

DOCKET NO. 573438

IN RE RUTH MARROQUIN
D/B/A THE OTHER PLACE
PERMIT NOS. MB-235880, LB-235881

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BEFORE THE

TEXAS ALCOHOLIC

HIDALGO COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-0496)

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of October 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Edel Ruiseco. The hearing convened on June 21, 1999 and adjourned June 21, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 9, 1999. 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.

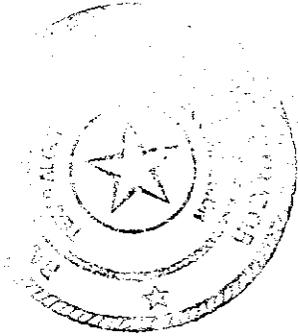
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB-235880 and LB-235881 are hereby **DISMISSED**.

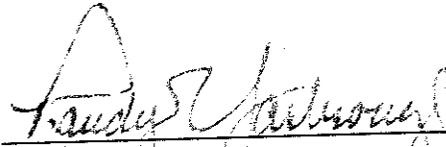
This Order will become final and enforceable on November 15, 1999, unless a Motion for Rehearing is filed before that date.

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 26th day of October 1999.

On Behalf of the Administrator,





Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/smy

The Honorable Edel P. Ruiseco
Administrative Law Judge
State Office of Administrative Hearings
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TEXAS ALCOHOLIC BEVERAGE
COMMISSION
VS.
RUTH MARROQUIN D/B/A
THE OTHER PLACE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Petitioner, Texas Alcoholic Beverage Commission (TABC), through its Staff, seeks to cancel mixed beverage permits held by Ruth Marroquin, d/b/a The Other Place (Respondent). Staff alleged that Respondent, on two occasions, employed minors to work nude or topless. Finding the Petitioner failed to prove that the persons employed as dancers were minors, this proposal recommends no penalty.

REASONS FOR RECOMMENDATION

The hearing for this case was convened before Administrative Law Judge Edel P. Ruiseco (ALJ) on June 21, 1999. Dewey Brackin, Esquire, of TABC's Legal Division represented Staff. The hearing was conducted in McAllen, Texas, and Juan Hinojosa, Esq., represented Respondent. The hearing was closed the same day. The parties were allowed until August 1, 1999, to file proposed findings of fact or briefs, on which date the record was closed.

The parties agreed that the State Office of Administrative Hearings (SOAH) had jurisdiction of the subject matter; that venue was proper in McAllen, Hidalgo County, Texas; and that all parties received notice of the allegations and hearing date.

There is essentially no dispute as to the facts in this case, except that Respondent contends that the dancers employed were not minors as verified through birth certificates.

As outlined in the Findings of Fact, the testimony of the TABC Enforcement Agents Charlotte Ann Knox, Sonia Salinas, and Ida I. Cantu, and the manager for Respondent, Rene Marroquin, all support the ALJ's recommendation.

The undisputed facts are that two female employees of Respondent did, on February 6, 1997, dance topless with their breasts fully exposed on the licensed premises. They danced with the authorization of Respondent.

The Pharr Police Department made a complaint that minors were dancing nude, and TABC sent agents to investigate. The agents were given descriptions of the alleged underage dancers' clothing and they arrested two dancers and the manager, Rene Marroquin. None of the agents saw the dancers dancing nude. The two female dancers were transported to the Pharr Police Department and questioned. Neither dancer was a U.S. citizen or had identification papers or other documents showing their dates of birth. Both dancers gave the same local address, which consisted only of a street name, i.e. Cantu Street, without any specific address. The Pharr Police Department immediately turned over the two dancers to the Immigration and Naturalization Service (INS) for deportation to Mexico. The dancers were deported that same night and have never been seen in the U.S. since that time. The manager stated that the dancers had identification in the form of birth certificates showing that they were 19 and 20, but they did not have any official documentation such as a driver's license or passport. The agents attempted to subpoena the dancers at the unspecified address in Pharr, Texas, but were unsuccessful. No statements were taken by the officers, nor did the dancers sign affidavits declaring their dates of birth or ages, nor were any official police or INS records offered showing the age of the dancers.

In summary, the ALJ finds the Petitioner did not prove that the dancers were minors, nor were any documents offered to show the dates of birth of the two deported dancers.

FINDINGS OF FACT

1. Ruth Marroquin, doing business as The Other Place, located at 1000 W. Ferguson Street, Pharr, Hidalgo County, Texas, was issued a Mixed Beverage Permit, MB235880, and a Mixed Beverage Late Hours Permit, LB235881, on March 5, 1993, and renewed annually thereafter.
2. On March 24, 1999, TABC's Staff sent notice of the hearing to Respondent at her address of record, 1000 West Ferguson, Pharr, TX 78577.
3. The hearing convened on June 21, 1999. Both parties were present and represented by counsel.
4. On February 6, 1997, three TABC agents (Ida I. Cantu, Charlotte Knox and Sonia Sainas) were asked to investigate Respondent by the Pharr Police Department, because it was reported that minors were dancing topless or nude on Respondent's licensed premises.

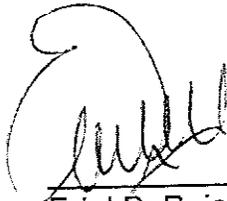
5. On February 6, 1997:
 - a. An officer of the Pharr Police Department entered the premises, saw the topless dancing, and identified two dancers he believed to be minors because of their costumes;
 - b. The officer left the premises, met the TABC agents outside the licensed premises, and provided the description of the dancers to the agents;
 - c. The agents entered the licensed premises, located the dancers on the premises, but did not see them dancing;
 - d. The agents arrested the persons identified by the Pharr Police Officer and took them to the Pharr Police Department for questioning;
 - e. The agents determined that the suspects had no identification or documentation on their persons, and that the suspects were illegal aliens;
 - f. The police department immediately contacted INS, had INS take the suspects into custody and INS processed and deported the suspects to Mexico the same day.
6. The TABC agents obtained information from the dancers regarding their birth dates, citizenship and local address, which was given only as a street in Pharr, Hidalgo County, Texas.
7. Respondent's witness verified the age of the dancers through their birth certificates, which showed that they were over the age of 18 years.
8. No evidence, in the form of official law enforcement records, from either the Pharr Police Department or the INS, was introduced to show the age of the dancers.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §106.14 (Vernon 1998), hereafter the Code.
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 (Vernon 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 AND 2001.052 (Vernon 1998).
4. The Respondent did not violate §43.251 of the Texas Penal Code, or 11.61(b)(7) of the Code and §35.31 of the TABC Rules.

5. The attempt to introduce unauthenticated evidence because of an alleged good faith effort to subpoena the dancers was denied. The effort to subpoena the dancers was not a good faith effort, because the agents did not obtain a correct address and were satisfied only with a street name, without a specific address, in Pharr, Texas, and because the agents knew that the dancers had been deported the same night that they were arrested.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should not be canceled, nor any civil penalty applied.

SIGNED this 8th day of September, 1999.



Edel P. Ruiseco, ALJ, Corpus Christi
State Office of Administrative Hearings