

DOCKET NO. 585149

IN RE DORA ELIA PEREZ	§	BEFORE THE
D/B/A MONTERREY LOUNGE	§	
PERMIT NO. BG-424862	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0951)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of September, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on May 31, 2000, and adjourned May 31, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 21, 2000. 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.

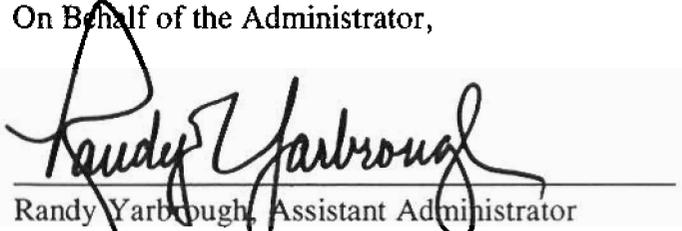
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BG-424862 is **SUSPENDED** for a period of seven (7) days, beginning the 29th day of November, 2000, unless the Respondent pays a civil penalty in the amount of \$1,050.00 on or before the 21st day of November, 2000.

This Order will become final and enforceable on October 16, 2000, 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 25th day of September, 2000.

On Behalf of the Administrator,

A handwritten signature in black ink, reading "Randy Yarbrough", is written over a light gray rectangular background. The signature is cursive and fluid.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
San Antonio
VIA FACSIMILE: (210) 308-6854

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE: (512) 475-4994

Dora Elia Perez
d/b/a Monterrey Lounge
401 Arbor Place
San Antonio, Texas 78207
CERTIFIED MAIL NO. Z 473 042 569

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission

San Antonio District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 585149

REGISTER NUMBER:

NAME: Dora E. Perez

TRADENAME: Monterrey Lounge

ADDRESS: 401 Arbor Place, San Antonio, Bexar County, Texas

DATE DUE: November 21, 2000

PERMITS OR LICENSES: BG-424862

AMOUNT OF PENALTY: \$1,050.00

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 21ST DAY OF NOVEMBER, 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.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

AUG 24 2000 ✓

August 21, 2000

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

RE: Docket No. 458-00-0951; Texas Alcoholic Beverage Commission vs. Dora E. Perez d/b/a Monterrey Lounge (TABC Case No. 585149)

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 Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Dora Elia Perez d/b/a Monterrey Lounge. For reasons discussed in the proposal, I recommend a seven day suspension and an opportunity to pay a civil penalty in lieu of suspension in the amount of \$1,050.00.

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,

A handwritten signature in cursive script that reads "Leah Davis Bates".

Leah Davis Bates
Administrative Law Judge

LDB: il

Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission
Dora E. Perez, d/b/a Monterrey Lounge, 4401 Arbor Place

Castle Hills Executive Center
1015 Jackson Keller, Suite 102B ♦ San Antonio, Texas 78213
(210) 308-6681 Fax (210) 308-6854



DOCKET NO.: 458-00-0951

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
Vs.	§	OF
	§	
DORA E. PEREZ d/b/a , MONTERREY LOUNGE PERMIT NO. BG-424862 BEXAR COUNTY, TEXAS (TABC CASE NO. 585149)	§ § § § § § §	ADMINISTRATIVE HEARINGS SAN ANTONIO, TEXAS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this action seeking a monetary penalty or a suspension of Respondent's license and permit. Staff alleged that Dora Ellia Perez d/b/a Monterrey Lounge's (Respondent) agent or employee was intoxicated on the licensed premises. This proposal finds that Respondent's employee was intoxicated while on the licensed premises and recommends a seven day suspension. The Administrative Law Judge (ALJ) further recommends that Respondent be given an opportunity to pay a civil penalty in lieu of suspension in the amount of \$1,050.00.

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

At a public hearing on May 31, 2000, TABC Staff appeared through its attorney, Dewey Brackin. Respondent represented herself. There were no disputed issues of notice or jurisdiction so those matters will be discussed only in the findings of fact and conclusions of law. ALJ Leah Davis Bates presided over the hearing which concluded on May 31, 2000.

II. LEGAL STANDARD, EVIDENCE AND ANALYSIS

A. Respondent's employee or Agent intoxicated on the licensed premises

Respondent holds a Wine and Beer Retailer's Permit, BG-424862 and is therefore considered a licensed premise. TABC is authorized to suspend a permit for not more than 60 days, pursuant to TEX. ALCO. BEV., CODE ANN. (Code) §11.61(b)(2), if a licensee violates any provision of the Code. In this case, TABC alleged that Respondent's agent, servant, or employee was intoxicated on the licensed premises in violation of §104.01(5) of the Code.

B. The Evidence

No exhibits were entered into evidence. Four witnesses testified at the hearing.

(1.) Detective Charles McLellan

Detective McLellan, a San Antonio Police Officer for 28 years, testified that on June 23, 2000, at 9:20 p.m., he, along with Detectives Orta and Holguin, entered Monterrey Lounge to perform routine inspections. As Detective McLellan entered the bar he observed four or five patrons at the bar drinking and watching television, and one gentleman standing behind the bar. Detective McLellan then approached the bar and spoke with Mr. Estanlao Perez, explaining that he and Detectives Holguin and Orta were looking for either TABC violations or violations of the City Code.

While Detective McLellan was inspecting the TABC permits, Mr. Perez continued to clean the area behind the bar and then began to question the Detective on why he was harassing this particular bar. Detective McLellan observed while Mr. Perez was speaking that there was a strong odor of an alcoholic beverage on his breath and that he appeared intoxicated. Detective McLellan requested Mr. Perez produce his identification. Mr. Perez fumbled through his wallet and passed his identification several times, before handing it to the Detective. Detectives Holguin and Orta began speaking with Mr. Perez and eventually placed him in custody and took him outside.

While outside Mr. Perez asked that his wife be called since she was the owner of the Monterrey Lounge and was just down the street. At that time Mr. Perez told Detective McLellan that

he was only drinking O'Doul's, a non-alcoholic beer, but later changed his story and admitted to drinking " a few beers."

Detective McLennan was of the opinion that Mr. Perez was a danger to himself or others and did not have full use of his mental and physical faculties because of the introduction of alcohol into his system. Mr. Perez was issued a citation and Mrs. Perez was informed that an administrative action would be taken against Monterrey Lounge because an intoxicated employee was on the premises.

(2.) Detective Richard Holguin

Detective Holguin also testified at the hearing. He has been a Detective for six years and a San Antonio Police Officer for 28 years, and he testified that he went with Detectives McLellan and Orta to Monterrey Lounge on June 23, 1999 and observed Mr. Perez standing behind the bar. Detective Holguin observed that Mr. Perez was swaying as he stood, was mumbling, thick-tongued as he spoke, and appeared intoxicated.

(3.) Dora Perez

Mrs. Dora Perez was in charge of the bar that evening and it was closed. She testified that when the Detectives had arrived she was across the street with her son, but that when she had left, her husband, Estanlio Perez was not behind the bar, but on the other side watching television. Mrs. Perez testified that her husband was not intoxicated but had been drinking both O'Doul's and beer.

(4.) Estanlio Perez

Mr. Estanlio Perez stated that he was not behind the bar when the Detective arrived, but was sitting on the outside of the bar watching television. He testified that he told the Detective that he was alternating one O'Doul's and one beer.

C: Analysis

TABC has the burden to show that it is more likely than not that Respondent's employee

or agent was intoxicated while on the licensed premises. TABC met that burden. Detectives McLellan and Holguin determined that Mr. Perez was intoxicated while an employee of Monterrey Lounge. Both Detectives saw Mr. Perez behind the bar, straighten up or cleaning the bar area, as they entered Monterrey Lounge that evening. And both testified to sufficient indicators of intoxication, along with Mr. Perez's admissions of drinking, could lead any reasonable person to the conclusion that Mr. Perez was intoxicated while on the premises. The officers' testimony is credible because there was no plausible reason given by Respondent that would explain why the police were so biased against Respondent that they would commit perjury.

Mrs. Perez cannot testify as to where her husband was located when the Detectives entered the Monterrey Lounge, by her own admissions she was across the street when they arrived.

Mrs. Perez's testimony that the bar was closed at 9:20 p.m. is simply not credible. On cross examination, Mrs. Perez admitted that the doors were open and that the bar usually closes at around 11:00 p.m.

D. Recommendation

When TABC is authorized to suspend a permit or a license, it must give the permittee an opportunity to pay a civil penalty in lieu of suspension. The amount may not be less than \$150 or more than \$25,000 for each day the permit was to have been suspended. If the penalty is not paid before the sixth day after TABC notifies him of the amount, the permittee loses the opportunity to pay it and TABC is required to impose the suspension. In this case, TABC requested a 45 day suspension, but also asked that Respondent be allowed to pay the minimum civil penalty in lieu of suspension as provided in TEX. ALCO. BEV. CODE ANN. §11.64(a).

The ALJ recommends that Respondent's license be suspended for 7 days. However, the ALJ recommends that Respondent be given an opportunity to pay a civil penalty in the amount of \$1,050.00 in lieu of suspension before the sixth day after TABC notifies Mrs. Perez of its order.

III. PROPOSED FINDINGS OF FACT

Dora Perez d/b/a Monterrey Lounge (Respondent) holds a Wine and Beer Retailer's

Permit, BG-424862, issued by the Texas Alcoholic Beverage Commission (TABC).

2. On April 3, 2000, TABC timely sent Notice of Hearing by certified mail, return receipt requested to Respondent Dora Ellia Perez, at 401 Arbor Place, San Antonio, Texas, 78207. The Notice of Hearing informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the date and place of the hearing, and a brief statement of the issues, and the statutes and rules involved.

3. The hearing was held on May 31, 2000, at the State Office of Administrative Hearings (SOAH), located at 1015 Jackson Keller, Suite 102-B, San Antonio, Texas with Administrative Law Judge (ALJ) Leah Davis Bates presiding. Dewey Brackin, an attorney with TABC, appeared to represent TABC and Mrs. Perez appeared to represent herself. The record closed on May 31, 2000.

4. On June 23, 1999, Mr. Estanlao Perez, Respondent's employee or agent, was intoxicated while in Monterrey Lounge, a licensed premise.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 104.01.

2. The State Office of Administrative Hearings has jurisdiction over all matters relating 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 the Respondent, pursuant to TEX. GOV'T CODE ANN. Ch. 2001.

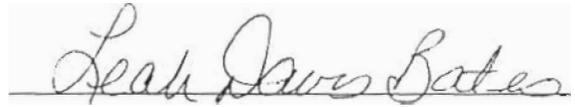
4. Based on the foregoing Findings of Fact, Respondent's employee was intoxicated while

in Monterrey Lounge, the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. §104.01(5).

5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine and Beer Retailer's Permit, BG-424862 should be suspended for seven days.

6. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to TEX. ALCO. BEV. CODE ANN. §11.61, Respondent should be permitted to pay a civil penalty of \$1,050.00 in lieu of the suspension of her license.

Signed this 21st day of August, 2000.



LEAH DAVIS BATES

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE

HEARINGS