NOV 17 2003

SOAH DOCKET NO. 458-03-3200

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
V.	§	OF
RUTH MARROQUIN D/B/A THE OTHER PLACE, Respondent PERMIT NOS. MB-235880 & LB-235881 HIDALGO COUNTY, TEXAS (TABC CASE NO. 604328)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) seeks suspension of the mixed beverage permits held by Ruth Marroquin d/b/a The Other Place (Respondent) because of allegations that Respondent violated the Texas Alcoholic Beverage Code. This proposal finds that the Staff's allegations are true. The Administrative Law Judge (ALJ) recommends suspension of the permits.

I. PROCEDURAL HISTORY & JURISDICTION

Notice and jurisdiction were not contested in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion.

On July 21, 2003, a hearing was convened before ALJ Melissa M. Ricard, at the Texas Alcoholic Beverage Commission Offices, Nightingale Plaza, 6521 N. 10th Street, McAllen, Hidalgo County, Texas, 78504. Staff was represented by Dewey A. Brackin, Staff Attorney. Respondent was represented by its counsel Jaime J. Munoz, and appeared through Rene Marroquin, successor in interest to the permits. The record closed on September 15, 2003.

II. DISCUSSION

A. Applicable Law

The Texas Alcoholic Beverage Commission (TABC) may cancel or suspend Respondent's mixed beverage permits if it finds that Respondent violated the Texas Alcoholic Beverage Code (the Code) or TABC rule. § 11.61(b)(2) of the Code. The applicable provision of the Code states that Respondent may not permit, nor may its agents, servants or employees engage in, conduct on Respondent's premises "which is lewd, immoral, or offensive to public decency, including . . . the exposure of person or permitting a person to expose his person," § 104.01(2) of the Code, and including "solicitation of any person to buy drinks for consumption by the retailer or any of his employees." § 104.01(4) of the Code.

B. Evidence

Respondent's licensed premises is located at 1000 W. Ferguson, Pharr, Hidalgo County, Texas. Respondent holds mixed beverage permit MB2358880 and mixed beverage late hours permit LB235881.

TABC Agent Sargent Mario Villarreal and McAllen Police Department Agent Bobby Zepeda of the Combined Drug Enforcement and Special Crimes Taskforce testified at the hearing. Their testimony was undisputed. On February 13, 2003, at approximately 10:20 p.m., the Agents were conducting a undercover operation at the licensed premises. The Agents were wearing beards and not displaying badges. They did not introduce themselves as law enforcement officers to anyone at

the establishment.

The premises provides entertainment in the form of topless female dancers. Upon entering the establishment, the Agents were escorted to the seating area and the bar tender on duty, later identified as Cedillo Lopez, asked the Agents for their drink orders. Agent Villarreal ordered and was provided two beers. There were about four other patrons and six dancers in the establishment at the time. Two females who were dancers at the establishment approached the table where the Agents were seated, and sat with them. The women introduced themselves to the Agents as "Ruby" and "Maricela." Ruby, later identified as Blanca Estella Rivera, had been dancing on stage when the Agents had arrived. Maricela was later identified as Consuelo Bonilla Velasquez.

Mr. Lopez approached the table and asked Agent Villarreal if he would like to buy the women a drink. When Agent Villarreal initially stated no, Mr. Lopez asked the Agent if he was sure. At that point, Agent Villarreal did answer affirmatively, and provided money to pay for the women's drinks. The drinks, known as "house drinks" were provided to the women by the bar tender and consumed at the table.

Ms. Rivera asked Agent Villarreal if he would like to pay for a table dance. The Agent answered affirmatively, and Ms. Rivera led him to a secluded part of the establishment where table dances are performed. Ms. Rivera stood in front of Agent Villarreal, removed her top, spread open his legs and performed the table dance. At one point during the dance, Ms. Rivera reached down to her g-string thong and pulled it aside exposing her genitalia. Agent Villarreal believed the act was intentional because of the way she reached down with her fingers and the duration of the exposure

which he estimated to be 2-3 seconds. At the end of the dance, Agent Villarreal paid Ms. Rivera ten dollars and they returned to table where Agent Zepeda and Ms. Velasquez were seated.

While seated all together, the women asked the Agents to purchase another drink for them. The Agents did so. The house drinks were brought to the table and consumed by the women. The Agents each drank another beer and then left establishment. The Agents remained in an undercover capacity the entire time they were in the establishment. The Agents did not contact any management of the establishment during this visit in order to maintain the integrity of their undercover operation. Agent Villarreal testified that he is not required to contact management even though he had witnessed a violation of law. Both Agents recognized an individual identified at the hearing as Mr. Marroquin as being behind the bar on that evening.

Later that same evening, TABC Agent Joe Cavazos, with gun and badge displayed, entered the establishment, identified the women and the bar tender.

Mr. Rene Marroquin is the manager of the establishment and the successor in interest for the TABC permits. Mr. Marroquin testified that the women were employees at the establishment on the evening in question, although the establishment did not pay the women to be dancers. Mr. Marroquin did not see the Agents at the establishment although Mr. Marroquin was on the premises that evening. He received no notice of any violations of law from anyone and had no knowledge of any violation of law that evening. Mr. Marroquin testified that anyone could be a dancer at the establishment if they showed up and wanted to dance.

The record remained open until September 15, 2003, to allow both parties to make written final arguments.

The Respondent was subject to an administrative suspension of its licenses in 1999 due to a finding of public lewdness and exposure of a person. The suspension was for ten days.

C. Analysis, Conclusion, and Recommendation

The facts of this case were undisputed therefore the ALJ finds the factual allegations asserted by the TABC true. Respondent argues that the dancers were not employees of the Respondent and that Respondent should not be held accountable for their acts. Respondent further argued entrapment.

Although Respondent argued that Ms. Rivera and Ms. Velasquez were not employees, Mr. Marroquin testified that they were employees, accordingly, under §104.01 of the Code, Respondent is liable for their actions. Mr. Lopez' relationship with the establishment was undisputed, therefore Respondent is liable for his actions as well.

Respondent argues entrapment because the wrong acts occurred after the Petitioner provided alcoholic beverages to the Agents. Respondent argues that since the purchase of alcoholic beverages was conducted in an effort to induce or allow the subsequent acts, the Respondent should not be held liable. The record does not include any facts which could be construed that the Agents induced any actions by simply purchasing alcoholic beverages.

Therefore, the ALJ finds that the Commission proved that the Respondent violated §§ 104.01(2) and (4) of the Code. The ALJ recommends a ten day suspension for the offense of solicitation of an alcoholic beverage. Due to the prior administrative action against the Respondent, the ALJ recommends a twenty day suspension for the offense of exposure of a person. Therefore, The ALJ recommends a total of thirty days suspension or a civil penalty of $150 per day in lieu of suspension.

III. FINDINGS OF FACT

1. Respondent's licensed premises is located at 1000 W. Ferguson, Pharr, Hidalgo County, Texas.

2. Respondent holds TABC mixed beverage permit MB2358880 and TABC mixed beverage late hours permit LB235881.

3. On April 14, 2003, the Staff sent Respondent a complaint alleging that on February 13, 2003, Respondent's employee, had allegedly exposed her genitalia and that Respondent's employee had solicited alcoholic beverages.

4. On May 20, 2003, Staff issued a notice of hearing notifying all parties that a hearing would be held concerning Staff's allegations and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.

5. The hearing was held on July 21, 2003, before Melissa M. Ricard, an administrative law judge with the State Office of Administrative Hearings (SOAH) at the Texas Alcoholic Beverage Commission Offices, Nightingale Plaza, 6521 N. 10th Street, McAllen, Hidalgo County, Texas, 78504. Staff was represented by Dewey A. Brackin, Staff Attorney. Respondent was represented by its counsel Jaime J. Munoz, and appeared through Rene Marroquin, successor in interest. The record closed on September 15, 2003.

6. On February 13, 2003, TABC Agent Sargent Mario Villarreal and McAllen Police Department Agent Bobby Zepeda of the Combined Drug Enforcement and Special Crimes Taskforce conducted a undercover operation at the licensed premises.

7. The bar tender on duty, Cedillo Lopez, asked the Agents to purchase alcoholic beverages for two females who were dancers at the establishment. The Agents purchased the drinks and the women consumed them.

8. Ms. Blanca Estella Rivera, a dancer at the establishment that evening, performed a table dance for TABC Agent Villarreal. During the dance, Ms. Rivera reached down to her g-string thong and pulled it aside exposing her genitalia.

9. Ms. Rivera and Ms. Consuelo Bonilla Velasquez, another dancer at the establishment, asked the Agents to purchase a second alcoholic drink for them. The Agents purchased another drink for each woman and the women consumed the drinks.

10. Mr. Lopez, Ms. Rivera and Ms. Velasquez were employees of the establishment on February 13, 2003.

11. In 1999, Respondent's TABC permits were administratively suspended for ten days for a finding of public lewdness and exposure of a person.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).

2. SOAH has jurisdiction over all matters relating to the conduct of 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. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

4. Based on Findings of Fact Nos. 7, 9 and 11, the Respondent violated §§ 104.01(4) of the Code.

5. Based on Conclusion of Law No. 4, the Respondent violated § 11.61(b)(2) of the Code.

6. Based on the foregoing findings and conclusions, Respondent's permit's should be suspended for ten days.

7. Based on Findings of Fact Nos. 8 and 11, the Respondent violated §§ 104.01(2) of the Code.

8. Based on Conclusion of Law No. 7, the Respondent violated § 11.61(b)(2) of the Code.

9. Based on the foregoing findings and conclusions and on Finding of Fact No. 11, Respondent's permit's should be suspended for twenty days.

10. Based on the Findings of Fact and the above Conclusions of Law, the Respondent's permits should be suspended for thirty days, or in the alternative, Respondent should be required to pay a civil penalty of $ 4,500.00 in lieu of suspension.

SIGNED NOVEMBER 14, 2003.

MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 604328

IN RE RUTH MARROQUIN	§	BEFORE THE
D/B/A THE OTHER PLACE	§	
PERMIT NO. MB-235880 & LB-235881	§	
	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-3200)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on July 21, 2003, and the record was closed on September 15, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 14, 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 exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision 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 Mixed Beverage Permit No. MB-235880 and Mixed Beverage Late Hours Permit No. LB-235881 are hereby **SUSPENDED.**

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **$4,500.00** on or before the **18th day of February, 2004**, all rights and privileges under the above described permits will be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 25th day of February, 2004.**

This Order will become final and enforceable on January 7, 2004, 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 December, 2003.

On Behalf of the Administrator,

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Melissa M. Ricard
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE : (361) 884-5427

Jaime Munoz
ATTORNEY FOR RESPONDENT
412 W. Bus. Hwy. 83
San Juan, Texas
VIA VACISMILE: (956) 787-9175

Ruth Marroquin
RESPONDENT
1000 W. Ferguson
Pharr, Texas 78577
CERTIFIED MAIL NO. 7001 2510 0003 8687 2196
RETURN RECEIPT REQUESTED

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

McAllen District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 604328 **REGISTER NUMBER:**

NAME: Ruth Marroquin **TRADENAME: The Other Place**

ADDRESS: 1000 W. Ferguson, Pharr, Texas 78577

DATE DUE: February 18, 2004

PERMITS OR LICENSES: MB-235880 & LB-235881

AMOUNT OF PENALTY: $4,500.00

Amount remitted $_____ Date remitted _____

If you wish to a 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 18TH DAY OF FEBRUARY, 2004, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

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.