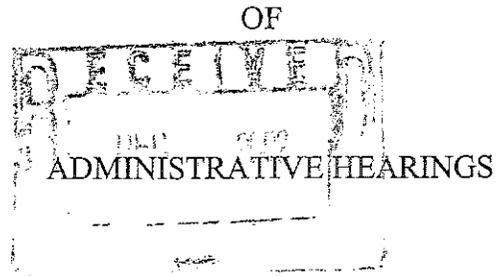


TEXAS ALCOHOLIC BEVERAGE §  
COMMISSION §

BEFORE THE STATE OFFICE

V. §

MARIA DEL ROSARIO SILGUERO §  
D/B/A TEXAS JAMS §  
PERMIT NOS. BG-458335 & BL-458336 §  
KLEBERG COUNTY, TEXAS §  
(TABC CASE NO. 597881) §



**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Maria Del Rosario Silguero d/b/a Texas Jams (Respondent), alleging that Respondent is not qualified or suitable to hold a permit based upon Respondent's sentence of deferred adjudication for a felony offense. Petitioner requested that Respondent's renewal application be denied. The Administrative Law Judge (ALJ) agrees with this recommendation.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.46, and 109.532 (Vernon 2000) and 16 TEX. ADMIN. CODE (TAC) § 33.1 (Vernon 2000). 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 (Vernon 2000).

On September 11, 2002, Petitioner issued its Notice of Hearing, directed to Maria Del Rosario Silguero d/b/a Texas Jams, P.O. Box 5348, Kingsville, Texas, 78363 via certified mail. On October 17, 2002, a hearing convened before ALJ Melissa Ricard at 1225 Agnes Street, Corpus Christi, Nueces County, Texas. Petitioner was represented at the hearing by Dewey Brackin, TABC Staff Attorney. Respondent appeared *pro se*. After presentation of evidence, the record was closed on October 17, 2002.

**II. LEGAL STANDARDS AND APPLICABLE LAW**

TABC may deny the issuance of a renewal permit if "the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit," pursuant to TEX. ALCO. BEV. CODE ANN. § 109.532(b)(1) (Vernon 2000). In defining the standards for such a denial, 16 TAC § 33.1(a) (Vernon 2000) provides as follows:

Final conviction or deferred adjudication for the following offenses may indicate that the applicant is not qualified or suitable to hold a permit or license under the Alcoholic Beverage Code, §109.532(b)(1), and may be grounds for denial unless three years...have elapsed since the termination of a sentence, parole, or probation served by the applicant for: (1) any felony offense; . . .

### **III. EVIDENCE AND PARTIES' CONTENTIONS**

#### **A. Information Regarding Respondent's Renewal Application**

Respondent holds a Wine and Beer Retailer's Permit, BG458335, and Late Hours License BL 458336, both issued by TABC, for the premises located at 114 E. Ave. D, Kingsville, Kleberg County, Texas. In its Notice of Hearing, TABC alleged that "[t]hree years have not elapsed since the termination, by pardon or otherwise, of a sentence or probation imposed on the applicant for the conviction of a felony and or deferred adjudication. . .". As evidence, TABC offered Respondent's renewal applications dated August 24, 2001 admitted as TABC Exhibit 1. In this renewal application, Respondent affirmatively indicated that she had been finally convicted or placed on deferred adjudication for a felony offense.

#### **B. Respondent's Criminal History**

The evidence is undisputed that Respondent was placed on deferred adjudication on January 16, 2001 for a felony offense of Endangering a Child stemming from an incident dated June 12, 2000. The deferred adjudication for this offense will not expire until the year 2005. The Judgment entered by the court was admitted as TABC Exhibit 2. Also admitted as part of Exhibit 2 is the plea agreement which indicates that the Respondent was also charged with two counts of Aggravated Assault which were dismissed in consideration of her plea of guilty to the offense of Endangering a Child.

#### **C. Staff's Further Evidence**

##### **1. Documentary Evidence**

Staff's further documentary evidence consisted of four additional exhibits for a total of six exhibits.

TABC Exhibit 3 is a letter dated December 21, 2001, which serves as official notification that TABC's Corpus Christi District Office intends to protest the Respondent's renewal application and includes an incident report by TABC Agent Dina Ahrens.

TABC Exhibit 4 is the Police Offense Report of the Kingsville Police Department dated June 12, 2000. The Report indicated that the Respondent was involved in an altercation with her ex-husband. The Respondent used her vehicle to strike a vehicle containing her ex-husband, his girlfriend and the woman's 19 month old baby. The Respondent was arrested for Aggravated Assault with a Deadly Weapon.

TABC Exhibit 5 is a Motion to Dismiss for a charge of Possession of a Controlled Substance against the Respondent dated March 24, 1999, Cause No.99-CRF-07692, 105<sup>th</sup> District Court, Klegberg County, Texas. The charge was dismissed because a co-defendant agreed to plea guilty.

TABC Exhibit 6 is a Motion to Dismiss charges filed against the Respondent in Cause No. 30118, County Court at Law, Kleberg County, Texas.

## 2. Testimony of Dina Ahrens

TABC Agent Dina Ahrens testified that she performed an investigation after it was determined that the TABC would protest the Respondent's renewal application. Agent Ahrens testified that her investigation revealed that the Respondent had been charged with three felony counts as indicated above, and that she was placed on deferred adjudication for one felony count of Endangering a Child.

Agent Ahrens further testified that the Respondent's criminal history included arrests for Possession of Controlled Substance and Possession of Marijuana. The charges were dismissed due to a plea agreement reached with a co-defendant, Jose Gilberto Silguero, Jr., the Respondent's ex-husband.

Agent Ahrens said that her investigation revealed that the Respondent had a propensity for violence and that the TABC had a legitimate concern that with this propensity for violence, it was more likely that a breach of the peace would occur at any premises under the control of the Respondent. Agent Ahrens said that during her investigation she interviewed local law enforcement officers who indicated that although no formal complaints have been made, the establishment operated by the Respondent was known for drug activity.

## D. Respondent's Evidence

### 1. Respondent's Testimony

The Respondent testified on her behalf. The Respondent indicated that she was involved in a car accident that was not alcohol related. She stated that she did not intend to hit the vehicle containing her ex-husband, the woman, and the baby. She was driving behind them and when the driver put on the brakes, she hit his car. She did not know that there was a child in the car.

The Respondent runs a clean establishment with no drug activity. The establishment is her means of support and nonrenewal of her TABC permits would cause undue hardship.

### 2. Testimony of Jose Silguero, Jr.

Mr. Silguero testified on behalf of the Respondent. He corroborated the Respondent's version of the events involving the accident. Further, he manages Texas Jams four to five times a week to help out the Respondent. Being an ex-drug dealer himself, he indicated that there is no drug activity at the establishment and he would know if there was. He has a good relationship with local law enforcement officers and welcomes them into the establishment.

#### IV. ANALYSIS

In regard to the allegation that Respondent is not qualified or suitable to hold a permit based upon her criminal history, it is clear that Respondent is currently under deferred adjudication for felony offense of Endangering a Child, as alleged by TABC. This period of deferred adjudication is not scheduled to expire until the year 2005. Under the provisions of TEX. ALCO. BEV. CODE ANN. § 109.532(b)(1) (Vernon 2000) and 16 TAC § 33.1(a) (Vernon 2000), this sentence of deferred adjudication is a valid basis for the denial of Respondent's permit.

#### V. RECOMMENDATION

The ALJ recommends that Respondent's renewal application for a Wine and Beer Retailer's Permit, BG458335, and Late Hours License BL 458336, for the premises located at 114 E. Ave. D, Kingsville, Kleberg County, Texas, be denied.

#### VI. PROPOSED FINDINGS OF FACT

1. Respondent, Maria Del Rosario Silguero d/b/a Texas Jams, holds a Wine and Beer Retailer's Permit, BG458335, and Late Hours License BL 458336, both issued by TABC, for the premises located at 114 E. Ave. D, Kingsville, Kleberg County, Texas.
2. In her renewal application signed on August 24, 2001, Respondent affirmatively indicated that she had been finally convicted or placed on deferred adjudication for a felony offense.
3. On January 16, 2001, Respondent was placed on deferred adjudication for the felony offense of Endangering a Child.
4. The deferred adjudication for this offense will not expire until the year 2005.
5. On September 11, 2002, Petitioner issued its Notice of Hearing, directed to Maria Del Rosario Silguero d/b/a Texas Jams, P.O. Box 5348, Kingsville, Texas, 78363, via certified mail.
6. On October 17, 2002, a hearing convened before ALJ Melissa Ricard at 1225 Agnes Street, Corpus Christi, Nueces County, Texas. Petitioner was represented at the hearing by Dewey Brackin, TABC Staff Attorney. Respondent appeared *pro se*. After presentation of evidence, the record was closed on October 17, 2002.

#### VII. PROPOSED CONCLUSIONS OF LAW

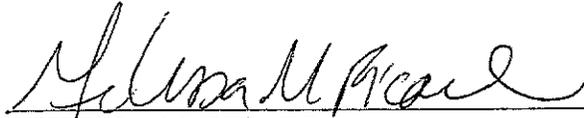
1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.46, and 109.532 (Vernon 2000) and 16 TAC § 33.1 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to

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 (Vernon 2000).

3. Proper and timely notice of the hearing was effected upon Respondent, pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).

4. Based upon Proposed Findings of Fact Nos. 3 and 4, TEX. ALCO. BEV. CODE ANN. § 109.532(b)(1) (Vernon 2000), and 16 TAC § 33.1(a) (Vernon 2000), Respondent's renewal application should be denied.

SIGNED on the 4<sup>th</sup> day of December, 2002.



MELISSA M. RICARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 597881**

IN RE MARIA DEL ROSARIO SILGUERO	§	BEFORE THE
D/B/A TEXAS JAMS	§	
RENEWAL APPLICATIONS: BG-458335	§	
& BL-458336	§	TEXAS ALCOHOLIC
	§	
KLEBERG COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0065)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 10<sup>th</sup> day of January, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on October 17, 2002 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 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.

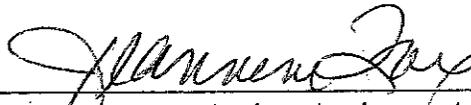
**IT IS THEREFORE ORDERED**, by the Acting Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Renewal Applications of Maria Del Rosario Silguero, d/b/a Texas Jams, for a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License be **DENIED**.

**This Order will become final and enforceable on January 31, 2003**, 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 13<sup>th</sup> day of January, 2003.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Jeannere Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Melissa M. Ricard  
State Office of Administrative Hearings  
Corpus Christi, Texas  
*VIA FACSIMILE: (361) 884-5427*

Maria Del Rosario Silguero  
d/b/a Texas Jams  
**RESPONDENT**  
P. O. Box 5348  
Kingsville, Texas 78363  
**CERTIFIED MAIL NO. 7001 2510 0003 8686 7109**  
**RETURN RECEIPT REQUESTED**

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

Corpus Christi District Office  
Licensing Division