

**DOCKET NO. 578620**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
CLUBS UNLIMITED L.L.C. D/B/A COSTA AZUL PERMIT/LICENSE NO(s). MB631867	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-1241)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 10<sup>th</sup> day of March, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on January 30, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 13, 2009. The 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.

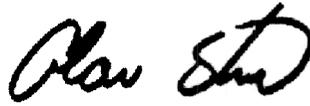
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 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 Respondent's permit be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on April 3, 2009 unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** this the 10<sup>th</sup> day of March, 2009, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
***VIA FACSIMILE: (713) 812-1001***

Clubs Unlimited L.L.C.  
d/b/a Costa Azul  
**RESPONDENT**  
11625 O' Donnell  
Houston, TX 77076  
***VIA REGULAR MAIL***

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

RMP/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED

FEB 17 2009

TABC HOUSTON  
LEGAL

February 13, 2009

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-09-1241; Texas Alcoholic Beverage Commission vs. Clubs Unlimited L.L.C. d/b/a Costa Azul**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Don Smith".

Don Smith  
Administrative Law Judge

DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- VIA REGULAR MAIL  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Club●Unlimited L.L.C. d/b/a Costa Azul, Respondent, 11625 O'Donnell, Houston, Texas 77076 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-09-1241

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,

Petitioner

VS.

CLUBS UNLIMITED L.L.C.  
D/B/A COSTA AZUL  
PERMIT NO. MB-631867  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 578620),

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Clubs Unlimited L.L.C. d/b/a Costa Azul (Permittee) filed an application with the Texas Alcoholic Beverage Commission (Commission or TABC) for a change of address and trade name of its Mixed Beverage Permit (MB-631867) to be relocated at 2710 Berry Road, Houston, Harris County, Texas, under the name Costa Azul. The Commission's staff (Staff) filed an administrative case to cancel the permit after the Texas Comptroller of Public Accounts (Comptroller) protested the application on the ground that the sole officer and shareholder of Permittee is delinquent in the payment of mixed beverage gross receipts tax in the amount of \$88,724.86 for another business the shareholder owned. For the Permittee, Ramiro Bobby Alaniz presented evidence that he does not have the money to pay the taxes. After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is sufficient basis to deny the application and cancel the permit.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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.

On January 30, 2009, a public hearing was convened on this matter in Houston, Harris County, Texas, before Administrative Law Judge Don Smith. The Permittee was represented by its sole shareholder, Ramiro Bobby Alaniz. Staff and the Comptroller were represented by Ramona Perry, attorney. The hearing concluded on January 30, 2009, and the record closed the same day.

## II. DISCUSSION AND ANALYSIS

### A. Applicable Law

As provided in TEX. ALCO. BEV. CODE § .61 (b) (Code), 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:

(5) the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the commission, or by Chapter 183, Tax Code.

Texas Tax Code § 183.021 imposes a tax at the rate of 14 percent on

the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

Texas Tax Code § .024 (a) states that any person who acquires a business or the assets of a business from a taxpayer through a fraudulent transfer or a sham transaction is liable for any tax, penalty, and interest owed by the taxpayer.

And CODE § .61 (a) states that as used in subsection (b) the word "permittee" also includes each officer and owner of a majority of the corporate stock.

**B. Evidence**

The issue is whether the Permittee is liable for Ramiro Bobby Alaniz's debt to the State of Texas. Mr. Alaniz is the sole shareholder and officer of Clubs Unlimited L.L.C. the permittee in this case. Permittee was issued a mixed beverage permit (MB631867) on June 27, 2006, to do business as Billares El Rey & Ballroom at 505 Berry Road in Houston, Texas. There is no record of any protest from the Comptroller on the original application or subsequent renewals. Thereafter, the Comptroller assessed estimated taxes owed by another business owned at some time in the past by Ramiro Bobby Alaniz. On August 1, 2008, Permittee submitted an application for a change of address to 2710 Berry Road and for a change of trade name to Costa Azul. The application is the subject of this hearing.

Darrell Stewart is a Senior Enforcement Agent with the Texas Comptroller's Office. Agent Stewart testified that Ramiro Bobby Alaniz owes the State of Texas \$88,742.86 for estimated taxes owed under Chapter 183 Tax Code (Mixed Beverage Gross Receipts Tax Act) based on an audit of mixed beverage sales from August 2001 to April 2004. The audit was on a different business, and not of Permittee. Permittee had no permit until 2006. Agent Stewart testified that Mr. Alaniz fraudulently transferred the assets of the business audited to Permittee at some unspecified point of time in violation of Texas Tax Code § 11.024, which prohibits fraudulent transfers. There was no other evidence submitted, other than the oral assertions of Agent Stewart, that there was a tax lien and a fraudulent transfer.

Ramiro Bobby Alaniz testified that he is the sole owner of Clubs Unlimited L.L.C. Costa Azul. On December 19, 2008 (the original hearing date), Mr. Alaniz and Agent Stewart spoke about trying to enter into an agreement for the payment of the debt, but Mr. Alaniz testified that he does not have the ability to pay the taxes owed. Mr. Alaniz also said he felt the audit was somehow unfair.

### C. Analysis

The Comptroller seeks to have the application of Permittee denied and the permit cancelled because the sole shareholder owes taxes to the state under Chapter 183 of the Tax Code. Can the Commission cancel the permit for the debts owed under another permit? Agent Stewart claims that the Commission can if there was a fraudulent transfer of assets to Permittee. Evidence of a fraudulent transfer was submitted.

The Commission is limited by statute in helping the Comptroller collect taxes from the Permittee. As provided in Code § 11.61, the Commission may cancel the renewal permit if the Permittee is indebted to the state for taxes, fees, or payment of penalties imposed by Chapter 183, Tax Code. While Agent Stewart was considered a Protestant in this hearing, the matter was brought forth as a suspension or cancellation case under Section 11.61 of the Texas Alcoholic Beverage Code. The notice of hearing states that the Permittee is indebted to the state for taxes owed under Chapter 183 of the Tax Code. The taxes owed originated from alcoholic beverage sales from August 2001 to April 2004 under another permit Mr. Alaniz held. The TABC records show that Mr. Alaniz held a permit for Bobby's Bronco Ballroom at 14 Berry Road in Houston, Texas; applied for a second permit in June 2006 for Billares El Rey & Ballroom located at 1505 Berry Road in Houston, Texas; and submitted a renewal/supplemental application in August 2008 changing the name on the second permit to Costa Azul and locating to 2710 Berry Road in Houston, Texas. As to the location where the taxes owed originated from, there was no evidence submitted, but it is known that the taxes owed did not originate from Permittee's location.

Although taxes imposed under Chapter 183 of the Tax Code are on sales of mixed beverages "consumed on the premises of the permittee," the word "permittee" includes each officer and owner of a majority of the corporate stock. Mr. Alaniz is the sole owner and officer of Permittee, therefore, the debt owed by Mr. Alaniz is Permittee's debt. And since the debt

owed is for taxes imposed under Chapter 183 of the Tax Code as alleged in the notice of hearing, the renewal/supplemental application should be denied and the permit cancelled.

### III. FINDINGS OF FACT

Clubs Unlimited L.L.C. d/b/a Costa Azul (Permittee), filed a renewal application with the Texas Alcoholic Beverage Commission (the Commission) for a mixed beverage permit for premises located at 2710 Berry Road, Houston, Harris County, Texas.

2. Protest to the renewal application was filed by the Texas Comptroller of Public Accounts (Comptroller).
3. The Commission's Staff issued a notice of hearing on November 21, 2008.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. On December 19, 2008, the parties requested a re-set of the hearing to January 30, 2009.
6. The hearing was held on January 30, 2009, in Houston, Harris County, Texas, before Don Smith, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH). The Permittee was represented by Ramiro Bobby Alaniz. The Commission's Staff appeared and was represented by Ramona Perry, attorney. Agent Darrell Stewart appeared for the Comptroller. The hearing concluded on January 30, 2009, and the record closed the same day.
7. Ramiro Bobby Alaniz owes the State of Texas \$88,742.86 for taxes owed under Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act) (the debt).
8. Ramiro Bobby Alaniz is the sole shareholder and officer of Permittee.
9. Permittee is liable for the debt.

### IV. CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and § 11.61.

SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.

- 3 Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
- 4 Permittee is indebted to the state for taxes, fees, or payment of penalties imposed by Chapter 183 of the Tax Code (Mixed Beverage Gross Receipts Tax Act) in violation of TEX. ALCO. BEV. CODE §§ 11.61 (b) (5) and 11.61 (b) (2).
- 5 Based on the foregoing findings and conclusions, the renewal application of Clubs Unlimited L.L.C. should be denied and the permit should be cancelled.

Signed this 13<sup>th</sup> day of February, 2009.



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**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**