

beverage. As Agent Knox approached the female an employee of the premises quickly removed a beer can from the female's table. This occurred a few feet away and in plain view of the Respondent, who was located behind the bar. Agent Knox smelled the beverage and determined that it did, in fact, contain alcohol. She questioned the female, Jessica Lopez, who stated that she was 20 years old, was consuming alcohol, and worked as a dancer at the bar. Agent Knox also used a passive alcohol sensor and detected alcohol on Ms. Lopez' breath.

TABC agent Sonya Salinas testified that she accompanied agent Knox on the evening in question and that she observed the same events described by agent Knox.

The Commission offered a document into evidence that included a copy of the permit and a violation history of the premises. The violation history shows no prior violations. The Commission also offered a photograph of Ms. Lopez which depicted a youthful appearing female and a sworn statement by Ms. Lopez stating that she was consuming alcohol at the bar on the night in question..

Guadalupe Padilla testified for Respondent and stated he was employed as a waiter at the bar on the night in question and has never provided alcoholic beverages to minors. Respondent did not allow minors to consume alcohol at the bar. On January 19, 2001, Mr. Padilla was arrested for serving alcohol to a minor, but the charges were later dropped.

Adolfo Reyes testified that he is the owner of the licensed premises and does not allow minors to consume alcohol at the establishment. On the night in question, Ms. Lopez was not consuming alcohol.

B. Applicable Law

Petitioner is authorized to suspend or cancel a permit if a permittee violates a provision of TEX. ALCO. BEV. CODE §11.61(b)(2). TEX. ALCO. BEV. CODE §106.13 (a) states, "... the commission or administrator may cancel or suspend for not more than 90 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor or with criminal negligence permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises."

IV. Analysis

Agent Knox and Agent Salinas both testified that it was clear that Respondent was present when a minor was consuming alcohol on the licensed premises and did nothing to prevent it from occurring. The written statement of Ms. Lopez and the results of the passive alcohol sensor corroborated the agents' testimony. Although Respondent and Mr. Padilla denied the allegations, the evidence is overwhelming that Respondent allowed a minor to consume alcohol on the premises.

V. Conclusion and Recommendation

The ALJ concludes that Petitioner demonstrated, by a preponderance of the evidence, that the violation occurred. The standard penalty chart found at TEX. ALCO. BEV. CODE § § 37.60(a) recommends that, for a first offense, permitting a minor to consume an alcoholic beverage on the premises result in a suspension from 7 to 15 days. The ALJ recommends a 15-day suspension in this case. This is not a situation in which an employee simply failed to check an ID, but one where the Respondent himself allowed an underage employee to consume alcohol in his presence..

VI. Proposed Findings of Fact

1. Adolfo Reyes, d/b/a Azteca Lounge (Respondent) holds Wine and Beer Retailer's Permit No. BG-451041 for the premises located in Edinburg, Hidalgo County, Texas.
2. On January 19, 2001, Respondent permitted the consumption of alcohol by a minor on the premises.
3. As a result of the occurrence described in Finding of Fact No. 2, the Texas Alcoholic Beverage Commission (TABC or Commission) seeks to suspend Respondent's permit.
4. Respondent requested a hearing to contest the suspension.
5. On February 8, 2002, notice of the hearing was sent to Respondent. The notice contained a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
6. The hearing was held on October 24, 2002, before Administrative Law Judge John H. Beeler. The Commission appeared and was represented by staff attorney Dewey Brackin. Respondent appeared by video conference and was represented by attorney Omar Maldonado. The record closed on October 31, 2002.

VII. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§ 6.01 and 11.61.
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 Ch. 2003.

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. Based on the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE §106.13 (a).
5. Based the above Findings of Fact and Conclusions of Law, Respondent's permit should be suspended for 15 days, and Respondent should be allowed to pay a civil penalty of \$2,250.00 in lieu of suspension.

SIGNED this 30TH day of December, 2002.



JOHN H. BEELER
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 593246

IN RE ADOLFO REYES
D/B/A AZTECA LOUNGE
PERMIT NO. BG-451041

HIDALGO COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-1759)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th day of January, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on October 24, 2002, and the record was closed October 31, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 30, 2002. 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 Acting 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 Acting 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 No.BG-451041 is hereby **SUSPENDED**.

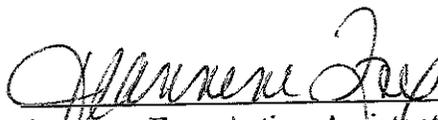
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$2,250.00** on or before the **12th day of March, 2003**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **fifteen (15) days, beginning at 12:01 A.M. on the 19th day of March, 2003**.

This Order will become final and enforceable on February 6, 2003, 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 16th day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

E. Omar Maldonado
ATTORNEY FOR RESPONDENT
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McAllen, Texas 78504
VIA FACSIMILE: (956) 682-1554

Administrative Law Judge John Beeler
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE: (512) 475-4994

Dewey A. Brackin
ATTORNEY FOR PETITIONER
Texas Alcoholic Beverage Commission
Legal Division

McAllen District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 593246

REGISTER NUMBER:

NAME: Adolfo Reyes

TRADENAME: Azteca Lounge

ADDRESS: Rogers Road South side. 2 mile West Int. Depot Road, Edinburg, Texas 78539

DATE DUE: March 12, 2003

PERMITS OR LICENSES: BG-451041

AMOUNT OF PENALTY: \$2,250.00

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 12TH DAY OF MARCH, 2003, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

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.