

DOCKET NO. 606906

IN RE MARIO ALEXANDER CRUZ, ET AL	§	BEFORE THE
D/B/A MARIO'S RESTAURANT &	§	
DISCOTECA	§	
PERMIT/LICENSE NOS. BE518459,	§	
BL518460	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-3807)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis W. Cranz. The hearing convened on March 24, 2005, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 3, 2005. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 Respondent's permits be **SUSPENDED for fifteen (15) days**.

IT IS THEREFORE ORDERED that unless Respondent pays a civil penalty in the amount of **\$2,250.00** on or before the **6th day of July, 2005**, all rights and privileges under the above described permits will be **SUSPENDED for a period of fifteen (15) days, beginning at 12:01 A.M. on the 13th day of July, 2005**.

This Order will become final and enforceable on June 10, 2005, 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 20th day of May, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Phyllis W. Cranz
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Mario Alexander Cruz et al
d/b/a Mario's Restaurant & Discoteca
RESPONDENT
1407 E. Abram Street
Arlington, Texas 76010-7212
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 2990

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Fort Worth District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 606906

REGISTER NUMBER:

NAME: MARIO ALEXANDER CRUZ, ET AL

TRADENAME: MARIO'S RESTAURANT & DISCOTECA

ADDRESS: 1407 E. ABRAM ST., ARLINGTON, TEXAS 76010-7212

DATE DUE: July 6, 2005

PERMITS OR LICENSES: BE518459, BL518460

AMOUNT OF PENALTY: \$2,250.00

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 OF \$2,250.00 ON OR BEFORE THE 6TH DAY OF JULY 2005, 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.

DOCKET NO. 458-05-3807

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

V.

**MARIO ALEXANDER CRUZ, ET. AL. D/B/A
MARIO'S RESTAURANT & DISCOTECA
TARRANT COUNTY, TEXAS
(TABC CASE NO. 606906),
Respondent**

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BEFORE THE STATE OFFICE

OF

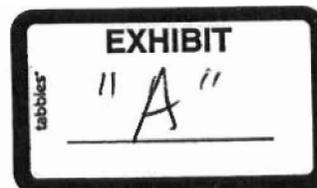
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Mario Alexander Cruz and Elvia De Jesus Cruz d/b/a Mario's Restaurant & Discoteca (Respondent). Petitioner sought suspension of Respondent's permits alleging Respondent employed a person under the age of 18 years old to sell, handle, or dispense beer, or to assist in doing so in the licensed premises. For the reasons discussed in this proposal, the Administrative law Judge (ALJ) recommends that Respondent's permit be suspended.

I. PROCEDURAL HISTORY

On February 8, 2005, Petitioner issued its notice of hearing, directed to Respondent's address of record, 1407 East Abram Street, Arlington, Tarrant County, Texas 76010-7212, via certified mail, return receipt requested. The notice of hearing contained a statement of time, place, and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing was to be held, a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted as required by TEX. GOV'T CODE ANN. § 2001.052. The hearing was held on March 24, 2005, at the Fort Worth field office of the State Office of Administrative Hearings (SOAH), 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas, before Phyllis Crazz, an Administrative Law Judge (ALJ). TABC staff appeared and were represented by Timothy Griffith, TABC Staff Attorney. Respondent was represented by Mario



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PROPOSAL FOR DECISION

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Alexander Cruz. There were no challenges to the notice of hearing, jurisdiction, or venue. The hearing concluded on March 24, 2005, and the record closed that same day.

II. JURISDICTION

TABC has jurisdiction and authority over this matter pursuant to Subchapter B, TEX. ALCO. BEV. CODE ANN., Chapter 6, § 6.01, and Chapter 61. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN., ch. 2001.

III. DISCUSSION

A. Applicable Law

TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(12) to cancel or suspend Respondent's license for the retail sale or service of alcoholic beverages if the Respondent has employed a person under 18 years of age to sell, handle, or dispense beer, or assist in doing so, in an establishment where beer is sold for on-premises consumption.¹ In the event the Respondent's basic or primary license is suspended or canceled, any secondary license will be suspended or canceled.²

¹ TEX. ALCO. BEV. CODE ANN. §61.71(a)(12) (Vernon 1995 and Supp. 2004-2005) states that:
GROUNDS FOR CANCELLATION OR SUSPENSION: RETAIL DEALER.

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on-or off-premise license if it is found, after notice and hearing that the licensee:

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

² TEX. ALCO. BEV. CODE ANN. §61.03(c) (Vernon 1995 and Supp. 2004-2005) states that:
EXPIRATION OF SUSPENSION OF LICENSE.

(c) An action by the commission resulting in the suspension of a basic or primary license also acts to suspend any secondary license held by the holder of the basic or primary license.

All provisions of the code also apply to a late hours license.³

B. Evidence

TABC staff alleged that Respondent is the holder of a Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640 issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC "Exhibit 1" establish that a Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640 were issued to Respondent by TABC on July 8, 2002.

TABC staff alleged that Respondent, on or about August 8, 2003, employed two persons under the age of 18 years, Ashlie Nicole Santos and Michelle Villarreal, to sell, handle, or dispense beer or to assist in doing so.

Ms. Santos appeared and testified under oath that from August 8, 2003 thru August 17, 2003, she worked at Mario's Restaurant & Discoteca as a waitress. She stated that she was 15 years old at the time, took orders for various brands of beer and served them. She further testified that Mario Cruz told her to say that she was 19 years old if the police asked.

Michelle Villarreal appeared and testified under oath that from August 8, 2003 thru August 17, 2003, she worked at Mario's Restaurant & Discoteca as a waitress. She stated that she was 16 years old at the time, took orders for various brands of beer and served them. She further testified that Mario Cruz told her to say that she was 19 years old if the police asked.

Both witnesses stated that they told the police the same facts when asked. Mario Cruz asserted that Ms. Villarreal's mother had told him that she was old enough to work, but no age was specified. Ms. Villarreal refuted this stating that he had never spoken with her mother who had only picked up her last check.

³ TEX. ALCO. BEV. CODE ANN. §70.03 (Vernon 1995 and Supp.2004-2005) states that:
APPLICATION OF CERTAIN CODE PROVISIONS. All provisions of this code which apply to a retail dealer's on-premise license also apply to a retail dealer's on-premise late hours license.

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PROPOSAL FOR DECISION

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Mario Cruz testified under oath and did not refute that he had hired the two witnesses during August, 2003. Mr. Cruz did not offer any evidence that he had ascertained the specific age of either of the two witnesses. Both witnesses had a very youthful appearance on the day of the hearing.

Mr. Cruz testified that the two witnesses, Ashlie Nicole Santos and Michelle Villarreal, had wanted to stay at the licensed premises after midnight one night and were told they could not. Subsequently, they quit and reported him to the TABC staff and police.

During the rebuttal testimony, the two witnesses refuted Mr. Cruz's testimony claiming they had quit because Mr. Cruz was touching them inappropriately.

C. Analysis, Conclusion, and Recommendation

The relevant facts are clear. Respondent holds a Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640.

The Respondent hired the two witnesses, Ashlie Nicole Santos and Michelle Villarreal, during August 2003. The two witnesses took orders for and served alcoholic beverages, *i.e.* beer. The two witnesses were under 18 years of age in August 2003.

TABC Staff has requested a 30 day suspension or in lieu of the suspension, payment of a \$4500 penalty.⁴ This request departs from the TABC's Standard Penalty Chart⁵ in that a first violation for employing a person under 18 years of ages provides a recommended 5 to 7 day suspension. The Standard Penalty Chart is not binding in a SOAH hearing, and any penalty recommended must be based on the record.⁶ The Respondent's prior violation history contains 3

⁴ TEX. ALCO BEV. CODE §11.64 (Vernon 1995 and Supp. 2004-2005) ALTERNATIVES TO SUSPENSION, CANCELLATION.

⁵ 16 TEX. ADMIN. CODE §37.60 (Vernon 1995 and Supp. 2004-2005) (Tex. Alco. Bev. Comm'n., Standard Penalty Chart).

⁶ *Id.*, §37.60 (g).

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PROPOSAL FOR DECISION

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citations which were not argued as enhancing factors. This violation does represent employing 2 persons under 18 years of age. After considering the evidence and testimony presented, the requested suspension time appears excessive.

Accordingly, the ALJ recommends that Respondents's Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640 be suspended for 15 days or a penalty of \$2250.00 be paid.

IV. FINDINGS OF FACT

1. Mario Alexander Cruz and Elvia De Jesus Cruz d/b/a Mario's Restaurant & Discoteca, (Respondent) are the holders of a Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640 which were issued on July 8, 2002, by TABC.
2. Respondent's permits were issued for the premises located at 1407 East Abram Street, Arlington, Tarrant County, Texas 76010-7212.
3. On August 8, 2003, Respondent employed two persons who were under 18 years of age who took orders and served alcoholic beverages, namely various types of beer
4. On February 8, 2005, Petitioner issued its Notice of Hearing to Respondent concerning this violation at its address of record, 1407 East Abram Street, Arlington, Tarrant County, Texas 76010-7212, via certified mail, return receipt requested.
5. On March 24, 2005, a hearing convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Mario Alexander Cruz.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapters 5,6, and 61.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision

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PROPOSAL FOR DECISION

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with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN., ch. 2001.

3. Respondent received proper notice of hearing. TEX. GOV'T CODE ANN. §2001.052.
4. Based upon Finding of Fact Number 3, Respondent violated TEX. ALCO. BEV. CODE ANN. § 61.71(a)(12).
5. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's Beer Retailer's On-Premises License BE518459 and a Retail Dealer's On-Premises Late Hours License BL518640 should be suspended for 15 days or a penalty of \$2550.00 paid in lieu of suspension.

ISSUED ON MAY 3, 2005.



PHYLIS CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: Mario Alexander Cruz et al d/b/a Mario's Restaurant & Discoteca
DOCKET NUMBER: 458-05-3807
AGENCY CASE NO: 606906

Timothy Griffith
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 972/547-5093
Ph: 972/547-5092

AGENCY COUNSEL
BY FAX

Mario Alexander Cruz et al
d/b/a Mario's Restaurant & Discoteca
1407 E. Abram Street
Arlington, TX 76010-7212

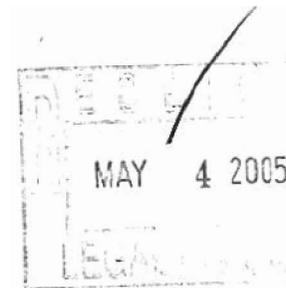
RESPONDENT
BY MAIL

As of May 4, 2005

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



May 4, 2005

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Mario Alexander Cruz, et al
d/b/a Mario's Restaurant & Discoteca
1407 E. Abram Street
Arlington, Texas 76010-7212

VIA REGULAR MAIL

RE: Docket No. 458-05-3807; Texas Alcoholic Beverage Commission vs Mario Alexander Cruz, et al
d/b/a Mario's Restaurant & Discoteca (TABC Case No. 606906)

Dear Mr. Steen:

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Respondent, Mario Alexander Cruz d/b/a Mario's Restaurant & Discoteca. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Mario Alexander Cruz and Elvia De Jesus Cruz d/b/a Mario's Restaurant & Discoteca (Respondent). Petitioner sought suspension of Respondent's permits alleging Respondent employed a person under the age of 18 years old to sell, handle, or dispense beer, or to assist in doing so in the licensed premises. For the reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended.

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Phyllis W. Cranz
Administrative Law Judge

6777 Camp Bowie Blvd., Suite 400 ♦ Fort Worth, Texas 76116
(817) 731-1733 Fax (817) 377-3706
<http://www.ssoah.state.tx.us>