no sale shall be allowed between 2 a.m. and noon on Sunday.

Code Section 105.06:

HOURS OF CONSUMPTION:



(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon

B. Evidence Examined

Petitioner presented three witnesses, all TABC Agents. They were Manuel Arturo Rios, Tim Heidtman, and Sergeant Rick Cruz. Respondent presented no witnesses. Neither did she appear at the hearing, nor did anyone representing her appear other than her attorney.

On Sunday, May 3, 1998, at 9:37 a.m., TABC Agent Manuel Arturo Rios entered the Glenwood Bar at 5660 Alameda Avenue in El Paso after observing six vehicles in the parking lot of the establishment. He observed three people sitting at the bar and a barmaid standing behind it. There were other people sitting at tables in the room. The total number of patrons were between 10 and 13. Agent Rios took a seat at the bar and ordered a 12-ounce can of Budweiser. The barmaid served it to him, and he paid for it. He stayed in his seat for at least 25 minutes. During that time, Agent Rios observed the persons--those seated at the bar and those seated at the tables--with glasses or cans of beer in front of them from which they would drink. He also observed the barmaid serving beer, picking up empty glasses, and cleaning behind the bar. At no time did she try to prevent anyone from drinking.

Agents Tim Heidtman and Rick Cruz came in after Agent Rios left the bar for the purpose of issuing citations to those inside. They also observed about 12 people sitting inside consuming beer. They issued a total of 12 citations, mostly for consuming alcoholic beverages during prohibited hours. The Staff had two exhibits admitted into evidence which were Case Disposition Certificates from the El Paso Municipal Court. They showed that two of the persons who had been issued citations on May 3, 1998, had pled guilty to the offense of consuming alcoholic beverages during prohibited hours.

The Glenwood Bar has permits to sell beer and wine. It does not serve food. The barmaid who was identified as Jesusita Trujillo was issued citations for (1) sale of an alcoholic beverage during prohibited hours and for (2) permitting the consumption of alcoholic beverages during prohibited hours.

The Staff requested a suspension of 20 days with a civil penalty, in lieu of suspension, of \$150 per day. This proposal recommends that penalty.

FINDINGS OF FACT

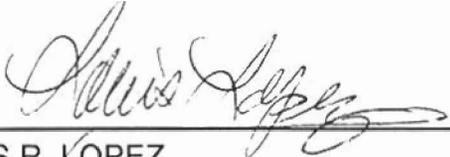
1. Librada Alicia Trujillo dba Glenwood Bar, whose address is 5660 Alameda Avenue, El Paso, El Paso County, Texas, was issued Wine and Beer Retailer's Permit No. BG-145083 and Retail Dealer's On-Premise Late Hours License No. BL-291756 by the Texas Alcoholic Beverage Commission (TABC) on February 9, 1970, which have been continuously renewed.

2. On June 22, 1999, a hearing was held before Administrative Law Judge Louis Lopez in the local office of the State Office of Administrative Hearings, 9434 Viscount Boulevard, Suite 102, El Paso, Texas. The Petitioner was represented by attorney Andrew del Cueto. The Respondent was represented by attorney Eduardo Lerma. Evidence was received, and the hearing was closed on the same day.
3. Jurisdiction, venue, and notice of hearing were proper in this case.
4. On Sunday, May 3, 1998, at 9:37 a.m., TABC Agent Manuel Arturo Rios entered the Glenwood Bar at 5660 Alameda Avenue in El Paso.
5. There was a woman bartender standing behind the bar, three people sitting at the bar, and at least eight other people sitting at tables in the room.
6. Agent Rios took a seat at the bar, ordered a 12-ounce can of Budweiser which the bartender served to him, and he paid for it.
7. During the 25 minutes that Agent Rios remained in the Glenwood Bar, the patrons in the bar had containers of beer in front of them and drank beer from them.
8. The bartender was engaged in serving beer, picking up empty glasses, and cleaning behind the bar. At no time did she try to prevent anyone from drinking beer.
9. Ten people were consuming alcoholic beverages, i.e. beer, in the Glenwood Bar on Sunday, May 3, 1998, between 9:37 a.m. and 10:00 a.m.
10. Two of the persons who were issued citations that morning, Alexandro Baca and William Roberts Coates, pled guilty in El Paso Municipal Court to the offense of consuming alcoholic beverages during prohibited hours.
11. The bartender, who was identified as Jesusita Trujillo, engaged in the sale of an alcoholic beverage on Sunday, May 3, 1998, between 9:37 a.m. and 10:00 a.m., when she sold one 12-ounce Budweiser beer to Agent Manuel Arturo Rios inside the Glenwood Bar.
12. Bartender Jesusita Trujillo engaged in the sale of an alcoholic beverage on Sunday, May 3, 1998, between 2:00 a.m. and 10:00 a.m., when she sold beer to ten patrons besides Agent Rios inside the Glenwood Bar.
13. Bartender Jesusita Trujillo permitted the consumption of alcoholic beverages on Sunday, May 3, 1998, between 9:37 a.m. and 10:00 a.m.
14. Sunday, between 9:37 a.m. and 10:00 a.m., is a period of time which falls within the time during which the Code prohibits the (1) sale and the (2) consumption of alcoholic beverages.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Sections 5.31--5.44, 6.01(b), 25.04(b), and 61.71.
2. Venue was proper in accordance with Code §11.015 and 1 Texas Administrative Code §155.13.
3. Service of proper notice of the hearing was made on Respondent pursuant to Code §11.63 and the Administrative Procedure Act, Texas Government Code §§2001.051 and 2001.052.
4. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code §5.43(a) and Tex. Govt. Code Chapter 2003.
5. Based upon the foregoing Findings of Fact, Librada Alicia Trujillo dba Glenwood Bar, violated Code Section 105.04, when her employee Jesusita Trujillo sold alcoholic beverages during prohibited hours.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, TABC should suspend Respondent's permit for a period of 20 days, pursuant to Code Section 61.71(a), or in lieu of suspension, impose a civil penalty of \$150.00 for each day of suspension, a total of \$3,000.00, pursuant to Code Section 11.64(a).

SIGNED this 15th day of July, 1999.



LOUIS R. LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS