

DOCKET NO. 610512

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § §	BEFORE THE
VS.	§	
LARAMITA INC. D/B/A LA RAMITA LOUNGE COUNTRY BRANCH PERMIT/LICENSE NOS. MB203061, LB203062, PE203063 BELL COUNTY, TEXAS (SOAH Docket No. 458-05-6467)	§ § § § § § § §	TEXAS ALCOHOLIC BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of August, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on the 6th day of June, 2005 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 28th day of July, 2005. The Proposal For Decision, attached 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 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 permits and/or licenses will be **SUSPENDED for ten (10) days beginning at 12:01 A.M. on the 26th day of October, 2005, unless Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 19th day of October, 2005.**

This Order will become final and enforceable on **6th day of September, 2005**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this 16th day of August, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CG\bc

The Honorable Suzan Moon Shinder, ALJ
State Office of Administrative Hearings
Waco, Texas
VIA FAX (254) 750-9380

LARAMITA INC.
RESPONDENT
d/b/a LA RAMITA LOUNGE COUNTRY BRANCH
905 RAMBLEWOOD DR
HARKER HEIGHTS, TX 76548
CERTIFIED MAIL NO. 7005 0390 0005 7550 3009

Christopher Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 610512

REGISTER NUMBER:

NAME: LARAMITA, INC.

TRADENAME: LA RAMITA LOUNGE

ADDRESS: 905 RAMBLEWOOD DR, HARKER HEIGHTS, TX 76548

DATE DUE: OCTOBER 19, 2005

PERMITS OR LICENSES: MB203061, LB203062, PE203063

AMOUNT OF PENALTY: \$1,500.00

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 19TH DAY OF OCTOBER 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.

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Suite 750, in Waco, Texas. The Staff appeared through its attorney Christopher Gee. The Respondent appeared through its representative, Guadalupe Carrillo. After evidence and argument, the record closed the same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code §11.61 (b)(14), the Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that the permittee sold or delivered an alcoholic beverage to an intoxicated person.

Pursuant to Code §1.04 (11) "permittee" means a person who is the holder of a permit, or an agent, servant, or employee of that person. Pursuant to Code §1.04 (6), "person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them. Pursuant to Code §11.61 (a), "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

Pursuant to 16 TEX. ADMIN. CODE (the Rules) §37.60(a) (the Standard Penalty Chart), settlements offered to persons charged with violating the Code are to be in compliance with the Standard Penalty Chart, and a violation of Code §11.61 (b)(14) should lead to the suspension of the permit for 10-15 days for a first violation, 15-30 days, for a second violation, and 30 days suspension to cancellation of the permit, for a third violation.¹

The length of a suspension, and the amount of a civil penalty as an alternative to suspension, must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension,² and the amount of a civil penalty,³ the Commission shall consider: the type of permit;

¹ This is persuasive, and not controlling, in this instance.

² Code § 11.61(g).

³ Code § 11.641.

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the type of violation; aggravating or ameliorating circumstances concerning the violation; and previous violations.*

Pursuant to Code § 11.64, if the permittee is given the opportunity to pay a civil penalty rather than have the permit suspended, the amount of the civil penalty may not be less than \$150.00 for each day the permit or license was to have been suspended.

III. SUMMARY OF THE EVIDENCE

The Staff alleged that on or about May 22, 2004, the Respondent, its agent, servant, or employee, sold or delivered an alcoholic beverage to an intoxicated person, in violation of Code § 11.61(b)(14). The Staff called two witnesses, Texas Alcoholic Beverage Commission (TABC) agents Daniel Ochoa and Daniel Garcia; and, their one exhibit, the Respondent's permits and violation history, was admitted. The Respondent rested without putting on any evidence. The Staff recommended a ten-day suspension of the Respondent's permits. The following is a summary of the most credible evidence in this case.

A Mixed Beverage Permit, MB-203061, Mixed Beverage Late Hours Permit, LB-203062, and Beverage Cartage Permit, PE-203063, were issued to Laramita Inc., doing business as La Ramita Lounge Country Branch, 534 East Veterans Memorial Boulevard, Harker Heights, Bell County, Texas, by the Commission, on October 6, 1988, and have been continuously renewed. The Respondent's violation history included a suspension in 2001, for "Intoxicated Permittee on Licensed Premises" (Code §11.61(b)(13)), and a suspension in 2000, for "Sale of (Alcoholic

* Aggravating or ameliorating circumstances include that the violation could not reasonably have been prevented by the permittee by the exercise of due diligence; that the permittee was entrapped; that an agent, servant, or employee of the permittee violated the Code without the knowledge of the permittee; that the permittee did not knowingly violate the Code; that the permittee demonstrated good faith, including the taking of actions to rectify the consequences of the violation and to deter future violations; or that the violation was a technical one. The length of a suspension and the amount of a civil penalty must not be based on the volume of alcoholic beverages sold; the receipts of the business; the taxes paid; or the financial condition of the permittee.

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Beverage) to Intoxicated Person" (Code §101.63).⁵

It was not contested that, on May 22, 2004, at approximately 12:30 a.m., a Commission "under-cover" agent observed the Respondent, by its bartender Nadia Marie Iracarry, selling alcohol to an adult male who was highly intoxicated, as evidenced by the man's physical appearance and his behavior. Based on the observations of the under-cover agent,⁶ the man swayed as he stood and walked; he held onto various physical objects for support to stand; it took him several seconds to get his billfold out of his pocket, and when he finally extricated his billfold, he threw his money on the bar, instead of placing it on the bar, to pay for his beer; his clothes were in disarray; his hair was not combed; and his eyes were extremely red. The under-cover agent called Commission Agent Daniel Garcia to the premises and reported his observations to the agent. Agent Garcia arrived less than five minutes after he was called to the scene, and the under-cover agent pointed out the intoxicated man who had been sold alcohol by the bartender. Agent Garcia observed that the man's speech was slurred and low; he swayed side to side as he stood; his breath smelled strongly of an alcoholic beverage; his eyes were red and glassy; he swayed into Agent Garcia several times; and his sway was so exaggerated that it appeared he might fall down. As a result of the foregoing, the man was arrested for Public Intoxication. Agent Garcia testified that a ten-day suspension or a \$1500.00 civil penalty would be appropriate in this case.⁷

IV. ANALYSIS

Based on uncontradicted, credible evidence, the Respondent sold an alcoholic beverage to an intoxicated person, in violation of Code §11.61 (b)(14). Based on this, on a review of the Respondent's violation history, on the testimony of Agent Garcia, and on argument, this Proposal for Decision recommends a ten-day suspension, or a civil penalty of \$150.00 per day in lieu of suspension.

Staff's Exhibit No. 2; despite its number, this was the only exhibit tendered by the Staff.

⁶ Commission Agent Ochoa.

The foregoing is based on the testimony of Commission Agent Ochoa and Commission Agent Daniel Garcia.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. A Mixed Beverage Permit, MB-203061, Mixed Beverage Late Hours Permit, LB-203062, and Beverage Cartage Permit, PE-203063, were issued to Laramita Inc., d/b/a La Ramita Lounge Country Branch, 534 East Veterans Memorial Boulevard, Harker Heights, Bell County, Texas, by the Commission, on October 6, 1988, and have been continuously renewed.
2. On May 22, 2004, at approximately 12:30 a.m, a Commission "under-cover" agent observed the Respondent, by its bartender Nadia Marie Iracarry, selling alcohol to an adult male who was highly intoxicated.
3. The Respondent's violation history included a suspension in 2001 for "Intoxicated Permittee on Licensed Premises" (Code §11.61(b)(13)), and a suspension in 2000 for "Sale of (Alcoholic Beverage) to Intoxicated Person" (Code §101.63).
4. On May 17, 2005, the Staff sent a Notice of Hearing by certified mail to the Respondent at the Respondent's last known address.
5. The Staff's notice of the hearing on the merits informed the Respondent of the date, time, and place of the hearing; the factual allegations; the statutes and rules involved; and the legal authorities under which the hearing was to be held.
6. On June 6, 2005, a public hearing was held before Suzan Shinder, Administrative Law Judge (ALJ), at the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, in Waco, Texas. The Staff appeared through its attorney Christopher Gee. The Respondent appeared through its representative, Guadalupe Carrillo. After evidence and argument, the record closed the same day.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) Ch. 5, Subch. B.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. (Government Code) ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedures Act, Government Code ch. 2001.

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4. Based on the foregoing findings and conclusions, on or about May 22, 2004, the Respondent, by its agent, servant, or employee, sold an alcoholic beverage to an intoxicated person, in violation of Code § 11.61(b)(14).
5. Based on the foregoing findings and conclusions, this Proposal for Decision recommends a ten-day suspension, or a civil penalty of \$150.00 per day in lieu of suspension.

Signed July 28, 2005.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS