

DOCKET NO. 585126

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
MICHAEL EZEKIEL SANCHEZ D/B/A ACCORALADOS NITE CLUB PERMIT/LICENSE NO(s). BG670827, BL	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-09-4991)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 28th day of October, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Burger. The hearing convened on August 14, 2009 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 September 30, 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.

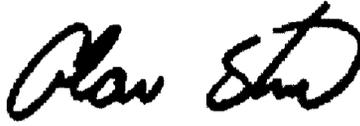
IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent’s permits are herein **SUSPENDED for thirty-two (32) days.**

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$9,600.00** on or before the **8th day of December 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of thirty-two (32) days beginning at 12:01 A.M. on the 16th day of December 2009.**

This Order will become final and enforceable on November 23, 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 28th day of October, 2009,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Administrative Law Judge
State Office of Administrative Hearings
2020 N. Loop West, Suite 111
Houston, Texas 770018
VIA FACSIMILE: (713) 812-1001

Michael Ezekiel Sanchez
d/b/a Accoralados Nite Club
RESPONDENT
2508 Hwy 249, Suite D
Houston, Texas 77038
VIA U.S. FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

SAL/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

OCT 01 2009

TARG HOUSTON
LEGAL

September 30, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-4991; Texas Alcoholic Beverage Commission vs. Michael Ezekiel Sanchez d/b/a Accoralados Nite Club

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.

Sincerely,

A handwritten signature in cursive script that reads "S. J. Burger".

Stephen J. Burger
Administrative Law Judge

SJB/mr
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th 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**
Michael Ezekiel Sanchez d/b/a Accoralados Nite Club, Respondent, 2508 Hwy 249, Suite D, Houston, TX 77038 - **VIA REGULAR MAIL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001
<http://www.soah.state.tx.us>

ADM. CODE § 155.501. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held and a reference to the statutes and rules involved. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings (“SOAH”) default rule.

At the hearing, the TABC presented Exhibit No. 1, the US Mail certified green card, and a copy of the returned envelope; Exhibit No. 2, the Notice of Hearing; and Exhibit No. 3, Respondent’s TABC license.

The TABC met its burden of proving that Respondent violated TEX. ALCO. BEV. CODE §§ 61.71(a)(17), 104.01(9); and TEX. ALCO. BEV. CODE §§ 61.71(a)(20) and 69.09. Given that Respondent possessed or permitted others to possess a narcotic on the licensed premises and acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder, the suspension period the TABC’s Staff has requested is appropriate. Under TEX. ALCO. BEV. CODE § 11.64, Respondent is given the option of paying the recommended penalty in lieu of the suspension, and the ALJ has included that option in the Conclusions of Law.

The ALJ proposes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Respondent, Michael Ezekiel Sanchez, d/b/a Accoralados Nite Club, 2508 Hwy. 249, Suite D, Houston, Harris County, Texas 77038, holds a Wine and Beer Retailer’s On Premise Permit, BG-670827, which includes a Retailer’s On Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (“TABC”).
2. On July 7, 2009, the TABC’s Staff sent notice to Respondent of the hearing to be held August 14, 2009, at 11:00 a.m., regarding the alleged violations.
3. The July 7, 2009, notice from the TABC was sent via certified mail and regular mail to the Respondent’s address of record, 2508 Hwy. 249, Suite D, Houston, Texas 77038.

4. The hearing on the merits convened August 14, 2009 at 11:00 a.m., at the offices of the State Office of Administrative Hearings ("SOAH"), 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Shelia A. Lindsey. The Respondent did not appear and was not represented at the hearing. The record closed the same day.
5. On or about March 7, 2009, Respondent or Respondent's agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premises.
6. On or about March 7, 2009, Respondent or Respondent's agent, servant, or employee acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§ 6.01, 11.46, 11.61, 61.71 and 61.73 of the TEX. ALCO. BEV. CODE.
2. SOAH has jurisdiction to conduct the 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 the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052, and 1 TEX. ADM. CODE § 155.501.
4. Based upon Finding of Facts Nos. 5 and 6, the Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(17) and (a)(20), 69.09 and 104.01(9).
5. Based on the Findings of Fact and Conclusions of Law, the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
6. Based on the foregoing findings and conclusions, a 32-day suspension of Respondent's license and permit is warranted.
7. Pursuant to TEX. ALCO. BEV. CODE § 11.64, Respondent should be allowed to pay a \$9,600 civil penalty (\$300 per day) in lieu of suspension of its permit and license.

SIGNED September 30, 2009.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS