

DOCKET NO 458-99-1512
(TABC NO. 585123)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
CARLOS LAZOS D/B/A EL BAILONGO LOUNGE PERMIT NOS. BG-453697 & BL-453698 EL PASO COUNTY, TEXAS	§ § § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), Petitioner, brought this action against CARLOS LAZOS dba EL BAILONGO LOUNGE, Respondent, to cancel or suspend a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late-Hours License for a violation of the Texas Alcoholic Beverage Code (Code), making a false statement in an application. This proposal recommends a suspension of the permits.

On Wednesday, September 8, 1999, a hearing was held in El Paso, Texas, before an administrative law judge with the State Office of Administrative Hearings. No question was raised regarding jurisdiction or the notice of hearing.

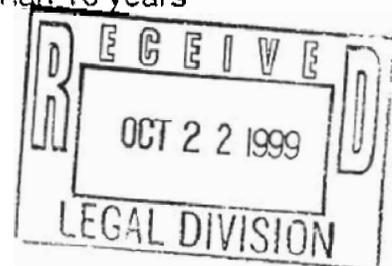
Discussion

A. Statutory Provisions

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

Code Section 101.69.

FALSE STATEMENT. Except as provided in Section 103.05(d) of this code, a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years



B. Evidence and Analysis

There was no dispute on the following: On May 13, 1999, Respondent Carlos Lazos was arrested for possession of drugs. His Application for a Retailer's Permit or License was signed before a notary on May 19, 1999, but it made no mention of the arrest in connection with Question 7 in the Personal History Sheet. The question was whether the applicant had ever been arrested. It was answered "yes." The details given pertained to a 1988 arrest for DWI. There was no mention of any other arrest.

The Respondent, through his attorney, had tried to get the hearing in this case continued until after the trial and verdict on the drug possession charge. He had pled not guilty to the charge and was professing his innocence unequivocally. His defense was that one of his employees had lied to him.

The Respondent did not personally appear at hearing. His only witness was his daughter, Hortencia Hernandez. Her testimony was mostly an attempt to establish, through hearsay, what her father would have testified about. She said her father had relied on bookkeeper Manny Rios to fill out the application because her father did not know any English even though he had lived in the United States for almost 25 years. The application was filled out well before the day of the Respondent's arrest for possession of drugs, May 13th. Mr. Lazos supposedly asked his bookkeeper after the arrest had taken place, if they should go back and list it in the application. Rios supposedly said that it was not necessary. Mr. Lazos worked as a sewing machine mechanic with Levi Strauss for 22 years, raised a family, and had no criminal record apart from the two arrests already mentioned. He was laid off from Levi Strauss as a result of the company closing its operations in El Paso.

While there is some plausibility that Mr. Lazos' bookkeeper may have tried to help him by advising him not to report his May arrest, the Respondent is still ultimately responsible for the veracity of his application. The arrest was for a serious charge--a felony, and the criminal penalty for a false statement is time in the penitentiary.

Mr. Lazos has led a responsible, law-abiding life. He did actually answer Question 7 "yes" and noted the previous DWI arrest, so he was not trying to present himself as having a clean record. He simply did not answer the question in his application completely when he failed to furnish information on his 1999 arrest. His omitting information on his May 1999 arrest may have been based on an honest misunderstanding and an unfortunate reliance on his bookkeeper. It is very important that Mr. Lazos is professing his innocence and has asked for a trial in his case. It is for these reasons, that cancellation is not recommended.

D. Recommendation

It is recommended that Respondent's permits be suspended for 28 days, and in lieu of suspension, that a penalty of \$100 per day be assessed, for a total of \$2,800.

FINDINGS OF FACT

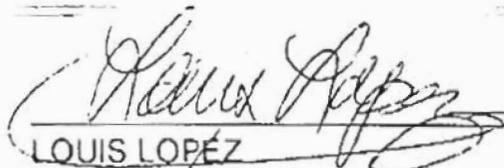
1. Carlos Lazos dba El Bailongo Lounge, whose address is 3530 Alameda Avenue, El Paso, El Paso County, Texas, was issued a Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late-Hours License on June 25, 1999.
2. On Wednesday, September 8, 1999, a hearing was held before Administrative Law Judge Louis Lopez in the SOAH office at 9434 Viscount Boulevard, Suite 102, El Paso, Texas. The Petitioner was represented by attorney Gayle Gordon. The Respondent was represented by attorney Delia Virginia Longoria. Evidence was received, and the hearing was closed on the same day.
3. The content and the service of the notice of the hearing were proper. No objection was raised in connection with jurisdiction or with the notice of the hearing.
3. On May 13, 1999, Respondent Carlos Lazos was arrested for possession of drugs, a felony.
4. Respondent's Application for a Retailer's Permit or License shows that it was signed before a notary on May 19, 1999 but makes no mention of the arrest in connection with Question 7 on the Personal History Sheet in the application form.
5. Question 7, whether the applicant had ever been arrested, was answered "yes," and the details given pertained to a 1988 arrest for DWI. There was no mention of any other arrest.
6. Respondent's bookkeeper, Manny Rios, filled out the application because Respondent did not know any English, even though he had lived in the United States for almost 25 years.
7. The application was filled out well before the day of the Respondent's arrest for possession of drugs, May 13.
8. After the arrest, Mr. Lazos and his bookkeeper decided not to go back to the application to fill in the details of the arrest.
9. Mr. Lazos made a false statement on his Application for a Retailer's Permit or License by not including details of his May 13, 1999 arrest in Question 7 in the Personal History Sheet in the application form.

- 10 Mr. Lazos raised a family and worked as a sewing machine mechanic with Levi Strauss for 22 years before the company shut down its operations in El Paso.
- 11 Cancellation is not recommended for the following reasons.
- a. Mr. Lazos has led a responsible, law-abiding life,
 - b. he acknowledged his previous DWI arrest and was not trying to present himself as having a clean record,
 - c. his omitting information may have been based on an unfortunate reliance on his bookkeeper,
 - d. he has pled not guilty in his drug possession case and has asked for a trial.

CONCLUSIONS OF LAW

- 1 The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to any or all of the following: Texas Alcoholic Beverage Code [Code] Sections 5.31--5.44, 6.01, 11.61, 61.71, and 32.01.
- 2 Service of notice of the hearing was made on Respondent pursuant to Code Section 11.63 and the Administrative Procedure Act, Texas Government Code Sections 2001.051 and 2001.052.
3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and the Texas Government Code Chapter 2003.
- 4 Based upon the foregoing Findings of Fact, the Respondent violated Code Section 101.69 by making a false statement on an application for a permit.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Texas Alcoholic Beverage Commission should suspend Respondent's permit and license for 28 days, and in lieu of suspension, assess an administrative penalty of \$100 per day, for a total of \$2,800.

SIGNED this 22nd day of October, 1999.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS