

DOCKET NO. 595961

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| IN RE EVANGELINA RIOS | § | BEFORE THE |
| D/B/A ANGIE'S LOUNGE | § | |
| PERMIT NO. BG-275471 & BL-275472 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| NUECES COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-02-1460) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 20th day of May, 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 March 14, 2002, and adjourned same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 28, 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 Permit/License Nos. BG-275471 & BL-275472 are hereby **SUSPENDED**.

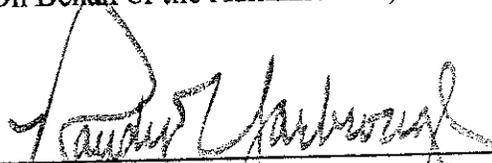
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$4,500.00 on or before the 24th day of July, 2002, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 31st day of July, 2002.**

This Order will become final and enforceable on June 10, 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 20th day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Evangelina Rios
RESPONDENT
1729 Melissa Ln.
Corpus Christi, Texas 78412-4531
CERTIFIED MAIL NO. 7001 2510 0000 7278 7810

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

Corpus Christi District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 595961 REGISTER NUMBER:
NAME: Evangelina Rios TRADENAME: Angie's Lounge
ADDRESS: 1729 Melissa Ln., Corpus Christi, Texas 78412-4531
DATE DUE: July 24, 2002
PERMITS OR LICENSES: BG-275471 & BL-275472
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 24TH 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

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. 458-02-1460

| | | |
|---|---|--------------------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE STATE OFFICE |
| | § | |
| | § | |
| vs. | § | |
| | § | OF |
| | § | |
| EVANGELINA RIOS D/B/A ANGIE'S LOUNGE PERMIT NOS. BG-275471 & BL-275472 NUECES COUNTY, TEXAS (TABC CASE NO. 595961) | § | |
| | § | |
| | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks suspension of Permit Nos. BG-275471 and BL-275472 held by Evangelina Rios, d/b/a Angie's Lounge (Respondent) because Respondent, her agent, servant, or employee allegedly possessed or permitted others to possess a narcotic on the licensed premises. 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 action be sustained.

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

The hearing in this case was convened on March 14, 2002, at the State Office of Administrative Hearings in Corpus Christi, Texas before Administrative Law Judge Kyle J. Groves. Dewey Brackin, staff attorney, represented Petitioner. Respondent did not attend the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued on a default basis pursuant to 1 Tex. Admin. Code §155.55. There are no contested issues of jurisdiction or notice, and the allegations against Respondent are deemed admitted. Therefore, these matters are addressed as findings of fact and conclusions of law without further discussion here.

II. APPLICABLE LAW

1. Section 11.61(b)(2) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: (2) the permittee violated a provision of this code or a rule of the commission . . ."

2. Section 11.64(a) of the Texas Alcoholic Beverage Code states, in pertinent part: "When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended"

3. Section 11.71 (a)(1) of the Texas Alcoholic Beverage Code states: "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: (1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period"

4. 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"

5. 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."

6. Section 104.01 of the Texas Alcoholic 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: ... (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so."

7. Section 155.55 (a) of Title 1 of the Texas Administrative Code states, in pertinent part: "If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party."

8. Section 155.55 (b) of Title 1 of the Texas Administrative Code states, in pertinent part: "For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof."

III. FINDINGS OF FACT

1. The hearing in Docket No. 458-02-1460 was convened on March 14, 2002 before

Administrative Law Judge Kyle J. Groves at the State Office of Administrative Hearings in Corpus Christi, Texas. Dewey Brackin, staff attorney, appeared on behalf of the Texas Alcoholic Beverage Commission (Petitioner). Evangelina Rios, d/b/a Angie's Lounge, (Respondent) did not appear.

2. Respondent was notified of the factual allegations against Respondent and of the date, time, and location of the scheduled hearing in the Notice of Hearing issued by Petitioner on January 28, 2002.

3. Respondent holds Wine and Beer Retailer's Permit No. BG-275471 and Retail Dealer's On-Premise Late Hours License No. BL-275472.

4. On or about June 22, 2001, Respondent, her agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premises.

IV. CONCLUSIONS OF LAW

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

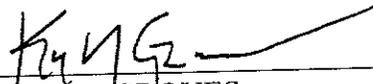
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with findings of fact and conclusions of law, pursuant to Tex. Gov't. Code Ann. §2003.021.

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

4. Respondent violated Tex. Alco. Bev. Code §104.01 (9) on or about June 22, 2001, because Respondent, her agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premises..

5. Based upon the Findings of Fact and Conclusion of Law No. 4, Petitioner's adverse action of suspending Respondent's Permit No. BG-275471 and License No. BL-275472 for 30 days or, in lieu of suspension, assessing a civil penalty against Respondent in the amount of \$4,500.00, is proper.

SIGNED on this 28th day of March, 2002.



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