

DOCKET NO. 611364

IN RE VICTOR ORLANDO MORALES	§	BEFORE THE
D/B/A MESON MAYA	§	
PERMIT/LICENSE NOS. MB494497,	§	
LB494498, FB494499	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-2990)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of May, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on February 3, 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 April 22, 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/licenses are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on June 2, 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 this 12th day of May, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Kyle Groves
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Victor Orlando Morales
d/b/a Meson Maya
RESPONDENT
5519 E. Grand Ave.
Dallas, Texas 75223
VIA CM/RRR NO. 7000 1530 0003 1929 2792

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

DOCKET NO. 458-05-2990

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

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BEFORE THE STATE OFFICE

V.

**VICTOR ORLANDO MORALES
D/B/A MESON MAYA
PERMIT/CERTIFICATE NOS. MB494497,
LB494498 & FB-494499
DALLAS COUNTY TEXAS
(TABC NO. 611364)**

OF

ADMINISTRATIVE HEARINGS

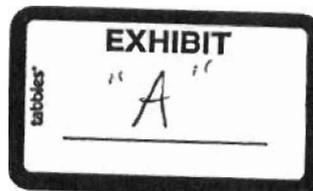
PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Meson Maya (Respondent) seeking cancellation of Respondent's Mixed Beverage Permit MB-494497, Mixed Beverage Late Hours Permit LB-494498 and Food and Beverage Certificate FB-494499. TABC alleged Respondent, or his agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by an invoice in violation of TEX. ALCO. BEV. CODE ANN. § 28.06 (c) and/or (d).

This Proposal for Decision finds the Respondent's permits and certificate should be canceled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter was convened on February 3, 2005. Attorney Timothy Griffith represented TABC. Respondent was represented by Attorney Robert Burns. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.



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PROPOSAL FOR DECISION

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No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

On July 17, 2001, Respondent was issued Mixed Beverage Permit MB-494497, Mixed Beverage Late Hours Permit LB-494498 and Food and Beverage Certificate FB-494499 for Respondent's premises located at 5519 East Grand Avenue, Dallas, Dallas County, Texas.

TABC Agent Jeff Farmer testified that on June 5, 2004, he performed an inspection of Respondent's licensed premises. During the inspection, he found bottles of alcohol that did not contain a local distribution stamp. Respondent testified that a couple of days prior to Agent Farmer's inspection, he held a party at the licensed premises and purchased approximately four bottles of alcohol from another restaurant. He admitted that this was a violation of TABC rules.

III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 28.06 (c) states:

No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

TEX. ALCO. BEV. CODE ANN. § 28.06 (d) states:

The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section.

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IV. ANALYSIS

The evidence was undisputed that Respondent knowingly possessed bottles of alcoholic beverages that did not contain a local distributor's stamp. There was no argument presented by Respondent that the penalty sanctioned by TEX. ALCO. BEV. CODE ANN. § 28.06 (d) was too harsh. Respondent explained the circumstance that caused him to obtain the alcoholic beverages without the distributor's stamp, and he admitted the violation. While Respondent expressed his regret that the violation occurred, the ALJ finds that the penalty stated in TEX. ALCOHOLIC BEVERAGE. CODE § 28.06 (d) should be imposed.

V. PROPOSED FINDINGS OF FACT

1. Meson Maya (Respondent) is the holder of Mixed Beverage Permit MB-494497, Mixed Beverage Late Hours Permit LB-494498, and Food and Beverage Certificate FB-494499 for premises located at 5519 East Grand Avenue, Dallas, Dallas County, Texas.
2. On February 3, 2005, the hearing in this matter convened before ALJ Kyle J. Groves. Timothy Griffith appeared for Petitioner. Respondent was represented by Attorney Robert Burns. The hearing concluded and the record closed on that same day.
3. On July 5, 2004, Respondent knowingly possessed four bottles of alcoholic beverages on the licensed premises that did not contain a local distributor's stamp.
4. Respondent purchased the four bottles of alcoholic beverage from another restaurant.

VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. 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 the Findings of Fact, Respondent, his officer, agent, or employee, knowingly possessed or permitted to be possessed on the licensed premises an alcoholic beverage

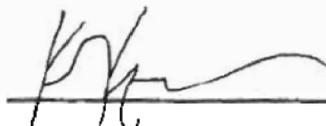
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that was not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Mixed Beverage Permit MB-494497, Mixed Beverage Late Hours Permit LB-494498, and Food and Beverage Certificate FB-494499 should be canceled.

SIGNED APRIL 22ND, 2005

KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: TABC vs. Victor Orlando Morales d/b/a Meson Maya
DOCKET NUMBER: 458-05-2990
AGENCY CASE NO: 611364

Timothy Griffith
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AGENCY COUNSEL
VIA FAX (972) 547-5093

Victor Orlando Morales
d/b/a Meson Maya
5519 E. Grand Ave.
Dallas, TX 75223

RESPONDENT
VIA REGULAR MAIL

as of April 22, 2005

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 22, 2005

APR 22 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-5-2990/TABC Vs. Victor Orlando Morales
D/B/A Meson Maya

Dear Ms. Fox:

Please find enclosed a PROPOSAL FOR DECISION in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "KG", with a long horizontal flourish extending to the right.

Administrative Law Judge
Kyle Groves

KG/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax,
Victor Orlando Morales, D/B/A Meson Maya, Respondent, By Mail