

DOCKET NO. 579222

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

NOE IBARRA PAULIN  
D/B/A MI OFICINA  
PERMIT/LICENSE NO(s). BG271822, BL

WICHITA COUNTY, TEXAS  
(SOAH DOCKET NO. 458-09-1098)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on March 13, 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 April 3, 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 permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on June 1, 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 8th day of May, 2009, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
6777 Camp Bowie Blvd., Suite 400  
Fort Worth, Texas 76116  
**VIA FACSIMILE (817) 377-3706**

Marty Canndey  
ATTORNEY FOR RESPONDENT  
1407 Ninth Street  
Wichita Falls, TX 76301  
**VIA FACSIMILE (940) 766-3717**

Noe Ibarra Paulin  
d/b/a Mi Oficina  
**RESPONDENT**  
200 Scott Street  
Wichita Falls, TX 76301  
**VIA REGULAR MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Wichita Falls Outpost  
Fort Worth Office

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 3, 2009

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**Re: Docket No. 458-09-1098; Texas Alcoholic Beverage Commission  
v, Noe Ibarra Paulin d/b/a Mi Oficina (TABC 579222)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script that reads "Monica Garza".

Monica Garza

MG/dd  
attachments

**SOAH DOCKET NO. 458-09-1098  
TABC DOCKET NO. 579222**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**BEFORE THE STATE OFFICE**

**OF**

**NOE IBARRA PAULIN  
D/B/A MI OFICINA,  
Respondent**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Noe Ibarra Paulin d/b/a Mi Oficina (Respondent), alleging that Respondent possessed or permitted others to possess a narcotic on the licensed premises. Petitioner requested cancellation of Respondent's permit and license. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) finds Petitioner proved its allegations. The ALJ recommends cancellation of Respondent's permit and license.

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

TABC has jurisdiction in this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61, and 61.71. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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.

On February 10, 2009, Petitioner issued its notice of hearing, directed to Respondent at his address of record. The notice 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, as required by TEX. GOV'T CODE ANN. § 2001.052.

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On March 13, 2009, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Respondent appeared through his attorney, Marty Cannedy. Following presentation of evidence, the record closed on March 13, 2009.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1), TABC may cancel a license if the license holder violates a provision of the code. Further, TEX. ALCO. BEV. CODE ANN. § 104.01(9) prohibits the possession of narcotics on the licensed premises.

## III. EVIDENCE

### A. Respondent's Permit and License

Respondent holds a Wine and Beer Retailer's On-Premise Permit, BG-271822, with accompanying Retailer's On-Premise Late Hours License, issued by TABC, for the premises located at 200 Scott Street, Wichita Falls, Wichita County, Texas. This permit was originally issued on January 22, 1992, and it has been continuously renewed.

### B. Possession of Narcotics on the Licensed Premises

On August 19, 2008, at approximately 7:00 p.m., police officers executed a search and arrest warrant at the licensed premises. Gerald Schulte, a Wichita Falls Police Department narcotics officer, testified that he sought the warrant after several undercover drug buys were made at the premises.

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When Officer Schulte and five other officers entered the premises to execute the warrant, Victor Pablo Duque, who was specifically named in the warrant, was found behind the bar. Packaged cocaine and \$329 were found on Mr. Duque's person.

Officers also contacted Dionne Townsend on the premises. Ms. Townsend indicated that she was a part-time waitress. An amount of cocaine consistent with personal use was found on Ms. Townsend's person.

Rodney Burchett, an organized crime unit investigator with the Wichita Falls Police Department, located Respondent sitting at his office desk. Officer Burchett found a useable amount of cocaine on Respondent's desk. Underneath Respondent's desk, officers located cocaine packaged in small bags with black tape. Officers also located handguns, currency, digital scales, sandwich bags, electrical tape, and unbroken rocks of cocaine. Officer Burchett opined that the packaging was consistent with street-level sales.

Following the warrant execution, both Mr. Duque and Ms. Townsend were arrested and placed in custody. Because Respondent complained of medical issues, he was transported to the hospital, and an at-large warrant was issued for his arrest. When police served this warrant at the licensed premises on August 23, 2008, cocaine was again found in Respondent's possession.

#### IV. ANALYSIS

The evidence clearly establishes that Respondent knowingly allowed the presence of narcotics on the licensed premises. The only reasonable interpretation of the evidence is that Respondent ran a cocaine sales operation from the licensed premises. When officers raided the premises on August 19, 2008, Respondent was found in possession of packaged cocaine, unbroken cocaine rocks, digital scales, packaging material, currency, and handguns. All of these items were found within Respondent's personal space. Further, the only other two people located on the

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premises (one behind the bar; the other claiming to be a waitress), also had cocaine in their possession. Finally, when police arrived to arrest Respondent on August 23, 2008, he again had cocaine in his possession on the licensed premises. Respondent clearly violated the Code provision prohibiting the possession of narcotics on the licensed premises.

Based on the above analysis, the ALJ agrees with Petitioner's recommendation that Respondent's permit and license be cancelled.

### V. PROPOSED FINDINGS OF FACT

1. Noe Ibarra Paulin d/b/a Mi Oficina (Respondent) holds a Wine and Beer Retailer's On-Premise Permit, BG-271822, with accompanying Retailer's On-Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 200 Scott Street, Wichita Falls, Wichita County, Texas.
2. This permit was originally issued on January 22, 1992, and it has been continuously renewed.
3. On August 19, 2008, at approximately 7:00 p.m., police officers executed a search and arrest warrant at Respondent's licensed premises.
4. At that time, Respondent was on the licensed premises and was found in possession of packaged cocaine, cocaine rocks, packaging material, digital scales, currency, and handguns.
5. Another individual located behind the bar was found in possession of packaged cocaine.
6. Another individual claiming to be a part-time waitress was found in possession of a useable amount of cocaine.
7. On August 23, 2008, officers arrived on the licensed premises to serve an arrest warrant on Respondent.
8. Respondent was again found in possession of cocaine.
9. Respondent and his employees possessed cocaine on the licensed premises.
10. On February 10, 2009, TABC staff (Petitioner) issued its notice of hearing, directed to

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Respondent at his address of record.

11. The notice 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.
12. On March 13, 2009, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
13. Petitioner was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Respondent appeared through his attorney, Marty Cannedy.
14. Following presentation of evidence, the record closed on March 13, 2009.

**VI. PROPOSED CONCLUSIONS OF LAW**

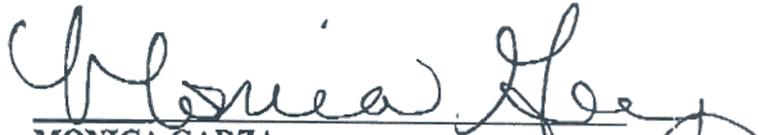
1. TABC has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 61.71.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent possessed and permitted others to possess narcotics on the licensed premises. TEX. ALCO. BEV. CODE ANN. § 104.01(9).
5. Respondent's permit and license should be cancelled. TEX. ALCO. BEV. CODE ANN. §§ 11.61, 61.71, and 104.01(9).

SIGNED April 3, 2009.

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MONICA GARZA  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS