

DOCKET NO. 582397

IN RE ELVA DELATORRE	§	BEFORE THE
D/B/A ARTURO'S NIGHT CLUB #2	§	
PERMIT NO. BG-421232	§	
LICENSE NO. BL-421233	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0877)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of September 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ed Shipper. The hearing convened on May 26, 1999 and adjourned May 26, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 17, 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.

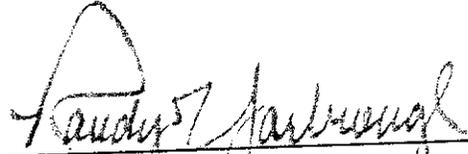
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. BG-421232 and BL-421233 are hereby **SUSPENDED** for **fifteen (15)** days beginning the **17th day of November 1999**, unless a civil penalty is paid in the amount of **\$2,250.00** on or before the **10th day of November 1999**.

This Order will become final and enforceable on October 14, 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 23rd day of September, 1999.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/smy

The Honorable Ed Shipper
Administrative Law Judge
State Office of Administrative Hearings
**VIA FACSIMILE (713) 957-0010 and
REGULAR MAIL**

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Elva Delatorre
RESPONDENT
11410 South Post Oak
Houston, Texas 77035
CERTIFIED MAIL/RRR NO. Z 473 037 533

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 12, 1999

DOYNE BAILEY
ADMINISTRATOR
TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 MESA DRIVE, SUITE 160
AUSTIN, TEXAS 78731

VIA CERTIFIED MAIL P 622 059 255
RETURNED RECEIPT REQUESTED

RE: Docket No. 458-99-0877; Texas Alcoholic Beverage Commission vs. Elva Delatorre d/b/a Arturo's Night Club #2; (Permit No. BG-421232, License No. BL-421233) (TABC No. 582397) 584791

Dear Mr. Bailey:

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 Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Elva Delatorre for Arturo's Night Club #2. For reasons discussed in the proposal, based on the foregoing Findings of Fact and Conclusions of Law, Wine and Beer Retailer's Permit BG-421232, and Retail Dealer's On Premise Late Hour License, BL-421233 held by Elva Delatorre d/b/a Arturo's Night Club #2, 11410 S. Post Oak, Houston, Harris County, Texas, should be suspended for a period of 15 days or Permittee should pay a fine of \$150.00 per day of suspension in lieu thereof.

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. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

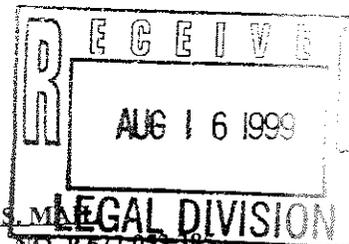
A handwritten signature in cursive script, appearing to read "Ed Shipper".

Ed Shipper
Administrative Law Judge

ES:cj

Enclosures: 1

xc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing - Via Regular U.S. MAIL
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - **CERTIFIED MAIL NO. P 622 053 385**
Elva Delatorre, d/b/a Arturo's Night Club #2, 11410 South Post Oak, Houston, Texas 77035 - **CERTIFIED MAIL**
NO. P 622 053 384, RETURN RECEIPT REQUESTED



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

ELVA DELATORRE
D/B/A ARTURO'S NIGHT CLUB #2
PERMIT NO. BG-421232
LICENSE NO. BL-421233
TABC NO. 582397
PORT ARTHUR, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Elva Delatorre, d/b/a Arturo's Night Club #2 (Respondent), because Respondent had permitted consumption of alcoholic beverages during prohibited hours. Respondent made no appearance. The Proposal for Decision finds the allegations proven and recommends the license be suspended for a period of 15 days or a \$150 fine in lieu of the license suspension per day of the suspension.

I. Procedural History, Notice and Jurisdiction

Because the hearing proceeded on a default basis, procedural history, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. Evidence and Applicable Statutory Provisions

There was one allegation in this proceeding, asserting that on or about November 20, 1998, Respondent, its agents, servants, or employees did permit consumption of alcoholic beverages on the licensed premises during prohibited hours in violation of Sections 105.06, 25.04 and 11.61(b)(2) of the Texas Alcoholic Beverage Code.

TEX. ALCO. BEV. CODE ANN. Section 61.71(a)(18) and 105.06 (Vernon 1997) authorize the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Licensee sold, served, or delivered an alcoholic beverage at a time when the consumption of alcoholic beverages is prohibited.

The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence. TABC Exhibit 1 demonstrated that the Wine and Beer Retailer's Permit, BG-421232, and Retail Dealer's On-Premise Late Users License, BL-421233, were issued to Elva Delatorre, d/b/a Arturo's Night Club #2, at 11410 Post Oak, Houston, Harris County, Texas by the Texas Alcoholic Beverage Commission. TABC Exhibit 4 demonstrated that alcoholic beverages were consumed on Respondent's premises during prohibited hours.

III. Recommendation

Because the Licensee permitted an alcoholic beverage to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited, the license should be suspended for a period of 15 days or the Licensee should be required to pay a \$150 fine per day of suspension in lieu of suspension of the License.

PROPOSED FINDINGS OF FACT

1. Elva Delatorre d/b/a Arturo's Night Club #2, located at 11410 S. Post Oak, Houston, Harris County, Texas, holds Permit No. BG-421232 and Permit No. BL-421233
2. On May 13, 1999, the Staff of the Texas Alcoholic Beverage Commission sent a notice of hearing, by certified mail, return receipt requested, to the Respondent at his address of record, regarding an alleged violation of the Texas Alcoholic Beverage Code, with no showing of actual receipt.
3. The Texas Alcoholic Beverage Commission rules, 16 TEX. ADMIN. CODE, Section 37.7, authorize service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
4. The hearing on the merits was held on May 26, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. The Respondent did not appear and was not represented at the hearing.
5. On or about November 20, 1998, the Licensee permitted an alcoholic beverage to be consumed on the premises at a time when consumption of alcoholic beverages is prohibited.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Sections 6.01 and 61.71 (Vernon's 1995, Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing on this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1977).

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX GOV'T CODE ANN. Sections 2001.051 and 2001.052 (Vernon 1999) and TEX ADMIN CODE §155.55(d) (1998).
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE, Section 155.55 and 16 TEX. ADMIN. CODE §37.7.
5. The Licensee has violated TEX. ALCO. BEV. CODE ANN. Sections 61.71(a)(18) and 105.06 (Vernon 1997) in that the Licensee permitted an alcoholic beverage to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Wine and Beer Retailer's Permit BG-421232, and Retail Dealer's On Premise Late Hour License, BL-421233 held by Elva Delatorre d/b/a Arturo's Night Club #2, 11410 S. Post Oak, Houston, Harris County, Texas, should be suspended for a period of 15 days or Permittee should pay a fine of \$150.00 per day of suspension in lieu thereof.

SIGNED this 12th day of August, 1999.



ED SHIPPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS