

DOCKET NO. 594507

IN RE WALTER EDUARDO ZELIDON	§	BEFORE THE
D/B/A EL PALOMAR	§	
PERMIT NO. BG-489102 and BL-489103	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0113)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of March, 2002 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on December 13, 2001, and adjourned December 13, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 13, 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. 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/License Nos. BG-489102 and BL-489103 BG-489102 and BL-489103 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 **8th** day of **May, 2002**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of **thirty (30) days, beginning at 12:01 A.M. on the 15th day of May, 2002**.

This Order will become final and enforceable on April 3, 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 13th day of March, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Stephen J. Burger
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Walter Eduardo Zelidon
d/b/a El Palomar
RESPONDENT
14425 Tomball Parkway
Houston, Texas 77086
CERTIFIED MAIL NO. 7000 1530 0003 0929 2174
AND REGULAR MAIL

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

Licensing Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 594507

REGISTER NUMBER:

NAME: Walter Eduardo Zelidon

TRADENAME: d/b/a El Palomar

ADDRESS: 14425 Tomball Parkway, Houston, Texas 77086

DATE DUE: May 8, 2002

PERMITS OR LICENSES: BG-489102 and BL-489103

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 8TH DAY OF MAY, 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.

II. FINDINGS OF FACT

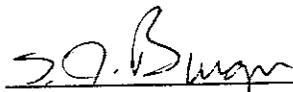
1. Walter Eduardo Zelidon, d/b/a El Palomar, Harris County, Texas, holds Permit Nos. BG-489102 and BL-489103, issued by the TABC.
2. On September 26, 2001, the TABC sent notice to Respondent by certified mail, return receipt requested, of the hearing to be held December 13, 2001, at 9:30 a.m., based on alleged violations of the Code.
3. The notice was sent to the Respondent's address of record, 14425 Tomball Parkway, Houston, Texas 77086.
4. The hearing on the merits convened December 13, 2001, at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney, Dewey Brackin. The Respondent did not appear and was not represented at the hearing. The record closed on the same day.
5. On March 24, 2001, the Respondent, its agent, servant, or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
6. On March 24, 2001, the Respondent, its agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premises.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01, 61.71, and 61.73.
2. SOAH 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. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Finding of Fact No. 5, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17) and 105.06.
5. Based upon Finding of Fact No. 6, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 104.01 (9), and 16 TEX. ADMIN. CODE § 35.41(b).
6. Based on the foregoing findings and conclusions, a thirty day suspension of Permits Nos. BG-489102 and BL-489103 is warranted.

7. Pursuant to Code §11.64, the Respondent should be allowed to pay a \$4,500.00 civil penalty in lieu of suspension of its permits.

SIGNED this 13th day of February, 2002.



Stephen J. Burger

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS