



## II. DISCUSSION

### A. Applicable Law

The Texas Alcoholic Beverage Code (Code) prohibits a person who is authorized to sell beer at retail and that person's, agent, servant, or employee from engaging in conduct that is lewd, immoral, or offensive to public decency including, but not limited, to being intoxicated on the licensed premises.<sup>1</sup> If a licensee or permittee engages in such conduct, the Commission may cancel the permit or license.<sup>2</sup>

### B. Evidence

Respondent holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit issued by the TABC. The parties stipulated that Jose Sandoval was intoxicated on Respondent's premises at 1504 East 6th Street in Austin, Texas, on August 29, 2009. TABC Sergeant James Molloy testified that he was at the premises that day and observed Mr. Sandoval working as Respondent's disc jockey. Mr. Sandoval told Sergeant Molloy that he was an employee, worked once a week, and was paid in cash at the end of the nights he worked.

Rebecca Ledesma owns Respondent. She did not work the evening of August 29, 2009, but was called to the location by the manager because of the issue with TABC, and she told the manager that Mr. Sandoval was an employee. However, at the hearing, Ms. Ledesma testified that Mr. Sandoval was paid in cash at the end of each evening he worked. Ms. Ledesma also said Mr. Sandoval was not on the payroll, and she did not take out taxes or withholding for him. Instead, she gave him a Internal Revenue Service Form 1099 at the end of each year. Mr. Sandoval was paid based on the size of the crowd not by units of time. He took his own equipment to the premises. Except for Respondent's expectation that Mr. Sandoval would

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<sup>1</sup> Code § 104.01(5).

<sup>2</sup> Code §§ 11.61(b)(13) and 61.71(a)(1).

provide music from 10:00 p.m. until 1:45 p.m., Mr. Sandoval received no instructions about how he was to perform his job. Mr. Sandoval was only one of the disc jockeys Respondent used, and the bar had a disc jockey only on Friday nights. Finally, Ms. Ledesma said Mr. Sandoval had never caused problems prior to that night.

### C. Analysis

Although Mr. Sandoval was not on Respondent's payroll and worked intermittently at the premises, he worked for Respondent in exchange for financial compensation. Respondent allowed him to be on the premises to provide a service for its customers. Without Respondent's invitation, Mr. Sandoval would have had no right to be on the premises and to provide music. Thus, Respondent was responsible for Mr. Sandoval's actions. Staff requested a 25-day suspension, or in lieu of suspension, a \$300 per day monetary penalty, and the ALJ agrees with this recommendation.

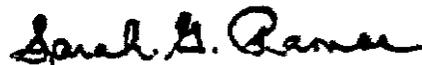
### III. FINDINGS OF FACT

1. Beck and Bob's L.L.C., d/b/a ATX Sports Bar (Respondent) holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (TABC).
2. On August 29, 2009, Jose Sandoval was intoxicated on Respondent's premises while he worked as a disc jockey for Respondent.
3. Mr. Sandoval was on the premises at Respondent's invitation and was paid for his work.
4. A notice of the hearing was sent to both parties. The notice included the time, date, and nature of the hearing; legal authority and jurisdiction under which the hearing would be held; applicable statutes and rules; and the matters asserted.
5. The hearing for this case was held on March 24, 2010, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, before Sarah G. Ramos, Administrative Law Judge (ALJ). Staff Attorney Judith Kennison represented the TABC's Staff, and attorney Patrick Groves represented Respondent. The record closed at the conclusion of the hearing.

**IV. CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. ch. 2003.
3. The parties received timely and adequate notice of the hearing, as required by TEX. GOV'T CODE ANN §§ 2001.051 and 2001.052.
4. Staff bore the burden of proof in this proceeding. 1 TEX. ADMIN. CODE § 155.247.
5. Mr. Sandoval was Respondent's employee or servant when he was intoxicated on the premises. *Ackley V. State*, 592 S.W. 2d 606 (Tex. Crim. App. 1979).
6. Respondent's permit should be suspended for 25 days, or in lieu of suspension, Respondent should pay a \$300 per day penalty for a total of \$7,500.

**SIGNED December 7, 2010.**



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**SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TABC DOCKET NO. 588129

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
BECK AND BOB'S L.L.C. D/B/A ATX SPORTS BAR, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB647121, LB	§	
	§	
TRAVIS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-1263)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this the 21st day of January, 2011, the above-styled and numbered cause.

After proper notice was given, a hearing in the above matter was conducted by the State Office of Administrative Hearings ("SOAH"), with Administrative Law Judge Sarah G. Ramos presiding. The hearing convened on March 24, 2010 and adjourned the same day. The Administrative Law Judge ("ALJ") made and filed a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law on May 13, 2010. The PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the record herein. Petitioner filed exceptions on May 27, 2010. Respondent filed a reply to exceptions on June 14, 2010. The ALJ responded to the exceptions and reply on June 17, 2010, and recommended no change to the PFD. The Administrator's Order adopting the ALJ's Findings of Fact and Conclusions of Law was issued on September 15, 2010. Petitioner filed a Motion for Rehearing on October 7, 2010. An Order Granting Motion for Rehearing and Remanding for Further Proceedings was issued by the Administrator on November 2, 2010. On December 7, 2010, the ALJ issued an Amended Proposal for Decision containing Findings of Fact and Conclusions of Law. The PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the record herein.

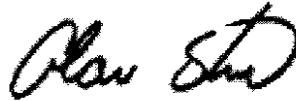
After due consideration of the Amended Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order as if they were fully set out and separately stated herein. All other motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** that Respondent pay a civil penalty in the amount of **\$7,500.00** on or before February 22<sup>nd</sup>, 2011. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above permits will be **SUSPENDED** beginning at 12:01 A.M. on March 2<sup>nd</sup>, 2011, and shall remain suspended for **twenty five (25) consecutive days**.

This Order will become final and enforceable on the 15<sup>th</sup> day of February, 2011, unless a Motion for Rehearing is filed **before** that date.

If this Order is appealed and judgment is rendered by the District Court affirming the Order, Respondent shall pay the civil penalty in the amount of **\$7,500.00** on or before the **tenth (10<sup>th</sup>) day** following the date the judgment is rendered by the District Court. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **eighteenth (18<sup>th</sup>) day** following the date the judgment is rendered by the District Court, and shall remain suspended for **twenty five (25) consecutive days**.

**SIGNED** this the 21st day of January, 2011, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

#### **CERTIFICATE OF SERVICE**

I certify that service was made upon all persons indicated below, in the manner shown, on this the 21st day of January, 2011.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Honorable Judge Sarah G. Ramos  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street Suite 502  
Austin, Texas 78701  
**VIA FACSIMILE: (512) 322-2061**

Patrick A. Groves  
Keel & Nassour, L.L.P.  
**ATTORNEY FOR RESPONDENT**  
508 W. 14<sup>th</sup> Street  
Austin, Texas 78701  
**VIA REGULAR MAIL**  
**VIA FACSIMILE: (512) 480-8170**

Beck and Bob's L.L.C.  
d/b/a ATX Sports Bar  
**RESPONDENT**  
3201 Catalina Dr.  
Austin, TX 78741-7036  
***VIA REGULAR MAIL***

Judith L. Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Lt. Jimmy Zuehlke  
Austin District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 588129 REGISTER NUMBER:

NAME: Beck and Bob's L.L.C.

TRADENAME: ATX Sports Bar

ADDRESS: 3201 Catalina Drive Austin, TX 78741-7036

DUE DATE: February 22, 2011

PERMITS OR LICENSES: MB647121, LB

AMOUNT OF PENALTY: \$7,500.00

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.