

DOCKET NO. 594346

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
LEUNAM L.L.C., ET AL	§	ALCOHOLIC
D/B/A THE JACK'S RABBIT - A	§	
GENTLEMEN'S CLUB	§	
PERMIT NOS. MB-487366, LB-487367	§	
& PE-487368	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH Docket No. 458-01-3588)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th of January, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on October 25, 2001, and the record remained open until November 9, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 30, 2001. 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. Exceptions to the Proposal were filed by the Respondent.

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-487366, LB-487367 & PE-487368 are hereby **SUSPENDED**.

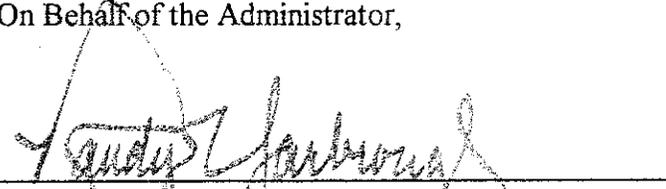
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$4,500.00 on or before the 27th day of March, 2002, all rights and privileges under the above described permits will be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 4th day of April, 2002.**

This Order will become final and enforceable on February 15, 2002, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by certified mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 25th day of January, 2002..

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Manuel Cantu, Jr.
Leunam, L.L.C., et al
d/b/a The Jack's Rabbit - A Gentlemen's Club
RESPONDENT
P. O. Box 4089
Edinburg, Texas 78540-4089
CERTIFIED MAIL NO. 7000 1530 0003 1927 6167

Administrative Law Judge
State Office of Administrative Hearings
Corpus Christi, Texas
VIA FACSIMILE: (361) 884-5427

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: 594346

REGISTER NUMBER:

NAME: Leunam L.L.C., et al

TRADENAME: The Jack's Rabbit - a
Gentlemen's Club

ADDRESS: 2901 BHWY 83 West, Weslaco, Hidalgo County, Texas 78596

DATE DUE: March 27, 2002

PERMITS OR LICENSES: MB-487366, LB-487367 & PE-487368

AMOUNT OF PENALTY: \$4,500.00

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 27TH DAY OF MARCH, 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

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.

DOCKET NO. 458-01-3588

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

vs.

LEUNAM L.L.C., ET AL
D/B/A THE JACK'S RABBIT -
A GENTLEMEN'S CLUB
PERMIT NOS. MB-487366, LB-487367,
AND PE-487368
HIDALGO COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks suspension of Permit Numbers MB-487366, LB-487367 and PE-487368 held by Leunam L.L.C., *et. al.*, d/b/a The Jack's Rabbit - A Gentlemen's Club, alleging the permittee, its agent, servant or employee engaged in or permitted an act of sexual contact intended to arouse or gratify sexual desires. Petitioner seeks to suspend Respondent's permits for 30 days or, in lieu of suspension, to assess a civil penalty against Respondent in the amount of \$4,500.00. The Administrative Law Judge recommends that Petitioner's requested suspension or alternate penalty be approved.

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

The hearing in this case was convened on October 25, 2001 at the Brownsville Municipal Courthouse in Brownsville, Texas before Administrative Law Judge Kyle J. Groves. Dewey Brackin, staff attorney, represented Petitioner. Respondent was represented by Manuel Cantu, Jr., the owner of Jack's Rabbit. The record remained open until November 9, 2001, so the parties could file closing arguments. There are no contested issues of jurisdiction or notice. Therefore, these matters are addressed as findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

Petitioner called one witness, TABC Agent Reuben Saurez. Petitioner offered one exhibit, and it was admitted.

Respondent testified for himself. Respondent offered one exhibit, and it was admitted.

A. Petitioner's Witness

Reuben Saurez

Reuben Saurez is a TABC enforcement agent. On March 29, 2001, Saurez was at Respondent's place of business doing undercover work. Saurez said he arrived at Respondent's place of business at approximately 10:00 p.m. Shortly thereafter, the D.J. announced the name of a dancer who came to the stage. The dancer was topless. At that time, a man walked up to the stage.

Saurez walked to an area so he could see the man interact with the dancer. Saurez testified that he was approximately four to five feet from the man. Saurez observed the dancer take her breasts and place them in the man's mouth. The man suckled on her breasts for a few seconds.

Saurez then saw the dancer put her genital area on the man's face and gyrate back and forth. Next the dancer turned and placed her buttocks on the facial area of the man. The dancer then moved her g-string, exposing her pubic hair, enabling the man to place money in her g-string.

After seeing this, Saurez contacted his supervisor who then entered Respondent's place of business and placed the dancer under arrest. Saurez testified that he believes the contact between the dancer and the man was with the intent to arouse their sexual desires.

Petitioner offered one exhibit and it was admitted. Petitioner's exhibit one is a certified copy of Respondent's license, permit and administrative history (Petitioner's Ex. 1).

B. Respondent's Witness

Manuel Cantu, Jr.

Manuel Cantu, Jr. is the President of Leunam L.L.C. Mr. Cantu said he was not present at the time of the alleged incident. However, he did receive a phone call from his bartender after the alleged incident, and the bartender told him that they received an administrative notice of violation from Petitioner. Mr. Cantu offered this notice of violation into evidence, and it was admitted (Respondent's Ex. 1).

Mr. Cantu said that he has repeatedly told the dancers not to have the type of contact alleged by Petitioner with customers. However, the dancers told him that this type of contact is necessary if they are to receive tips. Mr. Cantu also testified that he has 10 to 12 dancers working at the same time, and it is very difficult to monitor their activities.

Mr. Cantu said he feels that he is being discriminated against by Petitioner. He testified that Petitioner repeatedly inspected his club even though he believes other clubs are much worse. Mr. Cantu also said that he was not trying to defend what the dancer may have done, but rather he was trying to defend his club.

III. APPLICABLE LAW

1. Section 2003.021(b) of the Texas Government Code states in pertinent part: "The office (1) shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency; (2) shall conduct administrative hearings in matters for which the office is required to conduct the hearing under other law . . ." Tex. Gov't. Code Ann. §2003.021 (Vernon 2001).

2. Section 2001.051 of the Texas Government Code states: "In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case." Tex. Gov't. Code Ann. §2001.051 (Vernon 2001).

3. Section 104.01 of the Texas Alcohol and Beverage Code states: "No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

(6) permitting lewd or vulgar entertainment or acts;" TEX. ALCO. BEV. CODE ANN. § 104.01 (Vernon 2001)

4. While the Texas Alcohol and Beverage Code does not specifically define it, section 21.07 of the Texas Penal Code defines public lewdness: "(a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his:

(3) act of sexual contact;" TEX. PENAL CODE § 21.07 (Vernon 2001)

5. Section 21.01 of the Texas Penal Code defines sexual contact: "(2) Sexual contact means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person." TEX. PENAL CODE § 21.01 (Vernon 2001)

6. Section 61.71 of the Texas Alcohol and Beverage Code states: "(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;" TEX. ALCO. BEV. CODE ANN. § 61.71 (Vernon 2001).

IV. DISCUSSION

The testimony of Agent Saurez was not contradicted by Respondent. Saurez testified that he observed an act of sexual contact between an employee of Respondent and a customer of Respondent.

Mr. Cantu did not dispute that the alleged act took place. However, he believes that he is being treated unfairly by Petitioner. He stated that his place of business has frequently been inspected by Petitioner while other such establishments are not under the same scrutiny. Mr. Cantu feels that he is being discriminated against by Petitioner. However, even if true, this alleged discrimination would not excuse the Respondent's violation.

Mr. Cantu testified that he has repeatedly told his dancers not to engage in the type of activity alleged by Petitioner. He believes that the dancers should suffer the consequences of such actions, not the establishment. Nevertheless, section 104.01 of the Texas Alcohol and Beverage Code makes the Respondent liable for its employees and agents lewd actions on its premises.

V. PROPOSED FINDINGS OF FACT

1. The hearing in Docket No. 458-01-3588 was convened on October 25, 2001 at the Brownsville Municipal Courthouse in Brownsville, Texas before Administrative Law Judge Kyle J. Groves. Dewey Brackin, staff attorney, represented Petitioner. Respondent was represented by Manuel Cantu, Jr., the owner of Jack's Rabbit.

2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on July 31, 2001.

2. Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing issued by Petitioner on July 31, 2001.

3. Respondent holds Mixed Beverage Permit MB-487366, Mixed Beverage Late Hours Permit LB-487367 and Beverage Cartage Permit PE-487368.

4. Respondent, its agent, servant or employee engaged in or permitted an act of sexual contact intended to arouse or gratify sexual desires. TEX. ALCO. BEV. CODE ANN. § 104.01 (6) (Vernon 2001)

IV. PROPOSED CONCLUSIONS OF LAW

1. Petitioner has jurisdiction over this case pursuant to Tex. Alco. Bev. Code Ann. §11.61 (Vernon 2001).

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with findings of fact and conclusions of law, pursuant to Tex. Gov't. Code Ann. §2003.021 (Vernon 2001).

3. Respondent received proper and timely notice of the hearing in this case.

4. Respondent, its agent, servant or employee engaged in or permitted an act of sexual contact intended to arouse or gratify sexual desires.

5. Based upon the Findings of Fact and Conclusion of Law No. 4, Petitioner's adverse action of suspending Respondent's permits for 30 days or, in lieu of suspension, assessing a civil penalty against Respondent in the amount of \$4,500.00, is sustained.

SIGNED on this 30th day of November, 2001.



KYLE J. GROVES
Administrative Law Judge
State Office of Administrative Hearings