

DOCKET NO. 585123

IN RE CARLOS LAZOS	§	BEFORE THE
D/B/A EL BAILONGO LOUNGE	§	
PERMIT NO. BG-453697	§	
LICENSE NO. BL-453698	§	TEXAS ALCOHOLIC
	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1512)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of November, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis R. Lopez. The hearing convened on September 8, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 22, 1999. 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, with the following exception:

1. Conclusion of Law # 8 recommends a suspension of 28 days, and in lieu of suspension, a penalty of \$100 per day. However, Section 11.64(a) of the Texas Alcoholic Beverage Code states that "the amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended."

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 all rights and privileges under Permit No. BG-453697 and License No. BL-453698 are herein **SUSPENDED, for a period of twenty-eight (28) days, beginning at 12:01 A.M. on the 23rd day of February, 2000**, unless the Respondent pays a civil penalty in the amount of **\$4,200.00** on or before the **16th day of February, 2000**.

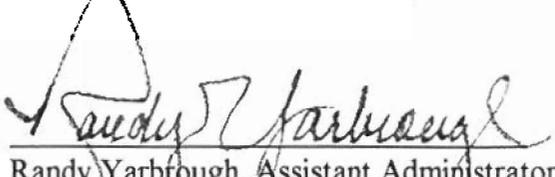
This Order will become final and enforceable on December 13, 1999, unless a Motion for Rehearing is filed before that date.

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 22nd day of November, 1999.



On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Louis R. Lopez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (915) 595-0362

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Delia Virginia Longoria
ATTORNEY FOR RESPONDENT
604 Myrtle Avenue
El Paso, Texas 79901
CERTIFIED MAIL/RRR NO. Z 473 039 119

Carlos Lazos
RESPONDENT
3530 Alameda Avenue
El Paso, Texas 79905-2402
CERTIFIED MAIL/RRR NO. Z 473 039 120

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 585123

REGISTER NUMBER:

NAME: Carlos Lazos

TRADENAME: El Bailongo Lounge

ADDRESS: 3530 Alameda Avenue

DATE DUE: February 16, 2000

PERMITS OR LICENSES: BG-453697, BL-453698

AMOUNT OF PENALTY: \$4,200.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 16TH DAY OF FEBRUARY, 2000, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

November 16, 1999

TO: Gayle Gordon, Director of Legal
FROM: Randy Yarbrough, Assistant Administrator
SUBJECT: Docket No. 458-99-1512
TABC Case No. 585123
Carlos Lazos d/b/a El Bailongo Lounge
Wine and Beer Retail Dealer's Off Premise Permit (BG-453697)
El Paso County, Texas

I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the license at the above referenced location should be **SUSPENDED**. Please prepare an **ORDER** adopting the Proposal for Decision, suspending the License for a period of twenty-eight (28) days unless a civil penalty in the amount of \$4,200.00 is paid in lieu of the suspension. (Please note that the fine payable in lieu of the suspension must be \$4,200 rather than the lower amount recommended by the Hearings Examiner as a matter of law stated in Section 11.64 of the Texas Alcoholic Beverage Code)

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script that reads "Randy Yarbrough". The signature is written in black ink and is positioned above a horizontal line.

RY

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 22, 1999

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

Certified Mail No. Z133586760

RE: **Docket No. 458-99-1512; Texas Alcoholic Beverage Commission vs. Carlos Lazos
d/b/a El Bailongo Lounge (TABC Case No. 585123)**

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 Delia Virginia Longoria, Attorney for Respondent.

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.

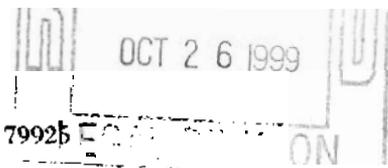
Sincerely,

Louis R. Lopez
Administrative Law Judge

LRL:et
Enclosure

xc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing -REGULAR MAIL
Gayle Gordon, Legal Director, Texas Alcoholic Beverage Commission -CERTIFIED MAIL NO Z 133 586 761
Delia Virginia Longoria - CERTIFIED MAIL NO Z 133 586 762, RETURN RECEIPT REQUESTED

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



DOCKET NO. 458-99-1512
(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.

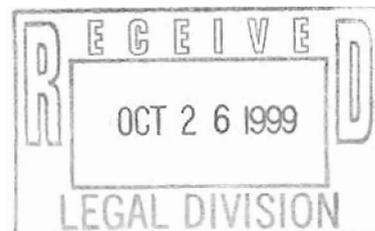
Discussion

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

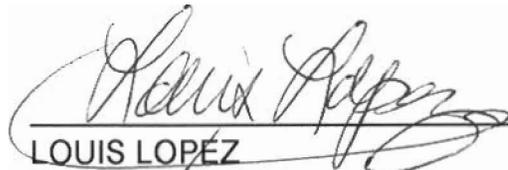
1. Carlos Lazos dba El Bailongo Lounge, whose address is 3530 Alameda Avenue, El Paso, El Paso County, Texas, was issued a Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late-Hours License on June 25, 1999.
2. On Wednesday, September 8, 1999, a hearing was held before Administrative Law 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