

**TABC DOCKET NO. 582302**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
CASPER ENTERTAINMENT LLC	§	OF
D/B/A KARMA RESTAURANT AND CLUB	§	
PERMIT/LICENSE NO(s).	§	
MB677847, PE & LB	§	
	§	
CAMERON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-4094)	§	ADMINISTRATIVE HEARINGS

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 29th day of October 2009, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Melissa M. Ricard presiding. The hearing convened on July 31, 2009 and the record closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on September 9, 2009. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission, for review, consideration, and entry of the final agency decision.

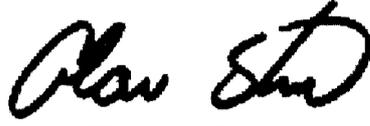
**It is Ordered** that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that NO ACTION be taken by the Texas Alcoholic Beverage Commission against the Respondent's Permit/License.

This is a final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent 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 29th day of October 2009  
at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Judge Melissa Ricard  
State Office of Administrative Hearings  
**ADMINISTRATIVE LAW JUDGE**  
5155 Flynn Parkway, Suite 200  
Corpus Christi, Texas 78411  
**VIA FACSIMILE: (361) 884-5427**

Casper Entertainment, LLC  
d/b/a Karma Restaurant And Club  
**RESPONDENT**  
3213 Grotto Dr.  
Brownsville, Texas 78526  
**VIA U.S. FIRST CLASS MAIL**

Casper Entertainment, LLC  
d/b/a Karma Restaurant and Club  
**RESPONDENT**  
1655 FM 802, Suite 212  
Brownsville, TX 78521  
**VIA U.S. FIRST CLASS MAIL**

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

Licensing Division  
Corpus Christi Enforcement

RMP/aa

**SOAH DOCKET NO. 458-09-4094**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**BEFORE THE STATE OFFICE**

**VS.**

**CASPER ENTERTAINMENT LLC  
d/b/a KARMA RESTAURANT AND CLUB  
PERMIT NOS. MB677847, PE & LB**

**OF**

**CAMERON COUNTY, TEXAS  
(TABC CASE NO. 582302)**

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**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Casper Entertainment LLC d/b/a Karma Restaurant and Club (Respondent) for refusing inspection of the licensed premises. Staff recommended that the license be suspended for 10 days or that Licensee pay a fine in lieu of suspension. The Administrative Law Judge (ALJ) finds that the Commission failed to establish that the Respondent refused an inspection, and therefore, does not recommend any sanction against the Respondent be imposed.

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

There are no contested issues concerning notice or jurisdiction, and they are discussed only in the Findings of Facts and Conclusions of Law sections of this Decision. A hearing in this matter convened on July 31, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, before ALJ Melissa M. Ricard. The staff of the Commission (Staff) was represented by its counsel, Ramona Perry, by telephone. Carrilo Perez, an officer of the Respondent, appeared for the Respondent.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

The sole allegation in this proceeding is that Licensee refused inspection of its licensed premises by a Texas peace officer. Section 101.04 of the TEX. ALCO. BEV. CODE ANN. (the Code) provides that:

**CONSENT TO INSPECTION; PENALTY.** (a) By accepting a license or permit, the holder consents to the commission, an authorized representative of the commission, or a peace officer entering the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

(b) A person commits an offense if the person refuses to allow the commission, an authorized representative of the commission, or a peace officer to enter a licensed or permitted premises as required by Subsection (a). An offense under this section is a Class A misdemeanor.

Staff introduced three exhibits into evidence:

Exhibit 2 is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Mixed Beverage Permit No. MB-677847, which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, was issued to Casper Entertainment LLC, doing business as Karma Restaurant and Club, 1655 FM 802 Suite 212, Brownsville, Cameron County, Texas, by the Commission. Attached to the affidavit is a permit and violation history.

Exhibit 1 is the US Postal Service Track & Confirm green card which shows that the Notice of Hearing was received by the Respondent on June 12, 2009. Exhibit 3 is the US Postal Service Track & Confirm green card which shows that the Respondent received the Amended Notice of Hearing on July 7, 2009.

City of Brownsville, Texas Police Officer Luis Perez testified at the hearing by telephone. Officer Perez stated that on September 25, 2008, he and his partner, Officer Tamayo, were dispatched to the licensed premises by their supervising Lieutenant. The Lieutenant asked the pair to check out the establishment, since it was well after the closing time of 2 a.m. and there were still a number of cars in the parking lot.

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The licensed establishment is located in a strip mall within the city limits of Brownsville. When Officer Perez arrived at the establishment, he observed that the lights were completely off in the parking lot, and there were 15-25 cars parked in it. There were no people outside when they arrived. The establishment has tinted windows, and from a distance, Officer Perez could not see inside. The officers were in full uniform and in a marked police unit.

The entrance was lit, and when he was up close, Officer Perez could see inside. There were several people there, just sitting and standing around. Officer Perez knocked on the door and there was no answer. There was a man about five feet from the door. Officer Perez believed the man was the bouncer for the establishment. Officer Perez used his flashlight to look inside, reflecting the beam off the man's face. He knocked again, louder this time. He believed that this loud knock would have been heard from the inside. Still, the bouncer did not open the door.

Officers Perez and Tamayo proceeded around the perimeter of the establishment when they observed two men come out of the back. The men admitted being employees of the establishment who had just taken out the trash. The employees then went to the entrance and knocked on the door. The door was opened for the employees, and the officers followed them into the establishment.

Officer Perez stated that the entire episode, from the time the officers pulled into the parking lot, until the time they actually entered the establishment, took a total of five to eight minutes. Officer Perez stated that while was inside the establishment that morning, he observed that he could clearly see the marked police unit which was parked outside in the dark parking lot. Once inside, Officer Perez did not observe any violations taking place, for example, after hours drinking.

Officer Perez asked the bouncer why the door had not been opened when he had knocked previously. The man stated that he had been told by his supervisor not to let anyone in. Officer Perez was introduced to Camilo Perez, manager for the establishment. When he asked Mr. Perez why he was not immediately admitted into the establishment, Mr. Perez stated that if it were up to him, he didn't have to let them (the officers) in, but that they were inside already.

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Mr. Perez testified on behalf of the Respondent at the hearing. Mr. Perez stated that the establishment never closes at 2 a.m. because it is large and it takes time to shut down. He stated that he has an understanding with local law enforcement and the Commission that he does not close until closer 2:30 a.m., but he does stop serving alcohol at the time required by the permit. The owner of the building shuts the lights to the parking lot off at 1:45 a.m. and it is very dark in the parking lot afterward.

On September 25, 2008, Mr. Perez was inside the establishment counting money and cleaning cash registers in the back of the establishment. The man thought by Officer Perez to be the bouncer, is Jose Martinez and is employed as a security guard by the establishment. Mr. Martinez does not have a key to the front door, and on that morning, he was not the one that opened the door.

Mr. Perez was the only one with the key, and he was in the back working when the officers first came to the door. Since the incident, Mr. Perez has become aware of the fire hazard associated with this practice. One of the employees let in was a manager, and that individual did not even have a key to get back in, Mr. Perez had to let everyone in.

Mr. Perez did not realize that the officers were at the door until after he came from the back to the front to open the door for the employees who were outside. He did tell the security guard not to let anyone in, but the guard did not inform Mr. Perez at anytime that the police were trying to gain access to the establishment. Mr. Perez stated that Officer Perez was irate when he entered, but he was allowed in and did conduct the inspection.

### III. RECOMMENDATION

Staff argued that since Section 101.04 provides that peace officer may inspect a licensed premises "at any time" that a permittee must open the door at any time and the failure to do so immediately constitutes a refusal to allow entry. Staff provided no legal authority for this argument. Respondent argues that the officers were not refused entry, they did gain access and that an

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inspection was conducted. The preponderance of the evidence shows that the peace officer did enter to the establishment and conduct the inspection, five to eight minutes after first arriving on the scene.

Given that the officers gained access within such a short period of time, Staff should provide some additional evidence to show how the Respondent refused entry, other than the mere lapse of time. Respondent points to the efforts by the officers to knock and to make themselves known to establish that the Respondent refused the inspection. Although Officer Perez testified that the bouncer/security guard had to be able to distinguish that they were peace officers knocking at the door, it was very late and very dark. Without more, Staff did not establish by a preponderance of the evidence that the bouncer/security guard knew they law enforcement.

Even if the Commission had established that the bouncer/security guard knew it was peace officers knocking on the door, Staff failed to establish that the Respondent's failure to immediately open the door constituted a refusal to allow entry. As a security issue, the Respondent was reluctant to let any one in the door. While the bouncer/security guard may committed an error of judgment by not informing Mr. Perez that there were police officers at the door (if he knew that they were officers), extra precautions for security's sake, even if mistakenly taken, do not constitute a refusal, especially if corrected in a short period of time. In addition, the bouncer/security guard could not immediately open the door in any event since he did not have a key.

Based upon the preponderance of the evidence, Staff failed to establish that the Respondent violated Section 101.04 of the Code and therefore the ALJ does not recommend any suspension of the license.

#### IV. FINDINGS OF FACT

1. Mixed Beverage Permit No. MB-677847, which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, was issued to Casper Entertainment LLC, doing business as Karma Restaurant and Club (Respondent), at 1655 FM 802 Suite 212, Brownsville, Cameron County, Texas, by the Texas Alcoholic Beverage Commission (Commission).

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2. On September 25, 2008, sometime after 2 a.m., City of Brownsville Texas Police Officer Luis Perez and his partner, Officer Tamayo, were dispatched to the licensed premises by their supervising Lieutenant
3. After arriving at the establishment, Officers Perez and Tamayo knocked on the door twice.
4. The officers knocks were not immediately answered, despite the fact that there were people inside the establishment that the officers could see through the tinted windows.
5. The officers entered the establishment five to eight minutes after they arrived on the scene, when the door to the establishment was opened for two employees who were outside.
6. The officers gained entry into the establishment and conducted an inspection.
7. The hearing on the merits was held on July 31, 2009, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Commission was represented by its counsel, Ramona Perry, by telephone. Camilo Perez, an officer of the Respondent, appeared for the Respondent.
8. Commission failed to establish that the Respondent that the Respondent refused to allow a peace officer entry into the establishment to conduct an inspection.

#### V. CONCLUSIONS OF LAW

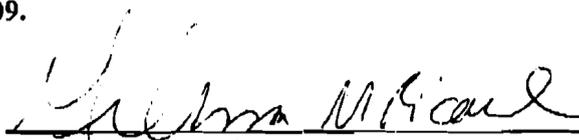
1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon the Findings of Fact above, the Commission failed to establish that the Respondent refused to allow a Texas peace officer the opportunity to enter the licensed premises, and no suspension of the Respondent's license should be imposed.

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SIGNED September 29, 2009.



**MELISSA M. RICARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**