

EEH/cb

Honorable Steven M. Rivas
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
Waco / Austin
VIA FACSIMILE: (254) 750-9380
VIA FACSIMILE: (512) 475-4994

Laramita Inc.
RESPONDENT
d/b/a La Ramita Lounge Country Branch
905 Ramblewood Dr.
Harker Heights, TX 76548
VIA REGULAR MAIL

Emily E. Helm
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

On March 10, 2009, TABC issued its notice of hearing, directed to Respondent at its mailing address of 905 Ramblewood Drive, Harker Heights, Bell County, Texas 76548, via certified mail, return receipt requested and regular mail. Respondent is a corporation. Ms. Carrillo is an officer (secretary) of the corporation¹ and received notice on March 16, 2009.

On June 5, 2009, a hearing convened before SOAH ALJ Steven M. Rivas at 801 Austin Avenue, Suite 750, Waco, Texas. Petitioner was represented at the hearing by Emily Helm, TABC Staff Attorney. Ms. Carrillo appeared on behalf of Respondent.

Evidence was presented and the record closed on that date. The record reopened on July 28, 2009, to give TABC an opportunity to submit documents that reflect Ms. Carrillo is Respondent's agent. The record again closed on August 4, 2009, when TABC submitted the requested documents.

II. DISCUSSION

A. Facts

The facts are not in dispute. Respondent's premise is located on 534 East Veterans Memorial Boulevard in Harker Heights, Texas. On July 28, 2008, Harker Heights police officer, Jay Leach, entered the premise during a "bar check." Officer Leach testified that a "bar check" consists of inspecting a bar to make sure it has the required TABC signs posted and that no other violation is occurring. Officer Leach and Officer Jim Chapman were making bar checks of over 30 bars located on East Veterans Memorial Boulevard.

Officer Leach noticed Respondent's "open" sign was still illuminated around 2:17 a.m. When he entered, Officer Leach noticed several people, including Ms. Carrillo, sitting at the bar.

¹ TABC Ex. A attached to Petitioner's Documents Submitted in Response to Order No. 3 Reopening of Record.

Officer Leach observed the bartender serve three tequila shots to Ms. Carrillo and two other patrons. On top of the bar were several beer bottles and other drinks.²

Officer Leach testified Ms. Carrillo had an odor of alcohol on her breath and unsteady balance. He attempted to administer the Horizontal Gaze Nystagmus test on her, but she was unable to follow the directions of the test. Officer Leach testified he believed Ms. Carrillo was intoxicated while on the premise.

Ms. Carrillo testified that she had arrived on the premise at approximately 2:15 a.m. to “close up.” According to Ms. Carrillo, her daughter was in the bar and told her there was still time to have a drink. Ms. Carrillo admitted everything the officer said was true.

TABC agent Thomas Noble issued the administrative penalty and testified there have been issues with intoxicated persons in that area. According to agent Noble, anytime a permittee is intoxicated on the premise, it is a violation.

According to the history of this license, Respondent has been cited on two prior occasions for intoxication of permittee on the premise: March 11, 2001, which resulted in a suspension; and October 26, 1997, which resulted in a written warning. Respondent has been cited for many violations since 1996.³ Agent Noble argued Respondent has had public safety issues in the past and sought cancelation in order to set a precedent that these types of violations will not be tolerated.

Ms. Carrillo requested her license not be canceled because it was the first time she was ever cited as being intoxicated on the premise. According to Staff, Ms. Carrillo’s deceased husband was

² TABC Ex. No. 3 and 4. These photographs depict the bar and the patrons including Ms. Carrillo.

³ TABC Ex. No. 2, a record of administrative violations reflects Respondent has previously been cited for sale to a minor, sale to an intoxicated person, and unsanitary conditions, among other violations.

the subject of two prior violations for permittee intoxication. Ms. Carrillo also argued she was a widow and the bar was her only means of income.

B. Applicable Statutes

Under TEX. ALCO. BEV. CODE ANN. § 104.01(5), No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to: being intoxicated on the licensed premises.

As set forth in TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13), the commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: the permittee was intoxicated on the licensed premises.

Under TEX. ALCO. BEV. CODE ANN. § 11.61(a), as used in subsection (b) of this section, the word permittee also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

C. Analysis and Conclusion

Respondent's license should be canceled. There is no question a violation occurred on the date in question. There also appears to be pattern of violations (19 including this one) since 1996. The prior violations resulted in five suspensions and numerous warnings. It is unclear when Ms. Carrillo took over the bar after her husband's death, however, the previous suspensions and warnings apparently did not influence Ms. Carrillo to use due diligence in preventing further violations.

III. FINDINGS OF FACT

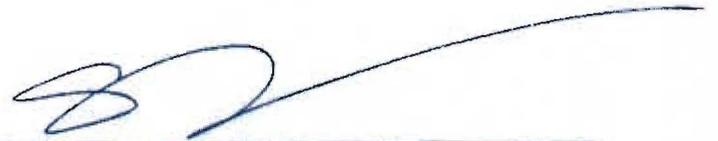
1. Laramita, Inc. d/b/a La Ramita Lounge Country Branch (Respondent), holds a Mixed Beverage Permit, MB203061, which includes the Mixed Beverage Late Hours Permit and Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 534 East Veterans Memorial, Harker Heights, Bell County, Texas 76548.
2. Respondent is a corporation in which Guadalupe Carrillo is an officer (secretary).
3. On March 10, 2009, Petitioner issued its notice of hearing to Respondent. The notice of hearing 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.
4. A hearing convened before Steven M. Rivas, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on June 5, 2009, in Waco, Texas. Petitioner was represented at the hearing by Emily Helm, TABC Staff Attorney. Ms. Carrillo appeared on behalf of Respondent. After the presentation of evidence, the record closed on that date.
5. The record reopened on July 28, 2009, to give TABC an opportunity to submit documents that reflect Ms. Carrillo is Respondent's agent. The record again closed on August 4, 2009, when TABC submitted the requested documents.
6. On or about July 28, 2008, Ms. Carrillo was found to be intoxicated on the licensed premises during a routine bar check by the local law enforcement.
7. Respondent's license history includes the following violations:
 - a) On October 26, 1997, Respondent violated the Alcoholic Beverage Code in that Respondent or one of Respondent's agents was found to be intoxicated on the licensed premises;
 - b) On February 6, 2000, Respondent violated the Alcoholic Beverage Code by selling an alcoholic beverage to an intoxicated person;
 - c) On March 11, 2001, Respondent violated the Alcoholic Beverage Code in that Respondent or one of Respondent's agents was found to be intoxicated on the licensed premises;

- d) On December 7, 2001, Respondent violated the Alcoholic Beverage Code in that Respondent sold an alcoholic beverage to a minor; and
- e) On May 22, 2004, Respondent violated the Alcoholic Beverage Code by selling an alcoholic beverage to an intoxicated person.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, and §§ 11.61(b)(2) and 61.71(a)(1).
2. SOAH has jurisdiction over all matters relating 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.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, TEX. ALCO. BEV. CODE ANN. § 11.63, 1 TEX. ADMIN. CODE (TAC) § 155.501, and 16 TAC § 37.3.
4. Based upon Finding of Fact No. 5, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13), 61.71(a)(1), and 104.01(5).
5. Based upon Conclusion of Law No. 4 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13), Respondent's permit and license should canceled.

SIGNED August 17, 2009.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 17, 2009

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

VIA INTERAGENCY MAIL

RE: Docket No. 458-09-2909; Texas Alcoholic Beverage Commission v. Laramita Inc. D/B/A La Ramita Lounge Country Branch Permit License No. (s) MB203061, LB & PE Bell County, Texas (TABC Case No. 581120)

Dear Mr. Steen:

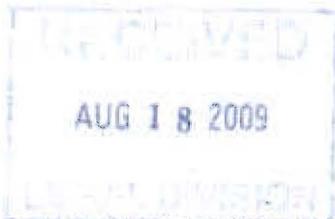
Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Rivas", written over a white background.

Steven M. Rivas
Administrative Law Judge



SMR/h
Enclosure

xc Emily Helm, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA MAIL INTERAGENCY MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (With Certified Evidentiary Record and 2 data CDs)
Laramita Inc., D/B/A La Ramita Lounge Country Branch, 905 Ramblewood Dr., Harker Heights, TX 76548 - VIA REGULAR MAIL