

**DOCKET NO. 593875**

IN RE MARIBEL MARTINEZ  
D/B/A AVILA'S BILLIARDS  
LICENSE NOS. BE427419, BL427420

TARRANT COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-1154)

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 9th day of May 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cindy Greenleaf. The hearing convened and adjourned on February 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 12, 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 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 License Nos. BE427419 and BL427420 are hereby **SUSPENDED** for ten (10) days.

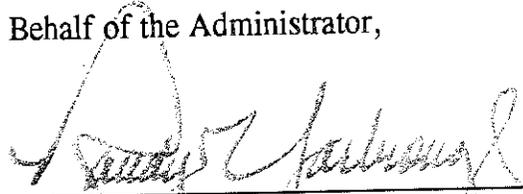
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 10<sup>th</sup> day of July, 2002, all rights and privileges under the above described licenses will be **SUSPENDED** for a period of ten (10) days, beginning at 12:01 A.M. on the 17th day of July, 2002.

This Order will become final and enforceable on May 30, 2002, 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 9th day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Cindy Greenleaf  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 377-3706**

Maribel Martinez  
d/b/a Avila's Billiards  
**RESPONDENT**  
10539 Dawn Dr.  
Dallas, Texas 75118-2805  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 8862**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 583875**

**REGISTER NUMBER:**

**NAME: MARIBEL MARTINEZ**

**TRADENAME: AVILA'S BILLIARDS**

**ADDRESS: 1516 E. Abram Street, Arlington, Texas 76010-7213**

**DATE DUE: July 10, 2002**

**PERMITS OR LICENSES: BE427419, BL427420**

**AMOUNT OF PENALTY: \$1,500.00**

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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 10TH DAY OF JULY 2002, 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**

**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.

DOCKET NO. 458-02-1154

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

V.

MARIBEL MARTINEZ  
D/B/A AVILA'S BILLIARDS  
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Maribel Martinez d/b/a Avila's Billiards (Respondent). Petitioner alleged that Respondent, with criminal negligence, permitted a minor to possess and consume an alcoholic beverage on the licensed premises in violation of the Texas Alcoholic Beverage Code (Code). Petitioner requested that Respondent's licenses be suspended for a period of ten days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$1,500. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) agrees with this recommendation.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 61.71, 70.03, and 106.13. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On December 31, 2001, Petitioner issued its Notice of Hearing, directed to Respondent at her address of record, 10539 Dawn Drive, Dallas, Texas 75228-2805, via certified mail, return receipt requested. The Notice of Hearing was received by Respondent on January 8, 2002, as evidenced by the signature of Respondent on the return receipt. There were no contested issues of notice or jurisdiction in this proceeding.

On February 20, 2002, a hearing convened before ALJ Cindy T. Greenleaf (SOAH) at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received by both parties on that date. The record was closed on February 20, 2002.

## LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 106.13 of the Code to suspend a retail license for not more than 90 days if a licensee, with criminal negligence, permits a minor to violate § 106.04 or § 106.05 of the Code by possessing or consuming an alcoholic beverage on the licensed premises. Criminal negligence is defined in TEX. PENAL CODE ANN. § 6.03(d) as follows:

A person acts with criminal negligence, or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Pursuant to § 11.64 of the Code, when a license suspension is authorized, the licensee must be afforded the opportunity to pay a civil penalty in lieu of the suspension.

## EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent is the holder of a Beer Retailer's On Premise License and a Retail Dealer's On Premise Late Hours License issued by TABC. Respondent did not dispute this allegation. Licensing records contained in TABC Exhibit Three establish that a Beer Retailer's On Premise License, Number BE-427419, and Retail Dealer's On Premise Late Hours License, Number BL-427420, were issued to Maribel Martinez d/b/a Avila's Billiards, 1516 E. Abram Street, Arlington, Tarrant County, Texas on March 20, 1998.

Petitioner alleged that Respondent, with criminal negligence, permitted a minor to possess and consume an alcoholic beverage on the licensed premises on February 15, 2001. In support of this allegation, Petitioner offered the testimony of TABC Agent Nicole Hamilton.<sup>1</sup> On February 15, 2001, Agent Hamilton was at Avila's Billiards. She noticed a youthful-appearing female sitting at the bar who was later identified as Alise Rugama. Avila's Billiards was well lit, and Ms. Rugama was sitting approximately ten feet from the bartender, Julio Cesar Avila, Respondent's employee. There was an unobstructed view between Ms. Rugama and Mr. Avila. Agent Hamilton observed Ms. Rugama drinking from a 12 ounce bottle of Seagram's Wild Margarita Wine Cooler, a flavored beer. Agent Hamilton made contact with Ms. Rugama and found that the contents of the bottle were consistent with the appearance and odor of an alcoholic beverage. Respondent offered no evidence to dispute that the bottle contained an alcoholic beverage. Although Ms. Rugama did not have a driver's license or official identification card, she verbally identified herself to Agent Hamilton and admitted that she was a minor with a date of birth of January 23, 1981.

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<sup>1</sup>At the time of the investigation, Agent Hamilton's legal name was Nicole Bedwell.

Respondent disputed Petitioner's allegations with the testimony of Mr. Avila. Mr. Avila stated that he knew Ms. Rugama because she frequented Avila's Billiards "every day." He admitted that he had requested identification from her in the past. Although he agreed it would be prudent to request identification each time a youthful appearing person came to the establishment, he stated that he did not ask for Ms. Rugama's identification each time she came to Avila's Billiards, and thus, did not ask for it on February 15, 2001. Respondent offered Respondent's Exhibit One, an official identification card issued by the State of Texas to Licet Delbosque Rugama.<sup>2</sup> Mr. Avila stated that Respondent's Exhibit One was the identification used by Ms. Rugama when he had requested identification from her in the past. The date of birth on Respondent's Exhibit One was February 8, 1973. In rebuttal testimony, Agent Hamilton stated that the picture in Respondent's Exhibit One was inconsistent with the physical appearance of Ms. Rugama. Based on Ms. Rugama's youthful appearance, Agent Hamilton said there was "absolutely no way" she would believe Ms. Rugama's date of birth to be February 8, 1973.

Finally, Petitioner offered evidence of matters deemed admitted by Respondent, pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2). TABC Exhibit Two contains requests for admissions served on Respondent at her address of record on January 8, 2002. Respondent indicated that she did receive the requests for admissions, but did not file a response. Respondent did not request a withdrawal of the deemed admissions, and indicated that she did not object to the matters deemed admitted. The matters deemed admitted are as follows:

1. Maribel Martinez d/b/a Avila's Billiards, Respondent, is the holder of a beer re[t]ailer's on premise license, BE 427419, and a beer retailer's on premise late hours license, BL 427420, issued by the Petitioner, the Texas Alcoholic Beverage Commission, for the premises known as Avila's Billiards located at 1516 East Abram Street, Arlington, Tarrant County, Texas 76010-7213.
2. The permits referenced in request 1 are currently in effect and were in effect on all dates relevant to the original, supplemental, or amended Notice of Hearing. ;
3. The State Office of Administrative Hearings has jurisdiction over this matter.
4. Petitioner has jurisdiction over this matter.
5. Respondent received adequate notice of this hearing.
6. Respondent does not have good cause if these requests were answered late or not answered.

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<sup>2</sup>This is the only reference to Licet Delbosque Rugama in this Proposal for Decision. Any reference to "Ms. Rugama" in the Proposal for Decision pertains to Alise Rugama.

7. Respondent or its agent, servant, or employee, on or about February 15, 2001, with criminal negligence, permitted a minor to possess and/or consume an alcoholic beverage on the premises in violation of § 106.13(a) of the Texas Alcoholic Beverage Code.

### ANALYSIS

It is clear from the evidence, and undisputed, that Respondent holds a Beer Retailer's On Premise License and a Retail Dealer's On Premise Late Hours License. It is undisputed that Ms. Rugama possessed and consumed an alcoholic beverage on the licensed premises on February 15, 2001. The only remaining issues to be determined are whether Ms. Rugama was a minor and whether the Respondent's employee, Mr. Avila, acted with criminal negligence in permitting Ms. Rugama to possess and consume an alcoholic beverage on the licensed premises.

On February 15, 2001, when Ms. Rugama possessed and consumed an alcoholic beverage at Avila's Billiards, Ms. Rugama was youthful in appearance. This is clear both from Agent Hamilton's observation and Mr. Avila's admission that he had asked for Ms. Rugama's identification in the past, thus confirming that he believed Ms. Rugama had a youthful appearance. Respondent argued that since Agent Hamilton was unable to confirm Ms. Rugama's age with any sort of identification, Ms. Rugama's statement about her age should be suspect. However, it is unlikely that Ms. Rugama would subject herself to criminal liability by admitting she was under 21 years of age. Further, the Respondent stipulated in the deemed admissions that Ms. Rugama was a minor. The evidence supports the conclusion that Ms. Rugama was a minor on February 15, 2001.

Respondent's employee, Mr. Avila, was bartending on February 15, 2001. Ms. Rugama was in plain view of Mr. Avila as she sat at the bar. Although Mr. Avila should have requested identification from Ms. Rugama on February 15, 2001, he did not do so. Even if Mr. Avila had requested identification from Ms. Rugama in the past and believed her to be of legal drinking age based on past identification requests, a reasonable person in his position would have made a similar request for identification on this occasion. In the event that Ms. Rugama might have displayed another person's identification in the past, it would be less likely that she would have continual possession of the other person's valid identification. Additionally, requesting identification would enable Mr. Avila to determine if Ms. Rugama was presenting valid or false identification. Mr. Avila's failure to do such was a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances. Further, Respondent stipulated in the deemed admissions that Respondent or its agent, servant, or employee, with criminal negligence, permitted a minor to possess and/or consume an alcoholic beverage on the premises. By permitting Ms. Rugama to possess and consume an alcoholic beverage, Mr. Avila, Respondent's employee, was criminally negligent.

### RECOMMENDATION

The ALJ finds Respondent's employee, Mr. Avila, acted with criminal negligence in

permitting Ms. Rugama, a minor, to possess and consume an alcoholic beverage at Avila's Billiards on February 15, 2001. Thus, the ALJ recommends that a license suspension for a period of ten days be imposed, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$1,500.

### PROPOSED FINDINGS OF FACT

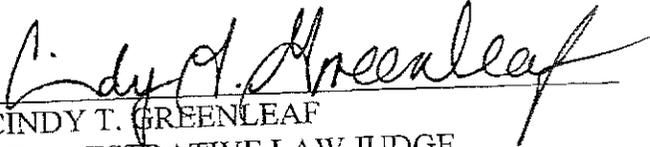
1. Respondent, Maribel Martinez d/b/a Avila's Billiards, holds a Beer Retailer's On Premise License, Number BE-427419, and Retail Dealer's On Premise Late Hours License, Number BL-427420, issued by the Texas Alcoholic Beverage Commission (TABC) on March 20, 1998, for the premises located at 1516 E. Abram Street, Arlington, Tarrant County, Texas.
2. On December 31, 2001, Respondent was served with a timely notice of hearing. The notice indicated that a hearing would be held at the State Office of Administrative Hearings (SOAH), 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas, on February 20, 2002, at 10:00 a.m.
3. A hearing was convened before Cindy T. Greenleaf, an Administrative Law Judge (ALJ) with SOAH, on February 20, 2002. Both parties appeared and presented evidence. The record was closed on February 20, 2002.
4. On February 15, 2001, Respondent's employee, Julio Cesar Avila, was working as a bartender at Avila's Billiards.
5. On that date, Alise Rugama possessed and consumed a 12 ounce bottle of Seagram's Wild Margarita Wine Cooler, an alcoholic beverage, at Avila's Billiards.
6. Avila's Billiards was well lit, and Ms. Rugama sat in plain view of Mr. Avila.
7. On that date, Ms. Rugama was 20 years of age and youthful in appearance.
8. On that date, Mr. Avila failed to take reasonable steps to determine whether Ms. Rugama was of legal drinking age.

### PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 61.71, 70.03, and 106.13.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of hearing.

4. Based on Proposed Findings of Fact Nos. 4 - 8, Respondent's employee permitted a minor to possess and consume an alcoholic beverage on the licensed premises, and did so with criminal negligence, in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.
5. Based on Proposed Findings of Fact Nos. 4 - 8 and Proposed Conclusion of Law No. 4, Respondent's Beer Retailer's On Premise License and Retail Dealer's On Premise Late Hours License should be suspended for ten days.
6. Based on Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1,500 in lieu of suspension of these licenses.

SIGNED on this the 12<sup>th</sup> day of April, 2002.

  
CINDY T. GREENLEAF  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS