

DOCKET NO. 586131, 586134 & 587345

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
MIGUEL ANGEL MARTINEZ	§	
D/B/A LA COSTENITA NIGHT CLUB,	§	ALCOHOLIC
Respondent	§	
PERMIT/LICENSE NO(s). BG698155, BL	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-0731)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 3rd day of February 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on November 13, 2009, and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on January 8, 2010. 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 further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent shall pay a civil penalty in the amount of **\$9,000.00** on or before **27th day of April 2010**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above license or permit by the Code will be **SUSPENDED** beginning at 12:01 A.M. on **5th day of May 2010** and shall remain suspended for **thirty (30) days**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on March 1st, 2010, 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 3rd day of February
2010 at Austin, Texas



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Miguel Angel Martinez
RESPONDENT
d/b/a La Costenita Night Club
8403 Clinton Drive
Houston, Texas 77029
VIA U.S. FIRST CLASS MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

SAL/dp

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 586131, 586134 7 587345 REGISTER NUMBER:

NAME: MIGUEL ANGEL MARTINEZ

TRADENAME: LA COSTENITA NIGHT CLUB

ADDRESS: 8403 CLINTON DRIVE, HOUSTON, TEXAS 77029

DUE DATE: APRIL 27, 2010

PERMITS OR LICENSES: BG698155, BL

AMOUNT OF PENALTY: \$9,000.00

Amount remitted \$ _____ Date remitted _____
You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may suspend for not more than 60 days or cancel an original or renewal permit or license if it is found, after notice and hearing, that the place or manner in which the permittee or licensee conducts his business warrants the cancellation or suspension based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(7) and 61.71(a)(17).

The Commission may suspend for not more than 60 days or cancel a retail dealer's on or off-premise license if it is found, after notice and hearing, that the licensee refused to permit or interfered with an inspection of the licensed premises by an authorized representative. TEX. ALCO. BEV. CODE ANN. § 61.71(a)(14).

No person authorized to sell beer may engage in or permit conduct on the premises which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following: failing or refusing to comply with state or municipal health or sanitary laws. TEX. ALCO. BEV. CODE ANN. § 104.01(8).

III. EVIDENCE

A. Petitioner's Evidence

1. Petitioner's Witnesses

Steve Roskey

Steve Roskey is an agent for the TABC. He had received complaints of prostitutes loitering and narcotics being used at Respondent's location, which is a bar. Additionally, there were reports of municipal code violations at Respondent's location.

On April 28, 2009, he visited Respondent's premises for an inspection. He noted the following conditions at the premises:

- Holes in the ceiling.
- Mold present at several locations.
- A locked exit door.
- A dirty restroom.
- Trash strewn about the inside and outside the premises building.
- Electrical violations.
- Evidence of prostitution.
- Building materials strewn around the premises.
- No evidence of tax stamps.

On May 5 and June 11, 2009, Agent Roskey re-inspected Respondent's premises and found that none of the conditions and violations noted at the April 28, 2009, inspection were remedied. At the June 11, 2009, inspection, he spoke with a bartender who did not know where the owner was.

2. Petitioner's Exhibits

Petitioner submitted exhibits which included photos taken at the inspections by Agent Roskey.

IV. ANALYSIS

The evidence presented clearly shows that on April 28, 2009, Respondent's premises, a bar, was inspected by the TABC after complaints of prostitution and narcotics usage on Respondent's premises. At the April 28, 2009, inspection, approximately 21 violations were found, which were specifically delineated by Agent Roskey above.

On two subsequent inspections, May 5, 2009, and June 11, 2009, the evidence shows that none of the previously noted conditions and violations were corrected.

The ALJ finds sufficient evidence that on April 28, 2009, May 5, 2009, and June 11, 2009, Respondent was conducting its business against the public's general welfare, health, safety, and sense of decency.

However, there is insufficient evidence that Respondent refused to permit or interfered with an inspection of the licensed premises by a TABC representative. This is evident by the fact that three inspections were made both inside and outside Respondent's premises.

V. RECOMMENDATION

The ALJ agrees with Petitioner's request that Respondent's permit and license be suspended for 30 days, or in lieu of suspension Respondent be allowed to pay a \$300.00-per-day penalty.

VI. FINDINGS OF FACT

1. Miguel Angel Martinez, (Respondent), d/b/a La Costenita Night Club, 8403 Clinton Drive, Houston, Harris County, Texas, is the holder of a Wine and Beer Retailer's Permit and a Retail Dealer's On Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC).
2. A Notice of Hearing dated October 22, 2009, was issued by the TABC and sent to Respondent.
3. The October 22, 2009, Notice of Hearing gave the location and nature of the hearing and contained 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 statement of the allegations and the relief sought by the TABC.
4. On November 13, 2009, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Shelia Lindsey, attorney. Respondent did not appear. Evidence was received and the record closed on the same date.
5. On April 28, May 5, and June 11, 2009, TABC Agent Roskey inspected Respondent's premises and observed the following:

Holes in the ceiling.
Mold at several locations.
A locked exit door.
A dirty restroom.
Trash strewn about the inside and outside of the premises.
Electrical violations.
Evidence of prostitution.
Building materials strewn about the premises.
No evidence of tax stamps.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings 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. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above Findings of Fact, on April 28, 2009, May 5, 2009, and June 11, 2009, Respondent did not refuse to permit or interfere with an inspection of his premises by a TABC representative. TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(14) and 101.04(b).
5. Based on the above Findings of Fact, on April 28, May 5, and June 11, 2009, Respondent conducted his business against the public's general welfare, health, safety, and sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(17) and 11.61(b)(7).
6. Based on Conclusion of Law 5, Respondent's permit and license is suspended for 30 days. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent is allowed to pay a \$9,000.00 civil penalty (\$300.00-per-day) in lieu of suspension of his permit and license.

SIGNED January 8, 2010.



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

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 8, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-10-0731; Texas Alcoholic Beverage Commission v. Miguel Angel Martinez d/b/a La Costenita Night 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 § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "S Burger".

Stephen Burger
Administrative Law Judge

SB/rjm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Miguel Angel Martinez d/b/a La Costenita Night Club, 8403 Clinton Dr., Houston, TX 77029 -**VIA REGULAR MAIL**

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