

**DOCKET NO. 596743**

IN RE ALIBER HINOJOSA RESENDEZ	§	BEFORE THE
D/B/A THE CRYSTAL PALACE CLUB	§	
PERMIT NO. BE-297746 & BL-297747	§	
	§	TEXAS ALCOHOLIC
	§	
NUECES COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1458)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 22nd 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 the same date. The record was left open until April 12, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 17, 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.

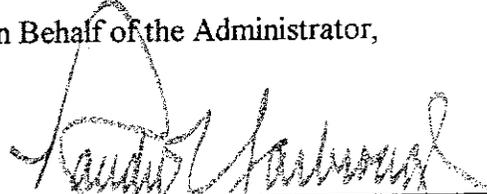
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit/License Nos. BE-297746 & BL-297747 are hereby **CANCELLED**.

**This Order will become final and enforceable on June 12, 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 22nd day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

Bill May

**ATTORNEY FOR RESPONDENT**

6000 S. Staples, Suite 100

Corpus Christi, Texas 78413

**VIA FACSIMILE: (361) 994-9285**

Aliber Hinojosa Resendez

d/b/a The Crystal Palace Club

**RESPONDENT**

3529 Morgan

Corpus Christi, Texas 78405-2822

**CERTIFIED MAIL NO. 7001 2510 0000 7278 7858**

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

**DOCKET NO. 458-02-1458**

**TEXAS ALCOHOLIC  
BEVERAGE COMMISSION**

**vs.**

**ALIBER HINOJOSA RESENDEZ  
D/B/A THE CRYSTAL PALACE CLUB  
LICENSE NOS. BE-297746 & BL-297747  
NUECES COUNTY, TEXAS  
(TABC CASE NO. 596743)**

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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 License Nos. BE-297746 and BL-297747 held by Aliber Hinojosa Resendez, d/b/a The Crystal Palace Club (Respondent) because the Respondent allegedly possessed a narcotic on the licensed premises. Petitioner seeks cancellation of the Respondent's licenses. The Administrative Law Judge recommends that Petitioner's action be sustained.

**I. PROCEDURAL HISTORY**

On November 30, 2001, the Staff of the Texas Alcoholic Beverage Commission (Petitioner), notified Aliber Hinojosa Resendez, doing business as The Crystal Palace Club (Respondent) that the Petitioner would seek disciplinary action against the Respondent's licenses because the Respondent possessed or permitted others to possess a narcotic on the licensed premises.

The hearing commenced on March 14, 2002, in the offices of the State Office of Administrative Hearings, 1225 Agnes Street, Corpus Christi, Texas before the undersigned Administrative Law Judge (ALJ). After the taking of evidence, the hearing was concluded. By agreement of the parties, the record remained open so Petitioner could file the Texas Department of Public Safety laboratory report. The report was received on April 12, 2002. Petitioner was represented by Dewey A. Brackin, Assistant Attorney General of Texas. The Respondent was represented by Attorney Bill May.

**II. JURISDICTION AND NOTICE**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these

matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

### III. DISCUSSION

Petitioner called one witness, Corpus Christi Police Officer David Rjasko. Petitioner offered three exhibits, a certified copy of the Respondent's licenses and administrative history (Petitioner's Ex. 1), a Corpus Christi Police Department Supplemental Narrative Report (Petitioner's Ex. 2), and a Texas Department of Public Safety laboratory report (Petitioner's Ex. 3). The Respondent did not call any witnesses and did not offer evidence.

#### Petitioner's Witness

##### David Rjasko

David Rjasko is a police officer for the Corpus Christi Police Department. On July 17, 2001, he was working as a patrol officer. As he drove by The Crystal Palace, he saw two females that appeared to be in violation of the Corpus Christi curfew ordinance. The two females were in a pickup in the parking lot adjacent to The Crystal Palace. Rjasko testified that the curfew is from 11:00 p.m. to 7:00 a.m. and it pertains to individuals under 17 years of age.

Rjasko approached the area where the two females were, and he made contact with the Respondent who was standing near the pickup containing the two females. Rjasko believed the Respondent may have been inducing a violation of the curfew ordinance. The Respondent identified himself as the owner of The Crystal Palace. For officer safety, Rjasko did a pat down of the Respondent. The Respondent had a revolver in his pocket. Rjasko placed the Respondent under arrest.

Rjasko then did a search incident to arrest of the Respondent and found a white, powdery substance in another pocket. The Respondent said the substance was for his own personal use.

Rjasko identified Petitioner's Exhibit 2, a Corpus Christi Police Department Supplemental Narrative Report that identified the white, powdery substance taken from the Respondent as cocaine. (Petitioner's Ex. 2)

### IV. APPLICABLE LAW

1. 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 . . ."

2. 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 . . . ."

3. 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."

4. 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."

#### V. FINDINGS OF FACT

1. The hearing in Docket No. 458-02-1458 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). Attorney Bill May represented the Respondent.

2. The Respondent was notified of the factual allegations against the Respondent and of the date, time, and location of the scheduled hearing in the Notice of Hearing issued by Petitioner on January 29, 2002.

3. The Respondent holds Beer Retailer's On Premise License No. BE-297746 and Retail Dealer's On-Premise Late Hours License No. BL-297747.

4. On or about July 17, 2001, the Respondent possessed a narcotic on the licensed premises.

#### VI. CONCLUSIONS OF LAW

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

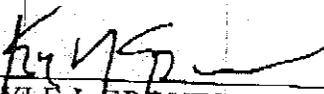
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with findings of fact and conclusions of law, pursuant to Tex. Gov't. Code Ann. §2003.021.

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

4. The Respondent violated Tex. Alco. Bev. Code §104.01 (9) on July 17, 2001, because he possessed a narcotic on the licensed premises..

5. Based upon the Findings of Fact and Conclusion of Law No. 4, Petitioner's adverse action of canceling the Respondent's License No. BE-297746 and License No. BL-297747 is proper.

SIGNED on this 17<sup>th</sup> day of April, 2002.

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