

DOCKET NOS. 580071, 580867, 582076 & 582366

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

LETICIA NORMA MUNOZ  
D/B/A EL JARDIN BILLIARDS & GRILLS  
PERMIT/LICENSE NO(s). MB671874, LB &  
PE  
DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-09-2194)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1st day of April, 2010, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Richard R. Wilfong. The hearing on place or manner and common nuisance allegations convened on April 27, 28 and 29, 2009 and August 17, 18, and 19, 2009. Additional alleged violations specific to the Respondent were heard on October 28, 2009. The record closed on December 30, 2009. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 9<sup>th</sup> day of February, 2010. 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. Respondent's Attorney filed exceptions to the Proposal For Decision on February 23, 2010. The Administrative Law Judge filed a reply to Respondent's exceptions on March 8, 2010, and recommends no changes to the Proposal For Decision.

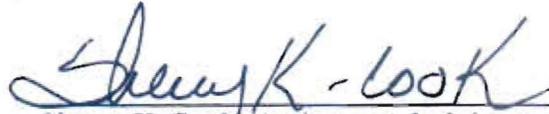
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those 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 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 your permit(s) and/or license(s) is hereby **CANCELLED**.

This Order will become **final and enforceable** on the 26<sup>th</sup> day of April, 2010, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this the 1st day of April, 2010, at Austin, Texas.



Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

EEH/cb

Honorable Judge Richard R. Wilfong  
**Administrative Law Judge**  
State Office of Administrative Hearings  
**VIA FACSIMILE: (512) 475-4994**

Larry Finstrom  
**Attorney For Respondent**  
1201 Elm Street, Suite 2510  
Dallas, TX 75270  
**VIA FACSIMILE: (214) 748-8379**

Leticia Norma Munoz  
**Respondent**  
d/b/a El Jardin Billiards & Grills  
2900 Walnut Hill Lane, Ste.104  
Dallas, TX 75229  
**VIA REGULAR MAIL**

Emily E. Helm  
**Attorney For Petitioner**  
TABC Legal Section

Licensing Division

Dallas District Office

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**Petitioner**

V.

**LETICIA NORMA MUNOZ D/B/A EL  
JARDIN BILLIARDS & GRILLS  
(TABC CASE NOS. 580071, 580867,  
582076, AND 582366),**

**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff/TABC/Petitioner) requested that the mixed beverage, mixed beverage late hours, and beverage cartage permits of Leticia Norma Munoz d/b/a El Jardin Billiards & Grills (El Jardin/Respondent), located at 2900 Walnut Hill Lane, Suite 104, in Dallas, Texas, be cancelled based on several violations of the Texas Alcoholic Beverage Code (Code) alleged to have occurred between September 20, 2007, and December 13, 2008. Respondent denied the allegations. The Administrative Law Judge (ALJ) finds that Staff proved the contested allegations specific to El Jardin as explained in detail below. Accordingly, the ALJ recommends that Respondent's permits be cancelled.

**I. PROCEDURAL HISTORY AND JURISDICTION**

There are no contested issues of notice or jurisdiction, and those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing in this matter relating to alleged violations of §§ 11.61(b)(7) and 81.005 of the Texas Alcoholic Beverage Code (Code) (items 6 and 7 below) was jointly held with several other dockets involving common issues of fact concerning the alleged violations referred to generally as "place or manner" and common nuisance allegations. The joint hearing on place or manner and common nuisance allegations convened at the J. Eric Jonson Central Library, 1515 Young Street, Dallas, Texas 75201, on April 27, 28 and 29, 2009, and August 17, 18, and 19, 2009. Additional

alleged violations specific to the Respondent (items 1 through 6 and 8 below) were heard on October 28, 2009 at the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas 75235. All of the hearings were before Administrative Law Judge (ALJ) Richard R. Wilfong. TABC Staff was represented by attorneys Emily Helm and Judith Kennison. Respondent appeared by attorney Timothy Griffith. Following the hearings, the parties submitted written closing arguments and reply briefs. The record closed on December 30, 2009.

## II. ALLEGATIONS AND LEGAL STANDARDS

In its Notice of Hearing, Staff made the following allegations:

1. On or about September 6, 2008, Respondent or Respondent's agent, servant or employee, with criminal negligence, permitted a minor, Gabriella Lin Sanchez age 16 to possess or consume an alcoholic beverage in violation of § 106.13 of the Code.
2. On or about September 6, 2008, Respondent or Respondent's agent, servant, or employee, with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor, Gabriella Lin Sanchez age 16 in violation of § 106.13 of the Code.
3. On or about September 6, 2008, Respondent, or Respondent's agent, servant, or employee, with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor, Marcos Miguel Muniz-Alvarez age 19 in violation of § 106.13 of the Code.
4. On or about October 25, 2008, Respondent, or Respondent's agent, servant, or employee, with criminal negligence, permitted a minor, Robert Santos Echererria Zelaya age 19 to possess or consume an alcoholic beverage in violation of § 106.13 of the Code.
5. On or about October 25, 2008, Respondent, or Respondent's agent, servant, or employee, Maria Carmen Delgado solicited or permitted solicitation of a person to buy drinks for consumption by Respondent or any of Respondent's employees in violation of §§ 11.61(b)(2) and 104.01(4) of the Code.
6. On or about September 20, 2007, through December 15, 2008, the place or manner in which Respondent, or Respondent's agent, servant, or employee conducted its business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency, in violation of § 11.61(b)(7) of the Code.

7. On or about September 20, 2007, through December 15, 2008, Respondent or Respondent's agent, servant, or employee used or allowed others to use the permitted premises in a manner that constitutes a common nuisance as defined in § 81.001 of the Code and in violation of § 81.005 of the Code.
8. On or about December 13, 2008, Respondent, or Respondent's agent, servant, or employee, sold, served, or delivered an alcoholic beverage to an intoxicated person in violation of § 11.61(b)(14) of the Code.

A person acts with criminal negligence under the Code if:

with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.<sup>1</sup>

### III. SUMMARY OF EVIDENCE PRESENTED AND ANALYSIS

At the joint hearings on place or manner and common nuisance allegations (items 6 and 7 above) Staff presented the testimony of 13 witnesses: nine members of the Dallas Police Department and four TABC employees. Staff offered 12 exhibits, 9 of which were admitted. Respondents collectively presented eight witnesses and offered seven exhibits that were admitted.

At the hearing on alleged violations specific to El Jardin (items 1 through 5 and 8 above), Staff presented the testimony of two witnesses and offered three exhibits that were admitted. Respondent presented the testimony of one witness and offered three exhibits that were admitted.

The following is a summary of the evidence presented concerning the alleged violations and the ALJ's analysis:

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<sup>1</sup> This definition is the Penal Code definition of criminal negligence on which the Code § 1.08 relies.

**A. September 6, 2008 - Allegations (1, 2, and 3) that Respondent or its Agent, Servant or Employee, with Criminal Negligence, Permitted a Minor to Possess or Consume an Alcoholic Beverage and/or Sold, Served, or Delivered an Alcoholic Beverage to a Minor.**

**1. Evidence:**

On September 6, 2008, TABC enforcement agent Victor Bulos, accompanied by Dallas Police Department vice detective Swint, conducted an undercover operation at El Jardin at approximately 1:10 a.m. Mr. Bulos observed a female that appeared very youthful in appearance and demeanor. She was at a table near the dance floor with four males and was doing what a fichera would do.<sup>2</sup> Mr. Bulos then observed her receive money from one of the males and proceed to the bar and purchase five 12 ounce Bud Light beers from Sandra Vidales, the bartender. She then returned to the table and placed a beer in front of each male. After clearing empty bottles from the table, she returned to the table and began drinking the fifth beer that she had purchased.<sup>3</sup> Mr. Bulos subsequently determined that the female was Gabriella Sanchez and she was only 16 years of age.<sup>4</sup> Gabriella Sanchez's mother, Roberta Meza, was in the bar, but was also busy as a fichera tending to another table of men on the opposite side of the dance floor.<sup>5</sup>

Mr. Bulos also observed another table where four youthful appearing males were sitting. He saw Lucinda Melo performing waitress duties in that vicinity of the bar,<sup>6</sup> and he saw her approach the table where the four males were sitting. She took their order for four beers, obtained the four beers from the bartender, Sandra Vidales, and served the beer to the four patrons.<sup>7</sup> Mr. Bulos

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<sup>2</sup> "fichera" is a nickname given to female employees at a Hispanic bar that serve as waitress and accompany or befriend male patrons by dancing with them, etc.

<sup>3</sup> Tr. 1423-1425 and 1442-1443.

<sup>4</sup> Tr. 1425.

<sup>5</sup> Tr. 1436-1438.

<sup>6</sup> Tr. 1441.

<sup>7</sup> Tr. 1427.

observed one of the youths, Marcos Miguel Muniz-Alvarez, consume the beer and a shot of tequila.<sup>8</sup> Mr. Bulos subsequently determined that Mr. Muniz-Alvarez was only 19 years of age.<sup>9</sup>

According to Leticia Norma Munoz, the sole owner of El Jardin, Lucinda Melo was not her employee. She claimed that she never: (1) compensated her; (2) supervised or directed her; (3) authorized her to conduct any business for her; (4) scheduled her to work; (5) authorized or required her to render any type of accounting; or (6) reserved any right to supervise her.<sup>10</sup> She stated that she was at the bar the night of September 6, 2008, and she did not see any youthful appearing female purchase alcohol from the bartender.<sup>11</sup> She also said that she does not allow minors to consume or possess alcohol, and she had no idea how the alleged minor could have obtained alcohol if she possessed it. She did not dispute that Sandra Vidales was employed by her as the bartender.

## 2. Analysis

The undisputed evidence establishes that on September 6, 2008: (1) Gabriella Sanchez was 16 years old; she took beer orders from patrons; received money from patrons to purchase beer; purchased beer from the bartender Sandra Vidales; served the beer to the patrons and kept one for herself which she consumed; and (2) Lucinda Melo was performing waitress duties; she waited on a table of male patrons by taking their order for beer, obtained the beer from the bartender Sandra Vidales, and served the beer to the patrons. One of the patrons served by Ms. Melo was Marcos Miguel Muniz-Alvarez a minor 19 years old who consumed the beer and a shot of tequila.

With respect to Gabriella Sanchez, Respondent attempted to avoid or mitigate the allegations on two grounds: (1) that the minor was in the visible presence of her mother; therefore, no violation

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<sup>8</sup> Tr. 1429.

<sup>9</sup> Tr. 1430; 1433.

<sup>10</sup> Tr. 1501-1502

<sup>11</sup> *Id.*

occurred pursuant to § 106.05(b)(2) of the Code; and (2) that Petitioner failed to prove that the Respondent had knowledge of or permitted the alleged sale; therefore, the mitigation provisions of § 106.13(c)(3) of the Code apply. Regarding the Respondent's contention that Gabriella Sanchez was in the visible presence of her mother, according to the undisputed testimony of Mr. Bulos, Ms. Sanchez's mother was busy as a fichera attending another table of men on the other side of the dance floor. Moreover, considering that Gabriella Sanchez was only a 16-year-old girl, a much higher level of observation and attention by the parent is warranted and should be required for the sale to a minor to be permissible under these circumstances. Thus, the ALJ finds based on the preponderance of the evidence that Gabriella Sanchez was not in the visible presence of her adult parent as contemplated by § 106.05(b)(2) of the Code, and the alleged violation of § 106.13 of the Code concerning Gabriella Sanchez was proved by a preponderance of the evidence. Regarding the Respondent's contention that Petitioner failed to prove that Respondent knew of or permitted the alleged sale to a minor, the ALJ finds that the Respondent, not the Petitioner, bears the burden of proving that an employee, servant, or agent violated the Code without Respondent's knowledge or permission and Respondent failed to do so. On the contrary, Respondent testified that *she was present* at the bar the night of September 6, 2008. She also testified that she does not check ID when the bartender is there – that is the responsibility of the bartender. There were no policies posted with regard to not serving minors. Thus, based on the preponderance of the evidence the ALJ finds that Respondent failed to prove that she met the criteria for mitigation under § 106.13(c)(3) of the Code.

With respect to Marcos Miguel Muniz-Alvarez, Respondent attempted to avoid responsibility only by claiming that Lucinda Melo, the person who served beer to Mr. Muniz-Alvarez, was not Respondent's agent, servant, or employee. Respondent's only evidence that Ms. Melo was not her employee, agent or servant was Respondent's testimony that she did not pay, supervise, authorize, or obtain an accounting from Ms. Melo.

The Code does not define the term "employee." In *Ackley v. State*, 592 S.W. 2d 606, 608 (Tex. Crim. App. 1980), the Texas Court of Criminal Appeals defined "employee" as "a person who works for another in return for financial or other consideration." The court stated that the test for

determining whether one person is another person's employee is whether the person is subject to the control of the other person.

The ALJ finds it significant that in light of Respondent's testimony that she was at El Jardin the night of September 6, 2008, she did not even attempt to dispute or rebut the testimony of Mr. Bulos concerning the activities and actions of Ms. Melo that he observed. In view of Ms. Melo's undisputed performance of customary waitress duties, including clearing tables, gathering and disposing of trash, taking beer orders from patrons, handling the exchange of money for beer at the bar, and serving the beer to the patrons at their tables, it is clear to the ALJ that Ms. Melo was openly performing the work of a waitress that was beneficial to Respondent. As to whether Ms. Melo was working in return for financial or other consideration, the ALJ is aware of the universal custom and practice for patrons of bars and restaurants to tip waiters and waitresses. The amount of the tip is generally 15 to 20 percent of the cost of the food or beverage purchased.<sup>12</sup> As to whether Ms. Melo received "other consideration," that is at least as likely as not. It would be illogical to conclude as Respondent urges, that Ms. Mello performed waitress duties as described by Mr. Bulos without financial reward or other consideration. As to being "subject to the control of the other person," the Respondent or her bartender could have simply required Ms. Melo to stop what she was doing. Notwithstanding, the apparent absence of hiring formality, by openly performing waitress services with the acquiescence of the Respondent, an agent, servant, or employee relationship between Respondent and Ms. Melo was tacitly created. Thus, the ALJ finds that the Petitioner proved that Ms. Melo, in her capacity as Respondent's agent, servant, or employee, sold, served, or delivered an alcoholic beverage to a minor in violation of § 106.13 of the Code.

- B. October 25, 2008 – Allegations (4 and 5) that Respondent or its Agent, Servant, or Employee, with Criminal Negligence, Permitted a Minor to Possess or Consume Alcoholic Beverages, and Solicited a Person to Buy Drinks for Consumption by Respondent or Respondent's Employees.**

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<sup>12</sup> Any objection to this taking of official notice should be filed as an exception to this PFD.

## I. Evidence

On October 25, 2008, TABC enforcement agent Victor Bulos was an open team member in an undercover operation at El Jardin. He entered El Jardin at approximately 10:35 p.m. and noted that the bar was not very crowded. He observed a table near the dance floor occupied by six male patrons. One of them was youthful in appearance and was in possession of and consuming a Bud Light beer.<sup>13</sup> Mr. Bulos also saw that the bartender, Sandra Vidales, had an unobstructed view of the youth sitting at the table from about 25 feet away.<sup>14</sup> The youth was positively identified as Robert Santos Echererria Zelaya and he was 19 years old.<sup>15</sup> Ms. Vidales said that the six patrons, including Mr. Zelaya had been sitting at the table for over an hour.<sup>16</sup> Mr. Zelaya said he was not asked for his ID and he did not possess a fake ID.<sup>17</sup>

Respondent testified that she was not at El Jardin on October 25, 2008.<sup>18</sup> She did not deny that the bartender, Ms. Vidales, was her, agent, servant or employee. She offered three photographs that she took sometime after October 25 and offered them for the purported purpose of showing that the bartender would not have had an unobstructed view of table where Mr. Zelaya was seated, and to show that the bar was dimly-lit.<sup>19</sup> Petitioner objected to the photographs because the Respondent was not at El Jardin on October 25, 2008, and the photographs were not taken on that date. The photographs were admitted for the limited purpose of indicating the general arrangement of the bar.

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<sup>13</sup> Tr. 1447-1448.

<sup>14</sup> Tr. 1449-1450.

<sup>15</sup> Tr. 1450.

<sup>16</sup> Tr. 1454.

<sup>17</sup> Tr. 1454; 1458.

<sup>18</sup> Tr. 1505.

<sup>19</sup> Tr. 1506-1510; Respondent's Spec. Aleg. Exs. 1, 2, and 3.

## 2. Analysis

The ALJ found the testimony of Mr. Bulos to be very credible and persuasive. Based on the preponderance of the evidence the ALJ is persuaded that the bar was not crowded on the evening of October 25, 2008; the bar was well-lit; and, the bartender had a clear view of Mr. Zelaya as he sat at a table for over an hour in the possession of and consuming a beer. Thus the ALJ concludes that the Petitioner proved that on September 25, 2008, Respondent's agent, servant or employee, with criminal negligence, permitted a minor, Robert Santos Echererria Zelaya age 19, to possess or consume an alcoholic beverage in violation of § 106.13 of the Code.

Allegation (5) pertaining to Maria Carmen Delgado, alleging that Respondent violated §§ 11.62(b)(2) and 104.01(4) of the Code, was dismissed by Petitioner on the record of this proceeding.<sup>20</sup>

### C. **December 13, 2008 - Allegation (8) that Respondent, or her Agent, Servant, or Employee, Sold, Served or Delivered an Alcoholic Beverage to an Intoxicated Person.**

#### 1. Evidence

On December 13, 2008, TABC enforcement agents Gilbert Alba and David Salazar, conducted an undercover operation at El Jardin. Mr. Alba testified that he and Mr. Salazar entered the bar a little after midnight and sat at a table near the dance floor. They observed a man bump into an empty chair as he walked from the dance floor so they continued to monitor him.<sup>21</sup> As the man walked toward the bar the female he was walking with was helping to steady him. When she let go he had difficulty walking without assistance and was staggering. According to Mr. Alba, it was apparent that the man did not have all of his gross motor skills.<sup>22</sup> After the man got to the bar he

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<sup>20</sup> Tr. 1445.

<sup>21</sup> Tr. 1460.

<sup>22</sup> Tr. 1461.

stood leaning against the bar. Within approximately 30 seconds the man leaned forward like he was falling asleep. Even while he leaned against the bar he had difficulty maintaining his balance. The bartender approached the man and it appeared that she was trying to take his order, but was having difficulty doing that. The bartender tried talking to the man several times.<sup>23</sup> Then, the female accompanying the man leaned forward and spoke to the bartender. It appeared to Mr. Alba that the female companion gave the order to the bartender. The bartender then served the man a 12-ounce Corona beer and served his female companion a Bud Light.<sup>24</sup> The man exhibited difficulty finding and retrieving his wallet, and getting the money out to pay for the beer.<sup>25</sup> At that point the undercover agents contacted the open agents who entered El Jardin and took the man outside. After determining that the man was intoxicated the bartender, Laura Virginia Alvarez, was charged with sale of alcohol to an intoxicated person. Ms. Alvarez was subsequently convicted of the criminal charge.<sup>26</sup> Certified copies of the court documents in the criminal case were admitted as evidence.<sup>27</sup>

Respondent testified that she was not at El Jardin the night of December 13, 2008.<sup>28</sup> However, she said that the man was with his wife, and his wife was her friend. Therefore, she knew that the bartender sold to the man's wife and not to the man.<sup>29</sup> She also, testified that the man's wife told her that her husband was already intoxicated before he came to El Jardin. She further claimed that the man did not drink any beer while he was at El Jardin. He was not served by the bartender, only his wife was sold a drink.<sup>30</sup> Respondent did not dispute that the bartender, Ms. Alvarez, was her agent, servant, or employee.

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<sup>23</sup> Tr. 1461-1463.

<sup>24</sup> Tr. 1463.

<sup>25</sup> Tr. 1464.

<sup>26</sup> Tr. 1466-1468; TABC Ex. 1.

<sup>27</sup> TABC Ex 1.

<sup>28</sup> Tr. 1502.

<sup>29</sup> Tr. 1502-1503.

<sup>30</sup> Tr. 1504-1505.

## 2. Analysis

The ALJ found the testimony of Mr. Alba to be very credible and persuasive in contrast with the Respondent's testimony that the ALJ found to be self-serving hearsay lacking credibility. Thus, the ALJ finds that the preponderance of the evidence proved that: (1) the man was at El Jardin the night of December 13, 2008; (2) Respondent was not present; (3) the man was obviously and unmistakably intoxicated; (4) the man's state of intoxication was openly and unmistakably apparent to Ms. Alvarez, the bartender; (4) Ms. Alvarez served the intoxicated man a bottle of Corona beer; (5) Ms. Alvarez was tried and found guilty of selling alcohol to this intoxicated person; and (6) Ms. Alvarez was the Respondent's agent, servant, or employee. Thus, the ALJ concludes that the Petitioner proved by a preponderance of the evidence that on December 13, 2008, Respondent's agent, servant, or employee, sold, served, or delivered, an alcoholic beverage to an intoxicated person in violation of § 11.61(b)(14) of the Code.

### D. **September 20, 2007 through December 15, 2008 – Allegations (6 and 7) that the Place or Manner Respondent Conducted Business Offended the General Welfare, Health, Peace, Morals and Safety of the People and the Public Sense of Decency, and/or Constitutes a Common Nuisance.**

#### 1. Evidence

The evidence was extensive concerning the allegations that Respondent, *et al*, conducted business in a place or manner that offended the general welfare, health, peace, morals and safety of the people and the public sense of decency, and/or constitutes a common nuisance.

El Jardin is among a cluster of bars and other businesses located in close proximity to each other in a "U" shaped strip center located at 2900 Walnut Hill Lane in Dallas, Texas. The bars are not assigned designated parking for use by their patrons; rather, they share a large common parking area.<sup>31</sup> The common parking area is exclusively controlled and maintained by the owner of the

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<sup>31</sup> Due to the uniqueness of the configuration and proximity of the bars, a photo (Exhibit 10) showing the layout is attached.

property rather than the individual bar owners who lease their bar locations from the owner of the property.

The bar owners, including Respondent, did not dispute the criminal activity, but claimed they were not responsible for it since it occurred in the common parking area exclusively controlled and maintained by the property owner. Moreover, they adamantly argued that they can not be held legally responsible for criminal activity in the common parking area outside their bars because that is not part of their "licensed premises."

## 2. Analysis

In view of the ALJ's findings and conclusions regarding the specific allegations (items 1 through 5 and 8 above), and the recommendation below that Respondent's permits be cancelled based on those violations, the ALJ concludes that it is unnecessary to further address the place or manner and common nuisance allegations.

## IV. RECOMMENDED SANCTIONS

The Commission has adopted a Standard Penalty Chart which sets forth suggested sanctions for the Commission's agents, compliance officers, or other designated personnel to use when settling cases prior to a hearing.<sup>32</sup> The suggested sanctions bind neither an ALJ nor the Commission and deviations from the chart are permitted if there are aggravating or mitigating circumstances.

Although the Standard Penalty Chart is not binding, it does provide some guidance in considering a penalty. And based on the Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations, the ALJ agrees with Staff's recommendation for permit cancellation. The ALJ finds that the frequency and gravity of Respondent's violations, and the repetition of the same types

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<sup>32</sup> 16 Tex. Admin. Code (TAC) § 37.60(a).

of violations, over a relatively short period of time is indeed cause for concern and justification for aggressive action.<sup>33</sup> The pattern exhibits careless indifference to violations of the law and a lack of diligence to prevent the violations. Additionally, the evidence does not inspire any confidence that Respondent is capable or of a mind to adequately oversee the operation of the licensed premises as required by law and in a manner that would prevent violations that threaten public health, safety, and welfare from occurring in the future. Accordingly, based on the totality of the evidence and for the reasons stated, the ALJ recommends cancellation of Respondent's permits.

## VI. FINDINGS OF FACT

1. Leticia Norma Munoz d/b/a El Jardin Billiards & Grills (Respondent) is the holder of Mixed Beverage, Mixed Beverage Late Hours and Beverage Cartage permits issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2900 Walnut Hill Lane, Dallas, Dallas County, Texas (licensed premises).
2. Leticia Norma Munoz is the sole owner of Respondent.
3. On February 5, 2009, TABC Staff (Staff) sent a Notice of Hearing to Respondent.
4. The Notice of Hearing contained a statement of the time, date, location, and the 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 allegations and the relief sought by the TABC.
5. On April 17, 28, and 29, August 17, 18, and 19, and October 28, 2009, public hearings were held at the J. Eric Jonson Central Library and the State Office of Administrative Hearings in Dallas, Dallas County, Texas, before Administrative Law Judge Richard R. Wilfong (ALJ). Staff appeared through attorneys Emily Helm and Judith Kennison. Respondent appeared through attorney Timothy Griffith. The presentation of evidence concluded on October 28, 2009, but the administrative record remained open until December 30, 2009, to allow the parties to submit closing arguments and reply briefs as ordered by the ALJ.
6. On September 6, 2008, TABC enforcement agent Victor Bulos and Dallas Police Department vice detective Swint participated in an undercover operation at the permitted premises.

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<sup>33</sup> TABC Ex. 2-E. This exhibit was admitted without object on April 27, 2009, the first day of the joint hearing. See Tr. 13.

7. On September 6, 2008, enforcement agent Bulos and detective Swint observed Gabriella Lin Sanchez receive money from one of four men at a table and then purchase five beers from the bartender, Sandra Vidales, at the bar. Ms. Sanchez then served one of the beers to each of the four men and kept one for herself which she consumed.
8. On September 6, 2008, Gabriella Lin Sanchez was 16 years of age and was very youthful in appearance and demeanor.
9. On September 6, 2008, Gabriella Lin Sanchez's mother, Roberta Meza, was at the licensed premises, but was on the opposite side of the dance floor tending to another table of men.
10. On September 6, 2008, Gabriella Lin Sanchez was not in the visual presence of her mother, Roberta Meza.
11. On September 6, 2008, Sandra Vidales was employed by Respondent as a bartender.
12. On September 6, 2008, enforcement agent Bulos and detective Swint also observed Lucinda Melo, who was performing waitress duties. She approached a table of four youthful appearing males and took their order for beer. She then purchased the beer from the bartender at the bar and served the beer to the four males. One of the males, Marcos Miguel Muniz-Alvarez, consumed the beer and a shot of tequila.
13. On September 6, 2008, Marcos Miguel Muniz-Alvarez was 19 years of age.
14. On September 6, 2008, Lucinda Melo was the Respondent's agent, servant or employee.
15. On October 25, 2008, TABC enforcement agent Bulos participated in an undercover operation at the licensed premises.
16. On October 25, 2008, enforcement agent Bulos observed a youthful appearing male, Robert Santos Echererria Zelaya, in possession of and consuming a beer.
17. On October 25, 2008, the bartender, Sandra Vidales, was the Respondent's employee.
18. On October 25, 2008, the licensed premises was well-lit and the bartender, Ms. Vidales, had a clear and unobstructed view of Robert Santos Echererria Zelaya as he possessed and consumer beer.
19. On December 13, 2008, TABC enforcement agents Gilbert Alba and David Salazar, conducted an undercover operation at the licensed premises.
20. On December 13, 2008, enforcement agents Alba and Salazar observed Respondent's bartender, Laura Virginia Alvarez, serve beer to a man who was intoxicated.

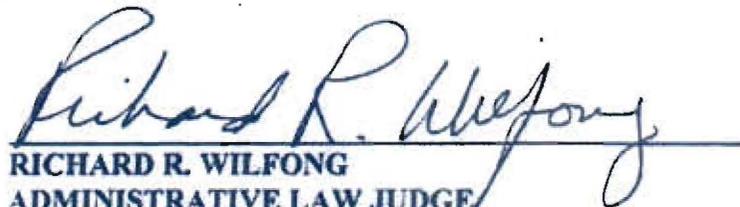
21. Respondent condoned violations of the Texas Alcoholic Beverage Code (Code) by her agents, servants or employees.
22. Respondent failed to use due diligence to prevent violations of the Code.
23. Respondent has not taken any significant steps to prevent violations of the Code from occurring in the future.

### VII. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, and §§ 6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE (TAC) § 155.401.
4. Respondent implicitly encouraged her employees to violate the law. 16 TAC § 50.10(d).
5. Based on the above Findings of Fact, on September 6, 2008, Respondent or Respondent's agent, servant or employee, with criminal negligence, permitted a minor to possess and consume an alcoholic beverage in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.
6. Based on the above Findings of Fact, on September 6, 2008, Respondent or Respondent's agent, servant or employee, with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.
7. Based on the above Findings of Fact, on September 6, 2008, the minor was not in the visible presence of her adult parent, guardian or spouse. TEX. ALCO. BEV. CODE ANN. § 106.05(2).
8. Based on the above Findings of Fact, on October 25, 2008, Respondent or Respondent's agent, servant or employee, with criminal negligence, permitted a minor to possess and consume an alcoholic beverage in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.

9. Based on the above Findings of Fact, on December 13, 2008, Respondent or Respondent's agent, servant or employee, sold, served, or delivered an alcoholic beverage to an intoxicated person in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(14).
10. Based on the above Findings of Fact, the Respondent failed to exercise due diligence to prevent the violations. TEX. ALCO. BEV. CODE ANN. § 106.13(c)(1).
11. Based on the above Findings of Fact and Conclusions of Law, the Respondent's permits should be cancelled pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61 and 106.13.

**SIGNED February 9, 2010.**

  
RICHARD R. WILFONG  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS