

**DOCKET NO. 582620**

IN RE GENARO CARRANZA FRAIRE, ET AL	§	BEFORE THE
D/B/A LA LOMITA BAR	§	
PERMIT NO. BG-428557	§	
	§	TEXAS ALCOHOLIC
	§	
TAYLOR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-3357)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 4th day of April 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on March 6, 2000 and adjourned March 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 6, 2000. 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 Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on May 25, 2000**, 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 4th day of May, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable B. L. Phillips  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (806) 792-0149**

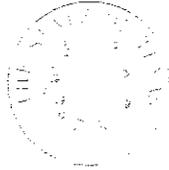
Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Genaro Carranza Fraire, et al  
d/b/a La Lomita Bar  
**RESPONDENT**  
2918 Bickley  
Abilene, Texas 79605  
**VIA CERTIFIED MAIL/RRR Z 473 040 092**

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

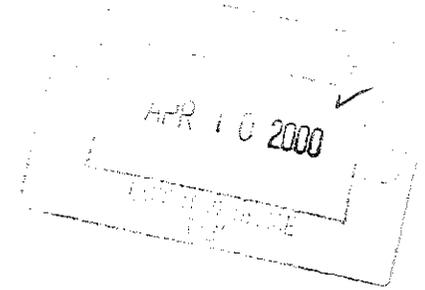
Licensing Division  
Lubbock District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

April 6, 2000



Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**CERTIFIED MAIL NO. Z 289 806 841**  
**RETURN RECEIPT REQUESTED**

RE: Docket No. 458-99-3357; Texas Alcoholic Beverage Commission vs. Genaro Carranza Fraire, et al d/b/a La Lomita Bar (TABC Case No. 582620)

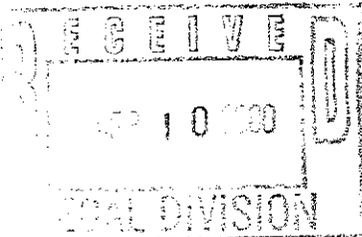
Dear Mr. Bailey:

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 Respondent Genaro Carranza Fraire et al, d/b/a La Lomita Bar. For reasons discussed in the proposal, I recommend Respondent's bond be forfeited.

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,

  
Brian Lee Phillips  
Administrative Law Judge



BLP:vu

Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing - **U.S. REGULAR MAIL**  
Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission - **CERTIFIED MAIL NO. Z 289 806 842, RETURN RECEIPT REQUESTED**  
Genaro Carranza Fraire. et al.; 2918 Bickley, Abilene, Texas 79605 - **CERTIFIED MAIL NO. Z 289 806 843, RETURN RECEIPT REQUESTED**

Megaron Building  
8212 Ithaca, Suite W3 ♦ Lubbock, Texas 79423  
(806) 792-0007 Fax (806) 792-0149

DOCKET NO. 458-99-3357

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
	§	
GENARO CARRANZA FRAIRE, ET AL	§	
D/B/A LA LOMITA BAR	§	
PERMIT BG-428557	§	
TAYLOR COUNTY, TEXAS	§	
(TABC CASE NO. 582620)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Genaro Carranza Fraire and Macaria Tijerina Morales, d/b/a La Lomita Bar (Respondent). The Staff recommended that the bond be forfeited because Respondent had committed three or more violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

**I. Jurisdiction, Notice and Procedural History**

The hearing in this matter convened on March 6, 2000 before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings (SOAH) in Lubbock, Lubbock County, Texas. Staff was represented by Christopher Burnett, Assistant Attorney General. Respondents Genaro Carranza Fraire and Macaria Tijerina Morales appeared and represented themselves. Staff offered evidence which was admitted to the record without objection, and Respondent raised no objection as to jurisdiction or notice and offered no controverting evidence.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

**II. Conduct Surety Bond**

The Commission issued Wine and Beer Retailer's Permit, BG-428557, on April 8, 1998, for the premises known as La Lomita Bar, 4558 Pine, Abilene, Taylor County, Texas.

The Respondent posted a conduct surety bond as required by Sections 11.11 and 61.13 of the Code.

### **III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond**

On October 19, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code. The waiver agreement stated that on October 2, 1998, Respondent permitted a minor to possess alcoholic beverages, failed to report a breach of the peace and possessed unauthorized alcoholic beverages (distilled spirits). The agreement contained the following language.

My name is Macaria Tijerina Morales, Genaro Carranza Fraire. I am a partner in the above stated permit. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1350.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on October 27, 1998 finding that Respondent had violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for nine days unless Respondent paid \$1350.00 as a civil penalty.

### **IV. Forfeiture of Conduct Surety Bond**

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN, §§ 6.01 and 61.71. The Commission's rule found at 16 Tex. Admin. Code (TAC) § 33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked, or, on final adjudication, that the holder violated a provision of the Code.

### **PROPOSED FINDINGS OF FACT**

1. The Commission issued Wine and Beer Retailer's Permit BG-428557, for the premises known as La Lomita Bar, 4558 Pine, Abilene, Taylor County, Texas. The Respondent posted a conduct surety bond as required by Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code.

2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (Staff) in a notice of hearing, dated December 29, 1999. The Court by Order Continuing Case reset the hearing for March 6, 2000.
3. The notice of hearing contained a statement of the 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.
4. The hearing was convened on March 6, 2000, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondents Genaro Carranza Fraire and Macaria Tijerina Morales appeared and represented themselves. Christopher Burnett, Assistant Attorney General, represented the Staff.
5. On October 19, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code. The waiver agreement stated that on October 2, 1998, Respondent permitted a minor to possess alcoholic beverages, failed to report a breach of the peace and possessed unauthorized alcoholic beverages (distilled spirits).
6. On October 27, 1998, the Commission Administrator entered orders finding that Respondent had committed three violations of the Code consistent with Respondent's waivers found in Findings of Fact Nos. 5.
7. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

#### **PROPOSED CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE. ANN. §§ 5.35, 25.04, AND 61.71 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings 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. ALCO. BEV. CODE ANN. § 5.34 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1999).
3. Service of proper notice of the hearing was made on Respondent pursuant to Texas Alcoholic Beverage Code Ann. Section 11.63 and Texas Government Code Ann. Sections 2001.051 and 2001.052.
4. Respondent holds permit number BG-428557 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) section 33.24 and TEX. ALCO. BEV. CODE ANN. sections 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code since September 1, 1995, as set out in Findings of Fact Nos. 5-7.

6. Respondent violated 16 TAC section 33.24 and TEX. ALCO. BEV. CODE ANN. sections 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding Wine and Beer Retailer's Permit BG-428557, issued by the Commission, and the conduct surety bond should be forfeited to the State.

SIGNED this 6th day of April, 2000.



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**B.L. PHILLIPS**  
ADMINISTRATIVE LAW JUDGE

pdfrair.tab