

DOCKET NO. 584206

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
SOUTHWEST PGP LLC	§	
D/B/A SOUTHWEST BAR INVESTMENTS LLC	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB674526, PE & LB & CB	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-4998)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 31st day of December, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on the 14<sup>th</sup> day of September, 2009 and continued on the 15<sup>th</sup> day of September, 2009, and concluded on that date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 2<sup>nd</sup> day of December, 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 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 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 no action is taken against your permit.

This Order will become **final and enforceable** on the 25th day of January, 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 31st day of December, 2009, at Austin, Texas.



Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

MW/cb

Honorable Judge Veronica S. Najera  
**Administrative Law Judge**  
State Office of Administrative Hearings  
El Paso, Texas  
**VIA FACSIMILE: (915) 834-5657**

Lisa Aceves Hayes  
**Attorney for Respondent**  
2524 Montana  
El Paso, TX 79903  
**VIA FACSIMILE: (915) 351-2776**

Southwest PGP, LLC  
d/b/a Southwest Bar Investments, LLC  
**RESPONDENT**  
2626 N Mesa St.  
EL Paso, TX 79902  
**VIA REGULAR MAIL**

Martin Wilson  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

El Paso District Office



SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 2

staff attorney. Respondent was represented by Lisa Aceves Hayes, attorney at law. The post-hearing schedule provided for written closing arguments. The record closed on October 12, 2009.

## II. DISCUSSION

### A. Background

The listed owners of The Loft/Mini Bar are Alexander Frank Catucci and Joseph Harris Dorgan. The establishment encompasses two bars which operate under one permit within the City and County of El Paso, Texas. The TABC issued Respondent a mixed beverage permit, which includes a beverage cartage permit, a caterer's permit, and a mixed beverage late hours permit in October 2007.<sup>1</sup> Mr. Catucci and Mr. Dorgan also have ownership interest in another bar known as Club 101 in El Paso County, and they hold a TABC permit for that bar. Respondent does not have any prior violations in its administrative history.

### B. The Investigation

Upon receipt of a "tip" from a source that remained undisclosed at hearing, the TABC conducted a subterfuge investigation.<sup>2</sup> The tip allegation was that there was a subterfuge owner. The person of interest was the general manager Alberto Juarez. Agent Wesley Rappe spoke with Mr. Juarez twice in the course of the investigation. The first contact was on December 31, 2008.<sup>3</sup> The second meeting occurred on January 7, 2009. Through its investigation, Petitioner ascertained the following:

- Mr. Juarez is an authorized signer on the business checking accounts.<sup>4</sup> The other two authorized signers are Mr. Catucci and Mr. Dorgan.<sup>5</sup> Agent Rappe testified that he

<sup>1</sup> Tr. at Exhibits Volume, Petitioner's Exhibit No. 1, custodian of records affidavit for permit MB-674526.

<sup>2</sup> Tr. at Volume 1, p. 17.

<sup>3</sup> *Id.*, at p. 21.

<sup>4</sup> There are two checking accounts for The Loft/Mini Bar. A payroll account and an operating account. Tr. at Volume 2, p. 79. See also Tr. at Exhibits Volume, Petitioner's Exhibit No. 4.

<sup>5</sup> Tr. at Volume 1, p. 38.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 3

perceived Juarez's ability to sign payroll, including his own paycheck, not typical of a manager's duties.<sup>6</sup>

- In addition, Mr. Juarez's father, Manuel Juarez, procured a lien on his personal residence.<sup>7</sup> The money was forwarded to the bar's business account.<sup>8</sup> It was allegedly used to cover renovation expenses performed by Manuel Juarez who is a general contractor.<sup>9</sup> Agent Rappe found this exchange odd. Thereafter, on January 8, 2009, agent Harold Nanos telephoned Manuel Juarez. Agent Nanos said that Manuel Juarez denied his son's ownership of the bar. Manuel Juarez did not testify.
- Further, a business check executed by Mr. Catucci in the amount of \$3,000. payable to Alberto Juarez was uncovered. Of consequence is the memo description on the check which states "partner's distribution." The inscription was handwritten by Mr. Catucci.<sup>10</sup>
- Mr. Juarez signed a permit application for a Mardi-Gras event as owner/manager.

Based on the aforementioned facts, Petitioner concluded that Respondent gave control of the licensed premises to Alberto Juarez, thereby, engaging in subterfuge. Petitioner reasoned that the parties engaged in a subterfuge scheme because Mr. Juarez does not qualify for a permit due to a criminal conviction.<sup>11</sup>

Staff alleges that Respondent failed to have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, possession, transportation, and sale of all alcoholic beverages purchased, sold or stored on the licensed premises.<sup>12</sup> Second, Staff alleges that Respondent engaged in a device, scheme, or plan which surrendered control of the employees, premises, or business of the permittee to a person other than the Respondent.<sup>13</sup>

<sup>6</sup> *Id.*, at p. 34.

<sup>7</sup> Tr. at Volume 1, p. 31.

<sup>8</sup> *Id.*, p. 40.

<sup>9</sup> *Id.*, p. 33.

<sup>10</sup> Tr. at Exhibits Volume, Petitioner's Exhibit No. 6, check number 1448.

<sup>11</sup> Tr. at Volume 1, p. 32. In 2004, Alberto Juarez was convicted of a third degree felony of intoxicated assault with a motor vehicle. He is currently on probation.

<sup>12</sup> TEX. ALCO. BEV. CODE ANN. (Code) § 109.53.

III. ANALYSIS

The main points of Petitioner's direct case are addressed by the ALJ, as follows:

A. General Manager's responsibilities

Petitioner alleges that Alberto Juarez's responsibilities "fall within the scope of an owner."<sup>14</sup> Specifically, because he has the ability to write checks for operating expenses and sign payroll checks. The ALJ reviewed the evidence of record and determined that Mr. Juarez did not exclusively pay bills or sign payroll checks. Mr. Catucci regularly did both as shown by the following chart:

Month	Checks signed by Frank Catucci	Checks signed by Alberto Juarez	Checks signed by Joe Dorgan
April 2008 <sup>13</sup>		12	
May 2008 <sup>16</sup>	35	23	
June 2008 <sup>17</sup>	10	12	
July 2008 <sup>18</sup>	15	38	
August 2008 <sup>19</sup>	7	25	17
September 2008 <sup>20</sup>	28	47	1
October 2008 <sup>21</sup>	23	53	10
November 2008 <sup>22</sup>	17	41	
December 2008 <sup>23</sup>	12	35	
January 2009 <sup>24</sup>	6	67	

<sup>13</sup> *Id.*  
<sup>14</sup> Tr. at Exhibits Volume, Petitioner's Exhibit No. 4, investigative report, p. 6.  
<sup>15</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01102-01103.  
<sup>16</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01104-01109.  
<sup>17</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01110-01112.  
<sup>18</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01113-01118.  
<sup>19</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01119-01123.  
<sup>20</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01124-01131.  
<sup>21</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01132-01140.  
<sup>22</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01140-01146.  
<sup>23</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01146-01150.  
<sup>24</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01150-01157.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 5

February 2009 <sup>25</sup>	2	44	
March 2009 <sup>26</sup>	12	68	
April 2009 <sup>27</sup>	30	17	
May 2009 <sup>28</sup>	33	17	
June 2009	No documentation for this month		
July 2009 <sup>29</sup>	30	18	
TOTALS	260	505	18

A perusal of the checks issued indicates that Mr. Catucci executed checks for items in the course of conducting business. These checks are for beer purchases,<sup>30</sup> supplies and repairs,<sup>31</sup> insurance payments,<sup>32</sup> maintenance,<sup>33</sup> franchise tax payment,<sup>34</sup> and one check to the TABC.<sup>35</sup>

Respondent's bookkeeper clarified that there are two accounts for Respondent. The first entitled Southwest Bar Investments is the operating account for The Loft /Mini Bar. The second is the Alexander Catucci Children's Trust account which operates Club 101.<sup>36</sup> On this point, the evidence clarifies that the payroll report is issued by the bookkeeper. She "runs" the payroll and

<sup>25</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01158-01162.

<sup>26</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01162-01171.

<sup>27</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01171-01175.

<sup>28</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01172-01180.

<sup>29</sup> *Id.*, Respondent's Exhibit No. 3, copies of checks, LH-08-130:01181-01185.

<sup>30</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01113, check no. 1169 signed on July 12, 2008, by Mr. Catucci for a beer order; LH-08-130:01182, check number 2040 signed on July 28, 2009, by Mr. Catucci for a beer order.

<sup>31</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01131, check no. 1359 signed on October 3, 2008; by Mr. Catucci for supplies; LH-08-130:01164, check no. 1789 signed on March 19, 2009, by Mr. Catucci for repairs/supplies; LH-08-130:01113, check no. 1166 signed on July 12, 2008 by Mr. Catucci for speakers; LH-08-130:01175, check no. 1851 signed on April 28, 2009 by Mr. Catucci for supplies.

<sup>32</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01164, check no. 1790 signed on March 20, 2009, by Mr. Catucci for insurance.

<sup>33</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01176, check no. 1893 signed on May 14, 2009, by Mr. Catucci for cleaning; LH-08-130:01113, check no. 1165 signed on July 12, 2008 by Mr. Catucci for monthly spray.

<sup>34</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01177, check no. 1895 signed on May 14, 2009, by Mr. Catucci for franchise tax.

<sup>35</sup> *Id.*, Respondent's Exhibit No. 3, LH-08-130:01124, check no. 1288 signed on September 3, 2008, by Mr. Catucci to the TABC.

<sup>36</sup> Tr. at Volume 2, pp. 66-67.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 6

issues the checks for signature.<sup>37</sup> Payroll checks signed by Mr. Juarez were pre-printed. It appears that affixing the signature to checks is a ministerial duty.

Testimony of record reveals that Mr. Juarez began his employment with Mr. Catucci in 2004 at other bars owned by Respondent.<sup>38</sup> He occupied different positions, from lead bartender to assistant manager. Mr. Juarez was asked to be the general manager at The Loft/Mini Bar before the establishment opened.<sup>39</sup> He has been given one pay increase by Mr. Catucci.<sup>40</sup>

Further, the evidence indicates that Mr. Juarez is an employee supervised by the two owners, although primarily by Mr. Catucci.<sup>41</sup> Mr. Juarez was reprimanded twice. The reprimands are in his employee file.<sup>42</sup> The first reprimand was via an employee warning notice and entailed Mr. Juarez not showing for work and the ramifications of such failure.<sup>43</sup> The reprimand reveals that Mr. Juarez required consent from the owners to act in the course of his employment. The second reprimand addressed the lack of professional relationship between Mr. Juarez and other employees.<sup>44</sup> Mr. Catucci undertook the employee scheduling after the second

<sup>37</sup> *Id.*, at pp. 72-73. Erica R. Hoar, the bookkeeper, testified in detail about the payroll procedure. The payroll report is initially approved for dates and hours by the general manager; then she "runs" the dates and sends it to Mr. Catucci for approval.

<sup>38</sup> *Tr.* at Volume 1, p. 26; and at Volume 2, pp. 6-12.

<sup>39</sup> *Tr.* at Volume 2, p. 12.

<sup>40</sup> *Id.*, at p. 13.

<sup>41</sup> *Id.*, at p. 43.

<sup>42</sup> *Id.*, at p. 33.

<sup>43</sup> *Tr.* at Exhibits Volume, Respondent's Exhibit No. 1, LH-08-130:01006. The first reprimand was on January 3, 2008, as follows: "this letter is regarding the performance of Albert Juarez on 12-31-07. Albert was late in opening due to the fact he over slept, but we later found he was hung over. Also, he did not schedule enough staff. Joe and I had to show up to open and set up with a few employees from another bar. These are the duties of our GM Albert. Albert was warned and told this was unacceptable. We also told him to coordinate more with us on special events and listen. When we ask for something specific to get it done and not improvise without our consent. This meeting took place with Joe, I and Albert." Reprimand signed by Mr. Catucci, Mr. Dorgan and Mr. Juarez.

<sup>44</sup> *Id.*, at Respondent's Exhibit No. 1, LH-08-130:01008. The second reprimand on March 21, 2008 states: "THIS NOTE IS ABOUT AN INCIDENT THAT HAS OCCURRED WITH Albert and the staff. We warned Albert that he has become too friendly with the staff and they don't respect his decisions. I have spoken with Albert about this issue on several occasions and about how we have theft problems. This has gotten to the point where all the employees think they can do whatever, whenever they want. I explained this to Albert and told him exactly what he needs to do and this was unacceptable and has to change, period. I have taken over the scheduling of employees until we regain respect and Albert was instructed to fire those employees that did not listen or understand that he is a manager and not their friend at work." Reprimand signed by Mr. Catucci, Mr. Dorgan and Mr. Juarez.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 7

reprimand. Both reprimands illustrate the owners' involvement in the daily running of the business and their expectations of the general manager.

Mr. Catucci is at the business routinely, almost daily.<sup>45</sup> Mr. Juarez and Mr. Catucci communicate daily.<sup>46</sup> Mr. Catucci sets the salaries and approves raises.<sup>47</sup> The company pays for health insurance, vehicular insurance, and vehicle loans for the owners; Mr. Juarez does not receive any of these benefits.<sup>48</sup> As a point of reference, evidence is of record regarding the functions and responsibilities of the general manager at Club 101, also owned by Respondent. Mr. Juarez's responsibilities and benefits parallel the duties of the general manager at Club 101.<sup>49</sup> Except for the fact that the general manager at Club 101 does not sign payroll because the funds are held in a children's trust and the fiduciary responsibilities are higher.<sup>50</sup>

The ALJ concludes that the evidence reveals that Alberto Juarez is an employee whose duties are those of a general manager of a bar.<sup>51</sup> Those duties were set by the two owners. He is a person of general authority who performs all reasonable tasks in conducting the business's operation. That, in itself, does not exclude Mr. Catucci. In a business context, the general manager directs and coordinates the operations of a small business, but reports to the chief executive officer. Mr. Juarez reports to Mr. Catucci, who is the owner, or chief executive officer.<sup>52</sup> When asked whether he had a lot of authority, Mr. Juarez said "No, I have a lot of responsibility."<sup>53</sup>

<sup>45</sup> Tr. at Volume 2, p. 15 and p. 24.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*, at p. 31.

<sup>48</sup> Tr. at Volume 2, p. 42. See also Tr. at Volume 1, pp. 210-211.

<sup>49</sup> *Id.*, at p. 40 and pp. 58-59.

<sup>50</sup> Tr. at Volume 2, pp. 80-81

<sup>51</sup> *Id.*, at p. 14. Mr. Juarez testified that he places and receives orders, makes schedules, deals with personnel matters and pays bills. He makes sure the "place is running properly."

<sup>52</sup> *Id.*

Q. And do you consult with Mr. Catucci in fulfilling those duties?

A. Yes. When there is a problem that I can't handle or only he can take care of, then I go ahead and let him know (by Mr. Juarez).

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 8

**B. The loan from Manuel Juarez**

Mr. Catucci testified that Manuel Juarez made a loan to him. The money was forwarded to the corporate business account. On the same day, Mr. Catucci wrote a check in the amount of \$125,000. for the purchase of the bar, made out to Keith Mahar, the selling entity.<sup>54</sup> The monthly mortgage payments for Manuel Juarez's home lien are paid from Respondent's business checking account. Manuel Juarez did not testify and thus, the reason for the alleged loan cannot be ultimately ascertained. Nonetheless, the subterfuge allegation in this case involves Alberto Juarez, not Manuel Juarez. The ALJ agrees with Respondent that it is an "odd" way to conduct business. But, that in itself, is insufficient to sustain subterfuge. There are a myriad of reasons that could explain the exchange between Respondent and Manuel Juarez. There is nothing of record that indicates that it was anything but a loan. The alleged loan was not memorialized into written form. Most importantly, there is nothing on the record that proves there was a *quid-pro-quo* involving ownership to Alberto Juarez.

**C. The \$3,000. check made out to Alberto Juarez**

A \$3,000. check was made out to Mr. Juarez by Mr. Catucci. The stated purpose is "partner distribution."<sup>55</sup> Mr. Catucci testified that he loaned Mr. Juarez the money. Mr. Juarez requested the personal loan to settle debts.<sup>56</sup> He paid the loan in full.<sup>57</sup> The bookkeeper, Erica R. Hoar, advised Mr. Catucci to memo the loan as a partner's distribution to indicate the money was coming from Mr. Catucci's distributions. The note payable to Mr. Catucci by the corporation was reduced by the loan amount.<sup>58</sup> Therefore, the annotation describes the source of the money, not its purpose. Mr. Catucci's testimony was corroborated by Ms. Hoar.<sup>59</sup>

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<sup>53</sup> *Id.*, at p. 43.

<sup>54</sup> Tr. at Volume 1, p. 42.

<sup>55</sup> Tr. at Exhibits Volume, Petitioner's Exhibit No. 6, check no. 1448

<sup>56</sup> Tr. at Volume 2, pp. 19-21.

<sup>57</sup> *Id.*, at p. 21 and p. 26.

<sup>58</sup> It was disclosed that the corporate entity which operates The Loft/Mini Bar has a note payable of \$140,000.

<sup>59</sup> Mr. Catucci individually. Tr. at Volume 2, pp. 68-69.

<sup>60</sup> Tr. at Volume 2, pp. 68-70.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 9

**D. The representation as manager/owner**

Mr. Juarez signed as "owner/manager" on a handwritten application with the El Paso County Health and Environmental District. It was a food establishment application for a one day event.<sup>60</sup> Item number three on the application asks for the owner of the business. Mr. Juarez wrote the names of Mr. Catucci and Mr. Dorgan. On item number four, he listed himself as the manager/person-in-charge. Mr. Juarez testified that he did not know whether he was eligible to sign the application, so he wrote "owner/manager" to assure issuance of the permit.<sup>61</sup> The ALJ agrees with Petitioner that on its face, the action is suspect. But, in the totality of the analysis, it is a minor fact and does not rise to the level of proving subterfuge.

**E. The criminal conviction**

Mr. Catucci testified he was not entirely aware of the criminal conviction. He learned that Mr. Juarez was on probation, but unaware of the felony conviction or the details surrounding it.<sup>62</sup> He stated "he really never really spoke about it. It's not my issue to get into his personal business."<sup>63</sup> The ALJ agrees with Petitioner that the most common reason for subterfuge is the person's inability to obtain a permit due to disqualification. But in this case, the reason for the alleged subterfuge was advanced as fact, but it was not shown beyond an assumption.

In summation, the interpretation of the facts is not just a matter of credibility, but one of reasonableness as well. The foundation of the law is reasonableness. The requirement of "exclusive occupancy and control" must be defined in a reasonable manner to accomplish the agency's statutory intent. It is unreasonable to require a licensee perform all tasks. Yet, it is reasonable that from a business perspective, the licensee will hire the personnel to conduct business, without abdicating ultimate control. The exclusiveness of the control in the rule refers to ultimate control. The trier of fact, the ALJ, has considered as evidence not only the testimony

<sup>60</sup> Tr. at Exhibits Volume, Petitioner's Exhibit No. 7.

<sup>61</sup> Tr. at Volume 2, p. 53.

<sup>62</sup> *Id.*, at p. 39; and Tr. at Volume 1, p. 213.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 10

and evidence presented at hearing, but also all inferences which may be reasonably drawn. Subterfuge is not a reasonable inference that can be drawn. The facts of record do not prove that Petitioner failed to maintain exclusive occupancy and control or that Respondent engaged in a subterfuge scheme. For all the reasons discussed herein, the ALJ finds the evidence insufficient to establish subterfuge and recommends that the permit held by Respondent be renewed.

#### IV. FINDINGS OF FACT

1. A two day hearing convened on Monday, September 14, 2009, in the matter of the Staff of the Texas Alcoholic Beverage Commission (Petitioner) versus Southwest Bar Investments, formerly known as Southwest PGP, LLC d/b/a The Loft/Mini Bar (Respondent).
2. The hearing was held before Administrative Law Judge (ALJ) Veronica S. Najera at the State Office of Administrative Hearings, El Paso Regional Office, State Office Building, located at 401 East Franklin Avenue, Suite 580, El Paso, Texas.
3. Staff was represented by Martin Wilson, staff attorney. Respondent was represented by Lisa Aceves Hayes, attorney at law.
4. The record closed on October 12, 2009.
5. The owners of The Loft/Mini Bar are Alexander Frank Catucci and Joseph Harris Dorgan.
6. The Loft/Mini Bar operates under the authority of a mixed beverage permit, number MB-674526, which includes a beverage cartage permit, a caterer's permit, and a mixed beverage late hours permit in October 2007.
7. The bar is situated within the City and County of El Paso, Texas.
8. Respondent does not have any prior violations in its administrative history.
9. Upon receipt of a "tip" from a source that remained undisclosed at hearing, the TABC conducted a subterfuge investigation.
10. Manuel Juarez is the general manager at The Loft/Mini Bar.
11. Mr. Juarez is an authorized signer on the business checking accounts.

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<sup>87</sup> Tr. at Volume 1, at 213.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 11

12. Writing checks to pay vendors and affixing a signature to payroll checks does not indicate that Mr. Juarez is an owner of the bar.
13. The owners continue to write and sign checks for items in the course of conducting business.
14. Mr. Catucci is at The Loft/Mini Bar routinely, almost daily.
15. Mr. Juarez and Mr. Catucci communicate daily.
16. Mr. Catucci sets the salaries and approves raises.
17. Southwest Bar Investments, LLC pays the owner's health insurance, vehicular insurance, and vehicle loans.
18. Mr. Juarez does not receive any of the owner benefits enumerated in number 17 above.
19. Mr. Juarez's responsibilities and benefits parallel the duties of the general manager at Club 101.
20. Mr. Juarez is an employee whose duties are those of a general manager of a bar.
21. Mr. Juarez is a person of general authority who performs all reasonable tasks in conducting the business's operation.
22. There is no evidence of record that proves there was a *quid-pro-quo* involving ownership to Alberto Juarez resulting from an alleged loan from Manuel Juarez to Respondent.
23. Erica R. Hoar, bookkeeper, advised Mr. Catucci to memo a \$3,000. loan to Mr. Juarez as a "partner's distribution" to indicate the money was coming from Mr. Catucci's distributions. The annotation describes the source of the money, not its purpose.
24. The fact that Mr. Juarez signed as "owner/manager" on a handwritten application with the El Paso County Health and Environmental District for an event permit is suspect, but in the totality of the analysis, it is a minor fact and does not prove subterfuge.
25. Mr. Juarez's inability to obtain a permit due to disqualification was advanced as the reason for the subterfuge, but it was not shown beyond an assumption.
26. Respondent maintains ultimate control over the operation of the licensed premises.

SOAH DOCKET NO. 458-09-4998

PROPOSAL FOR DECISION

PAGE 12

**V. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings 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 Code § 5.43 and TEX. GOV'T CODE ANN. §§ 2003.021(b) and 2003.042.
3. Notice of hearing was provided pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.401 and Code § 11.63.
4. Based upon the Findings of Fact, Respondent did not fail to have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, possession, transportation and sale of all alcoholic beverages purchased, sold or stored on the licensed premises.
5. Based upon the Findings of Fact, Respondent did not engage in a device, scheme or plan which surrendered control of the employees, premises or business of the permittee to Alberto Juarez.
6. Based upon the Findings of Fact, Respondent did not engage in subterfuge.
7. The evidence does not support an enforcement action against Respondent and permit number MB-674526 should be renewed.

SIGNED December 2, 2009.




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**VERONICA S. NAJERA**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**EL PASO REGIONAL OFFICE**