



## II. DISCUSSION

### A. Undisputed Facts.

On September 24, 1997, Steven DePaz, owner of Promociones DePaz, entered into a license agreement with the Travis County Sheriff's Posse (Sheriff's Posse)<sup>1</sup> that gave Mr. DePaz the right to stage rodeos, concerts and related entertainment activities, including the sale of food and beverages, on 15 acres of the Sheriff's Posse's premises located at 7000 State Highway 183 South in Travis County, Texas (the premises).<sup>2</sup> The agreement was for a term of five years from 1997 to 2002, and it called for Mr. DePaz to pay the Sheriff's Posse \$20,000 a year. Kenneth Ray Smith represented the Sheriff's Posse in that agreement.<sup>3</sup>

On October 6, 1999, before the expiration of Mr. DePaz's license agreement, Mr. DePaz's daughter, Irma Lozano, entered into a separate license agreement with the Sheriff's Posse. Under the terms of that agreement, Ms. Lozano was given exclusive right to sell beer at any and all events conducted at the premises from October 15, 1999, through October 15, 2002. Ms. Lozano was the President of the newly formed Plaza Mexico De Austin.<sup>4</sup> The agreement called for Ms. Lozano to pay approximately \$1,666 a month or \$20,000 a year. Mr. Smith represented the Sheriff's Posse in this agreement, as well.

The following month, on November 5, 1999, Ms. Lozano applied for a permit to sell beer and wine at the premises. The TABC issued Ms. Lozano a Retailer's Permit number BG-462831 on December 1, 1999.

On December 7, 1999, Mr. DePaz entered into a contract for deed to purchase the premises. The terms of that contract for deed required Mr. DePaz to pay the Sheriff's Posse \$5,000 a month beginning January 1, 2000, and continue thereafter until the total amount for the deed was paid. Again, Mr. Smith represented the Sheriff's Posse in this contract. At some point in 2000, Ms. Lozano began paying \$5,000 a month to the Sheriff's Posse as rent.

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<sup>1</sup> The Travis County Sheriff's Posse is a non-profit organization that was formed in 1953. It puts on rodeos, concerts, and other events at its facility on Highway 183 in Travis County, Texas.

<sup>2</sup> The entire property covered approximately 18 acres, but the Sheriff's Posse retained 3 acres in the agreement and all subsequent licenses and contracts for deed.

<sup>3</sup> Mr. Smith is the President of the Sheriff's Posse.

<sup>4</sup> On October 6, 1999, the State of Texas issued a Certificate of Organization to Plaza Mexico De Austin, LLC, whose registered agent and only member was identified as Irma Lozano.

## **B. Legal Standards.**

Under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(15), the commission may suspend or cancel an original or renewal retail dealer's license if it is found that the licensee permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license.

Under TEX. ALCO. BEV. CODE ANN. § 109.53, it is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices... Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful.

Also, under TEX. ALCO. BEV. CODE ANN. § 61.43(a)(4), the county judge may refuse to approve an application for a license as a distributor or retailer if the county judge has reasonable grounds to believe and finds that the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application.

## **C. TABC Allegations.**

TABC alleged Plaza Mexico was guilty of subterfuge because it operated for the benefit of Mr. DePaz, an individual unauthorized to use Respondent's license in the conduct of business. TABC further alleged that since Mr. DePaz had entered into a contract for deed to purchase the premises, a scheme or plan was put in place that caused Ms. Lozano to surrender control of the employees, premises or business to Mr. DePaz.

TABC also alleged Mr. DePaz became Ms. Lozano's landlord in December 1999, and that Ms. Lozano failed to state this fact on two of her permit renewal applications.

## **D. Evidence.**

### **1. Subterfuge Allegation.**

Ms. Lozano testified she was involved with every aspect of her company. When a rodeo or concert was scheduled at the premises, Ms. Lozano testified she would hire all the employees for the beer sales, and make all delivery arrangements for beer, ice, and other supplies, as needed. In addition to preparing for beer sales, Ms. Lozano testified she was present at all events where beer was sold, and remained on the premises for the duration of any event to oversee the beer sales.

According to Ms. Lozano, her father's role on the premises was to book rodeo and concert performers. Ms. Lozano testified her father would promote the events and inform Ms. Lozano about

an upcoming event so that Ms. Lozano could prepare the beer sales. Ms. Lozano testified she, and not her father, made all decisions regarding beer sales including: the type of beer to sell, which employees to hire, and which suppliers to use.

Ms. Lozano testified she did not know her father had entered into a contract to purchase the premises. She testified she thought the original license agreement from October 1999 had not been nullified and was still in effect. Ms. Lozano testified she did not have money to make any payments at the beginning of the license term and agreed with Mr. Smith that her payments would begin later in 2000. The details of that agreement were not presented.

Later, when questioned about why she started paying \$5,000 a month to the Sheriff's Posse, she stated she agreed to pay \$5,000 instead of \$1,666 because she was making a good profit and did not want to "forfeit that profit and let somebody else get it." She could not recall with whom she agreed to make \$5,000 monthly payments.

Ms. Lozano testified she was worried about losing her license to another licensee and agreed to pay more rent. She stated, "(the premises) is a venue for events to happen and alcohol is going to be sold. If I don't sell it, somebody else will." When questioned as to why Ms. Lozano was worried about losing her license, she stated, "I don't recall the contract but it might state that if they want to let go of me, they can."

In his deposition testimony, Mr. DePaz admitted his daughter owned the beer license at the premises and that he was in the process of buying the premises.<sup>5</sup> Mr. DePaz acknowledged the monthly payment amount owed to the Sheriff's Posse was \$5,000 under the contract for deed, but that there was some type of agreement between him and Ms. Lozano where, "she got to pay so much monthly," although Mr. DePaz stated Ms. Lozano would not pay him the \$5,000 rent.

Ms. Lozano testified she did not know the \$5,000 monthly payments made to the Sheriff's Posse were for her father, Mr. DePaz.

Mr. Smith testified it was his understanding that the license agreement of October 1999 between the Sheriff's Posse and Ms. Lozano "did not continue" after the contract for deed in December 1999 was entered into between the Sheriff's Posse and Mr. DePaz. Mr. Smith testified after the contract for deed was executed, he began receiving the \$5,000 monthly payments from Ms. Lozano and has never received a payment from Mr. DePaz. Mr. Smith testified he was not

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<sup>5</sup> Mr. DePaz's deposition was admitted over Respondent's objection but the ALJ considered only the witness' testimony where he did not exercise his privilege against self-incrimination under Rule 513(a) of the Texas Rules of Evidence (TRE) and Courtroom Handbook on Texas Evidence, Vol. 2A, 2002 Ed., Goode, Wellborn, & Sharlot. Page 373, "Rule 513(c) does not apply to nonparty witnesses. Therefore, in accordance with Rules 513(b) and (c), a nonparty witness may invoke the privilege outside the jury's presence and his exercise of the privilege may not be made the subject of comment or inference." Therefore, the ALJ finds TRE 513(a) shall apply to Mr. DePaz because he is a nonparty to this matter and the ALJ will not draw an inference from Mr. DePaz's exercise of his privilege against self-incrimination contained in the deposition.

concerned that Ms. Lozano was making the payments, but, on one occasion, told Mr. DePaz that even though Ms. Lozano forwarded the \$5,000 payments, Mr. DePaz was still liable for all the terms and conditions on the contract for deed.

Mr. Smith testified he sometimes made arrangements with Ms. Lozano for the delivery of the \$5,000 monthly payment, and that the \$5,000 checks Mr. Smith received were made out to the Sheriff's Posse and signed by Ms. Lozano. Finally, Mr. Smith testified Ms. Lozano never missed a payment.

## **2. False statement on renewal application.**

TABC offered Respondent's renewal applications for 2000 and 2001 (TABC Exhibit #1) to support its contention that Respondent made a false statement on the renewal applications and questioned Ms. Lozano about any alleged false statement. On Respondent's 1999 original application, Ms. Lozano indicated Respondent was operating under a lease with the Sheriff's Posse and the rent amount was \$1,666 a month. On Respondent's renewal applications for 2000 and 2001, Ms. Lozano failed to indicate the lease agreement was no longer in effect and that the amount of rent she paid had changed from \$1,666 to \$5,000 a month. Ms. Lozano testified on both occasions a filing clerk assisted her in filling out the renewal applications. Ms. Lozano additionally admitted she did not fully read each renewal application before she signed it.

## **E. Argument and Analysis.**

### **1. Did Respondent Commit Subterfuge?**

No. There was no evidence Respondent permitted an unauthorized person to use or display the license under TEX. ALCO. BEV. CODE ANN. § 61.71 (a)(15). Furthermore, despite Ms. Lozano's obvious attempt to conceal the fact that her father, Mr. DePaz, entered into a contract for deed to purchase the premises, there was no credible evidence that Respondent surrendered control of the employees, premises, or business, as "subterfuge" is defined in TEX. ALCO. BEV. CODE ANN. § 109.53.

It is highly unlikely Ms. Lozano was not aware that her own father was in the process of purchasing the same property where she had a beer license. The monthly payment under Ms. Lozano's license agreement was \$1,666. She testified she did not make the first few payments that were due in 1999 because she did not have any money. She testified she started making payments of \$5,000 in 2000 when she had enough money, pursuant to a verbal agreement with Mr. Smith.

Mr. Smith's testimony did not corroborate Ms. Lozano's position that there was a verbal agreement regarding the rent payments of her license agreement. In fact, Mr. Smith testified the license agreement was no longer in effect after the contract for deed was executed on December 7, 1999. Furthermore, Mr. Smith testified he had several conversations with Ms. Lozano regarding the \$5,000 monthly payments that were owed to the Sheriff's Posse under the terms of the contract for

deed and not the 1999 license agreement. It is not likely Ms. Lozano really thought she was paying \$5,000 a month for the 1999 license agreement that called for only \$1,666 a month even after she missed the first few payments.

If the 1999 license agreement was still in effect, the amount owed to the Sheriff's Posse for 2000 and 2001 would have been \$20,000 per year. Based on Respondent's own evidence, she paid a total of \$25,000 to the Sheriff's Posse in 2000<sup>6</sup> and \$45,000 in 2001<sup>7</sup>. In the ALJ's opinion, it is unreasonable that Ms. Lozano would pay an additional \$30,000 of extra rent over two years<sup>8</sup> even with the concerns expressed by Ms. Lozano that the Sheriff's Posse might find a new licensee.

The ALJ firmly believes Ms. Lozano knew the following: that her father entered into a contract for deed to purchase the premises; the license agreement from 1999 was no longer in effect; and the monthly payment amount under the contract for deed was \$5,000. In support of these beliefs, the ALJ points to Mr. DePaz's testimony where Ms. Lozano agreed to make the monthly payments, and the 15 checks issued to the Sheriff's Posse for \$5,000 that were all signed by Ms. Lozano. Furthermore, nowhere in the record was there a check for \$1,666.

However, even with foregoing evidence, the TABC failed to prove Respondent permitted the use or display of Respondent's license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license.<sup>9</sup> TABC alleged Ms. Lozano's business was operated for the benefit of her father, Mr. DePaz. Although it is clear to this ALJ that Ms. Lozano was making the monthly payments of the contract for deed, no evidence was presented that Mr. DePaz used or displayed Respondent's license in any manner that may have benefitted Mr. DePaz.

The only person permitted to use Respondent's license was Ms. Lozano because she is listed as the only member of her limited liability company in its articles of organization.<sup>10</sup> Because Ms. Lozano essentially *is* Plaza Mexico De Austin, a violation under § 61.71(a)(15) would exist if Ms. Lozano permitted anyone else to use her license in the conduct of business to benefit that person. Furthermore, because Ms. Lozano is the sole member of Plaza Mexico De Austin, nobody else is

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<sup>6</sup> Respondent's Exhibit #1 contained five copies of checks issued to the Sheriff's Posse for \$5,000 each and signed by Ms. Lozano.

<sup>7</sup> Respondent's Exhibit #1 contained 10 copies of checks issued to the Sheriff's Posse for \$5,000 each and signed by Ms. Lozano. Check #1155, dated May 5, 2001, was returned NSF, therefore the total of rent reflected by the 2001 checks in this exhibit totaled \$45,000.

<sup>8</sup> It should be noted the checks submitted as part of Respondent's Exhibit #1 were not determined to be the complete set of rent checks issued to the Sheriff's Posse for 2000 and 2001. The ALJ believes Respondent could have forwarded more rent checks to the Sheriff's Posse based on Mr. Smith's testimony that a payment was never missed.

<sup>9</sup> TEX. ALCO. BEV. CODE ANN. § 61.71(a)(15).

<sup>10</sup> The Articles of Organization and Certificate of Organization for Plaza Mexico De Austin, LLC, was contained in TABC Exhibit #1.

authorized by law to use that license for any reason.<sup>11</sup> Had Respondent permitted Mr. DePaz to use Respondent's actual license to sell beer or wine, a violation would have been clear.

Additionally, there was no evidence that any device, scheme or plan was in place that surrendered Respondent's control of its employees, premises, or business.<sup>12</sup> TABC argued that because Respondent's license agreement for the premises became void after the contract for deed was executed, control of the premises fell squarely into the hands of Mr. DePaz. Even if the TABC is correct, the question is, "what control of the premises did Respondent have under the license agreement that it could possibly surrender?" Under the terms of the 1999 license agreement, Respondent had the exclusive to sell beer at rodeo events held at the premises. As a licensee, Respondent had no other right but to sell beer at the premises. Respondent had virtually no control of the premises itself that could have been surrendered. For instance, Respondent had no right to convey ownership or enter into a sublease (much less control) of the premises. Therefore, no scheme or plan could possibly surrender a right Respondent never had in the first place.

The TABC repeatedly asserted Respondent engaged in subterfuge because the business was run for the benefit of Mr. DePaz. Although no evidence of any benefit was presented, it is reasonable to believe Mr. DePaz somehow benefitted from his daughter holding the TABC license. Even so, it is unreasonable to think that nobody else can derive any benefit from a TABC license or have any interest in that license, other than the license holder. For instance, Respondent's employees derive a benefit from the license because they get paid to work for Respondent when needed. Various suppliers of beer, ice, and cups, for example, are paid for their goods, so they too derive some benefit from Respondent's license. Mr. DePaz presumably benefits by allowing his rodeo patrons an opportunity to purchase alcoholic beverages at the rodeo events, thereby satisfying their needs, and in turn building or maintaining a customer base. Finally, the Sheriff's Posse receives a benefit because it receives a \$5,000 monthly payment from Ms. Lozano for Mr. DePaz under the contract for deed. If the TABC can revoke Respondent's license because other people derive some benefit - and therefore have an interest in the license - all licensees would be subject to revocation if a person other than the licensee derived any benefit from the license.

The statute is clear in that a violation exists where a licensee permits an unauthorized person to use or display its license in the conduct of business for the benefit of that person. In this case, there was no evidence Respondent permitted anyone else to use or display its license in any manner for any reason. Ms. Lozano hired all employees, contacted and arranged all beer and ice deliveries, and paid for all expenses using the company's bank account. The benefits derived by anyone else including Mr. DePaz were not shown to be in violation of any statute. And any control of the premises or employees possessed by Respondent was not surrendered when her father entered into a contract for deed. For these reasons, the ALJ finds the TABC did not prove a violation existed

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<sup>11</sup> TEX. ALCO. BEV. CODE ANN. § 11.05. Unauthorized Use of Permit. No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

<sup>12</sup> TEX. ALCO. BEV. CODE ANN. § 109.53.

under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(15). Furthermore, the ALJ finds the TABC did not prove that Respondent surrendered control of the employees, premises, or business, as “subterfuge” is defined in TEX. ALCO. BEV. CODE ANN. § 109.53. Therefore, the ALJ does not recommend a penalty be imposed for this allegation.

## 2. Did Respondent make a false statement on a renewal application?

Yes. The renewal application contains an area where TABC argued Respondent should have indicated change of ownership, change of operating status and change of rental amount because it differed from the information Respondent provided on the original application. The original application indicated the Sheriff’s Posse was the owner of the premises, that Respondent was operating under a lease agreement with the Sheriff’s Posse, and the rental amount was \$1,666 a month. The ALJ believes the lease termination and the rent increase information should have been noted on Respondent’s renewal applications. Ownership of the property was not sufficiently established by either party, therefore, the ALJ does not find Respondent failed to note new ownership, if any, on the renewal applications.

TABC pointed out the following item on Respondent’s renewal applications for 2000 and 2001 was left blank:

“Affiant further states that **all of the facts and representations made in his/her original application** or any supplemental application submitted subsequent to the original application for the above described license or permit now on file with the Texas Alcoholic Beverage Commission, which original application is hereby made a part of this renewal application, **were and are true and correct**; that the applicant has in no manner become disqualified by law or by facts and conditions from holding the license or permit under the Texas Alcoholic Beverage Code; and that there is no change in ownership since the original application was filed with the Commission that the applicant, or any officer of principal stockholder, has not during the past year been convicted of a felony, except: \_\_\_\_\_.”  
(Emphasis added)

On its original application in 1999, Respondent indicated the owner of the premises was the Sheriff’s Posse. TABC argued Respondent should have pointed out Mr. DePaz was the new owner of the premises in its renewal applications based on the contract for deed that was executed on December 7, 1999. Respondent first argued Mr. DePaz was not the new owner of the premises simply by entering into a contract for deed especially when the contract called for \$5,000 monthly payments be made through the year 2003. Respondent next argued that adjudicating property rights under a contract for deed was far beyond the authority of the TABC. The ALJ agrees the rights of

the property holders of the premises is not a proper subject of this proposal but notes that under Texas property law, title to any real property is not properly conveyed until the terms of any contract for deed are complete.<sup>13</sup>

In Respondent's original application, Respondent indicated it was operating under a lease that lasted from October 15, 1999, through October 15, 2002 - the time frame stipulated in the license agreement with the Sheriff's Posse. Additionally, on the original application, Respondent indicated the rent amount was \$1,666 a month. TABC alleged Respondent should have pointed out in the 2000 and 2001 renewal applications that it was no longer operating under the 1999 license agreement and that it was now paying \$5,000 a month and not \$1,666 that was stated in the original application. Respondent gave no explanation why she did not note any changes on the renewal applications.

TABC argued that since Respondent made a false or incorrect statement on its renewal applications, it should be subject to license revocation under the TABC's penalty chart found at 16 TEX. ADMIN. CODE § 37.60. Under the penalty chart, the only penalty listed for making a false statement on a renewal application in violation of TEX. ALCO. BEV. CODE ANN. § 61.71(a)(4) was cancellation. Interestingly, TABC's allegation of a false statement was plead under § 61.43(a)(4) and not 61.71(a)(4) as stipulated in the penalty chart, however, that is not the reason the ALJ proposes a penalty much less than cancellation. Under a provision of the same penalty chart, the hearing examiner (or ALJ) is not bound to the provisions of the chart for any violation determined to have occurred.<sup>14</sup> Furthermore, the amount of the penalty assessed shall be based on the facts presented at the administrative hearing and from the record of that proceeding.<sup>15</sup>

TABC did not provide any evidence or argument that the false statement regarding Respondent's lease and rental amount constituted a violation worthy of revocation other than what is listed on the penalty chart. TABC asserted that a false statement on a renewal application required mandatory revocation of Respondent's permit but, as already noted, cancellation or revocation of a licensee's permit is not mandatory.

The ALJ was more persuaded by Respondent's argument that a false statement regarding a criminal conviction or citizenship status should result in revocation because those matters are "acutely relevant to an applicant's qualification for a permit." The amount of rent Respondent pays, while it certainly may change from time-to-time, in no way affects Respondent's ability to operate a lawful business or hold a beer permit. The designation of land ownership, even though no evidence was presented, might have had an impact on how Respondent operated under her permit. For instance, if there was any evidence Mr. DePaz had a criminal record or a history of "subterfuge"

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<sup>13</sup> The seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract. TEX. PROP. CODE § 5.079(a).

<sup>14</sup> 16 TEX. ADMIN. CODE § 37.60(g).

<sup>15</sup> *See id.*

arrangements, the ALJ would understand why TABC sought so adamantly to revoke Respondent's license and would have considered a longer suspension period or possibly revocation. In this case, however, no such evidence was presented.

For failing to state the lease agreement identified on the original application was no longer in effect at the time Respondent filed her renewal application for 2000, the ALJ proposes a one-month suspension of Respondent's permit.

For failing to state the lease agreement identified on the original application was no longer in effect at the time Respondent filed her renewal application for 2001, the ALJ proposes a one-month suspension of Respondent's permit.

For failing to state the amount of rent had changed from \$1,666 a month as identified on the original application to \$5,000 a month at the time Respondent filed her renewal application for 2000, the ALJ proposes a one-month suspension of Respondent's permit.

For failing to state the amount of rent had changed from \$1,666 a month as identified on the original application to \$5,000 a month at the time Respondent filed her renewal application for 2001, the ALJ proposes a one-month suspension of Respondent's permit.

### **III. FINDINGS OF FACT**

1. On December 1, 1999, the Texas Alcoholic Beverage Commission (TABC) issued a Retailer's Permit Number BG-462831 to Respondent, Plaza Mexico De Austin, L.L.C.
2. Irma Lozano is Respondent's President and sole member. Steven DePaz is Ms. Lozano's father and owner of Promociones DePaz.
3. Kenneth Ray Smith is the President of the Travis County Sheriff's Posse (Sheriff's Posse). The Sheriff's Posse owns property located at 7000 State Highway 183 South in Travis County, Texas (the premises).
4. On October 6, 1999, Respondent entered into a license agreement with the Sheriff's Posse that gave Respondent exclusive right to sell beer at any of the rodeo events conducted at the premises. The term of the agreement was for October 15, 1999, through October 15, 2002, and called for a monthly payment amount of \$1,666 or \$20,000 a year.
5. On December 7, 1999, Mr. DePaz entered into a contract for deed to purchase the premises. The terms of that contract for deed required Mr. DePaz to pay the Sheriff's Posse \$5,000 a month beginning January 1, 2000, and continue thereafter until the total amount for the deed was paid.

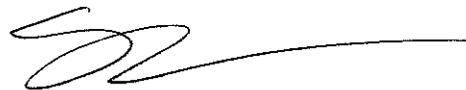
6. Mr. Smith represented the Sheriff's Posse in Ms. Lozano's license agreement and Mr. DePaz's contract for deed.
7. When the contract for deed was entered into by the Sheriff's Posse and Mr. DePaz, Mr. Smith no longer considered the license agreement between the Sheriff's Posse and Ms. Lozano to be in effect.
8. When the contract for deed was entered into by the Sheriff's Posse and Mr. DePaz, Ms. Lozano no longer considered the license agreement with the Sheriff's Posse to be in effect.
9. Ms. Lozano was aware of her father's contract for deed to purchase the premises and started making the \$5,000 monthly payments to the Sheriff's Posse in 2000.
10. In addition to making her father's contract payments, Ms. Lozano operated Plaza Mexico exclusively.
  - a. She decided the type of beer her company would sell;
  - b. She decided which suppliers of ice and cups to use;
  - c. She arranged for all deliveries of beer and supplies;
  - d. She hired all employees;
  - e. She supervised all employees;
  - f. She oversaw the preparation of beer sales before an event;
  - g. She oversaw the actual beer sales during an event;
  - h. She oversaw the closing of beer sales after an event;
  - i. She paid all the expenses from her company's account; and
  - j. She signed every check drawn from her company's account.
11. On Respondent's original 1999 TABC application, Respondent indicated she operated a lease with the Sheriff's Posse and indicated the amount of rent owed was \$1,666 a month.
12. On May 31, 2002, the Respondent received proper and timely notice of the hearing.
13. The hearing was convened on September 25, 2002, at the offices of the State Office of Administrative Hearings in Austin, Texas, and after briefs were filed, the record was closed on October 18, 2002. The TABC was represented by its staff attorney, Dewey Brackin. Respondent was represented by attorney Don Walden.
14. Ms. Lozano did not permit anyone else to use or display her license for any purpose.
15. Respondent did not enter into a plan or scheme that surrendered control of the premises.
16. On Respondent's renewal applications for 2000 and 2001, Ms. Lozano failed to indicate the 1999 license agreement was no longer in effect.

17. On Respondent's renewal applications for 2000 and 2001, Ms. Lozano failed to indicate the amount of rent she was paying changed from \$1,666 to \$5,000 a month.

**V.  
CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61(b) (2).
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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 hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. Based on Findings of Fact Nos. 1-10, 14 and 15, Respondent was not shown to have committed a violation under TEX. ALCO. BEV. CODE ANN. § 61.71(a)(15).
5. Based on Findings of Fact Nos. 4, 8, 11, 16 and 17, Respondent was shown to have committed a violation under TEX. ALCO. BEV. CODE ANN. § 61.43(a)(4).
6. Based on Findings of Fact Nos. 4, 8, 11, 16 and 17, Respondent was not shown to have committed a violation that warranted revocation of Respondent's license under TEX. ADMIN. CODE § 37.60(e).
7. Based on Findings of Fact Nos 1-17 and Conclusions of Law Nos. 4-6, Respondent's permit should not be revoked, but a suspension of four (4) months should be imposed.

Issued this \_\_\_\_ day of December, 2002.



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**STEVEN M. RIVAS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DOCKET NO. 599091

IN RE PLAZA MEXICO DE	§	BEFORE THE
AUSTIN LLC ET AL	§	
D/B/A PLAZA MEXICO DE	§	
AUSTIN LLC	§	
PERMIT NO. BG-462831	§	TEXAS ALCOHOLIC
	§	
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2935)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 10th day of February, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Steven M. Rivas. The hearing convened on September 25, 2002, and record was closed October 18, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 12, 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 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 BG-462831 is hereby **SUSPENDED**.

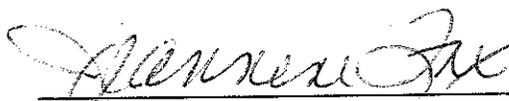
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$18,450.00 on or before the 24th day of April, 2003, all rights and privileges under the above described permit will be **SUSPENDED for a period of one hundred and twenty-three (123) days, beginning at 12:01 A.M. on the 1st day of May, 2002.**

This Order will become final and enforceable on March 3, 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 10th day of February, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

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

Austin District Office  
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 599091

REGISTER NUMBER:

NAME: Plaza Mexico De Austin LLC

TRADENAME: Plaza Mexica De Austin,  
LLC

ADDRESS: 4515 Craigwood Dr., Austin, Texas 78725

DATE DUE: April 24, 2003

PERMITS OR LICENSES: BG-462831

AMOUNT OF PENALTY: \$18,450.00

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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 APRIL, 2003, 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.