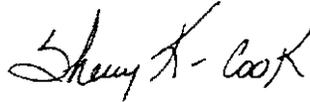


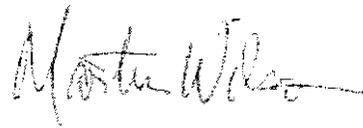
SIGNED this the 4th day of May, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 4th day of May, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Honorable Kyle Groves
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
Dallas, TX
VIA FACSIMILE: (512) 322-0471

Timothy E. Griffith
ATTORNEY FOR RESPONDENT
101 East Park Blvd., Suite 600
Plano, TX 75074
*VIA FACSIMILE: (469) 742-9521 AND
VIA REGULAR MAIL*

Triple D's Enterprises, LLC
d/b/a El Indomable
RESPONDENT
4430 Main St
Dallas, TX 75226-1119
VIA REGULAR MAIL

Matthew M. Clark
ATTORNEY FOR PETITIONER
TABC Legal Division

TABC Licensing Division

Lt. Jeff Gladden
Dallas Enforcement District Office

DOCKET NO. 458-11-1035

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,**

Petitioner

V.

TRIPLE D'S ENTERPRISES, LLC.

d/b/a EL INDOMABLE,

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC, Staff or Petitioner) brought this action against Triple D's Enterprises, d/b/a El Indomable (Respondent), seeking cancellation of Respondent's mixed beverage permit and mixed beverage late hours permit for the premises known as El Indomable, located at 4430 Main Street, Dallas, Dallas County Texas. Petitioner alleged that Respondent has engaged in conduct that is prohibited by the Texas Alcoholic Beverage Code or the Commission's rules.

Specifically, Petitioner alleged: (1) Respondent or Respondent's agent, servant, or employee failed to answer or falsely or incorrectly answered a question in an original or renewal application; (2) Respondent or Respondent's agent, servant, or employee, failed to report a change of the effective control to the Petitioner; and (3) Respondent or Respondent's agent, servant or employee permitted, or consented to, or allowed an unauthorized person to use or display a permit or license in the conduct of business.

After considering the arguments and evidence presented by the parties, the Administrative

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Law Judge (ALJ) finds that there is a sufficient basis for cancelling the permits and recommends the permits be cancelled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice, or venue in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On November 9, 2010, a hearing convened at the State Office of Administrative Hearings (SOAH) in Dallas, Texas, before ALJ Kyle J. Groves. Respondent was represented by attorney Jerry McClain. Staff was represented by attorney Matthew Clark. The record was to remain open until November 23, 2010, so the parties could file written closing arguments. However, both parties filed additional arguments after that date, and these were taken under consideration in this proposal for decision. The final argument was received December 1, 2010.

II. APPLICABLE LAW

TEX. ALCO. BEV. CODE § 11.46 GENERAL GROUNDS FOR REFUSAL. (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists: (4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application.

TEX. ALCO. BEV. CODE § 11.05. UNAUTHORIZED USE OF PERMIT. No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

TEX. ALCO. BEV. CODE § 109.53 states in pertinent part:

It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. Every permittee shall have and maintain

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exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful.

III. EVIDENCE

A. Who controls the premises?

Staff presented the testimony of TABC Agent Joe Garcia. Mr. Garcia testified that the license holder for El Indomable is Blanca Ramirez. Mr. Ramirez' son is Dennis Ramirez. Mr. Garcia said that he believes Mr. Ramirez is the person who actually controls El Indomable, not the license holder, Ms. Ramirez. Mr. Garcia said he bases this belief on a meeting that he had with Ms. Ramirez on December 15, 2009. During the meeting, Ms. Ramirez signed an affidavit stating that Dennis Ramirez actually controls El Indomable. The affidavit states that Ms. Ramirez does not know how much money the establishment makes or the amount of taxes that are paid. The affidavit further states that Ms. Ramirez only signs the checks for the business and that she is employed full-time at G.P. Plastics. Ms. Ramirez' W-2 and income tax return were admitted into evidence. They show her sole source of income was from G.P. Plastics.

Agent Garcia also testified and exhibits were admitted showing that Mr. Ramirez is listed as the lessee on the El Indomable lease. The electric bill for El Indomable is in the name of Mr. Ramirez' girlfriend, Karla Romero. Mr. Garcia said that he also believes that Mr. Ramirez forges his mother's name on checks drawn on the El Indomable account. Numerous checks were admitted into evidence. Check number 236 contains the purported signature of Ms. Ramirez, but the driver's license number of Mr. Ramirez is written at the top of the check.

Respondent presented the testimony of four employees of El Indomable. America Alvarez, Karla Romero, Vicente Ornalas and Joseph Palomo all said that Blanca Ramirez controls El Indomable. They said she conducts regular business meetings and generally comes to the establishment after she gets off work from her other job. The witnesses said that Dennis Ramirez is merely the manager of the establishment.

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B. Was a false statement made on the application?

Respondent has filed an original application with Petitioner for a premise to be known as Siglo XXI. The certificate of occupancy filed with the City of Dallas for Siglo XXI states that less than 75 percent of the establishment's gross quarterly revenue will come from the on-premise sale of alcoholic beverages. This document was signed by Ms. Ramirez in July 2009. However, the original application for Siglo XXI shows that annual alcoholic beverage sales will be \$325,000 and food sales will be \$10,000. According to this document, alcoholic beverage sales will be approximately 97 percent of the establishment's total revenue. The original application was signed by Mr. Ramirez on August 22, 2009.

Agent Garcia testified that the City of Dallas would not have issued the certificate of occupancy if the percentage of alcoholic beverage sales was over 75 percent. According to Mr. Garcia, TABC would have rejected the application if a certificate of occupancy was not issued.

IV. DISCUSSION

Staff argues Respondent failed to answer or falsely or incorrectly answered a question in its application. The evidence shows there is a discrepancy in the information provided to the City of Dallas and the information contained on the application. It appears from the documents that Respondent understated the percentage of alcohol that would be sold in order to obtain the certificate of occupancy for Siglo XXI. However, the information contained in the application showing that alcoholic beverage sales would be approximately 97 percent of the establishment's total revenue does not seem to be false or misleading. In addition, this allegation seems to pertain to the application filed with Petitioner for Siglo XXI, not El Indomable. Therefore, the ALJ concludes that Respondent did not violate TEX. ALCO. BEV. CODE § 11.46 (a) (4).

Staff also argues that Ms. Ramirez and Mr. Ramirez have conspired to allow Mr. Ramirez to control El Indomable without a license. The preponderance of the evidence supports this position. Other than the testimony of the four employees from El Indomable, there is very little evidence that

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Ms. Ramirez actually controls the establishment. Ms. Ramirez admitted to Mr. Garcia that her son controls El Indomable. Furthermore, her sole source of income is from G.P. Plastics. According to her tax information, she derives no income or loss from El Indomable. Therefore, El Indomable must be controlled by Mr. Ramirez. Having a non-license holder in control of a licensed premise violates TEX. ALCO. BEV. CODE §§ 11.05 and 109.53. Therefore Respondent's permits should be cancelled.

V. PROPOSED FINDINGS OF FACT

1. Blanca Ramirez is the president of Triple D's Enterprises, LLC.
2. Triple D's Enterprises, LLC is the holder of a mixed beverage permit and a mixed beverage late hours permit for the premises known as El Indomable, located at 4430 Main Street, Dallas, Dallas County Texas.
3. The Staff of the Texas Alcoholic Beverage Commission (TABAC/Staff) seeks the cancellation of Respondent's permits asserting Respondent failed to answer or falsely or incorrectly answered a question in its application, and the permittee consented to or allowed the use or display of its permit by a person other than the person to whom the permit was issued.
4. On July 20, 2010, Staff issued a notice of hearing that included a statement regarding the time, place, and nature of the hearing; referenced the legal authority upon which the hearing would be held; cited the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
5. The hearing was held November 9, 2010, in Dallas, Dallas County, Texas, before ALJ Kyle Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The record was to remain open until November 23, 2010, so the parties could file written closing arguments. However, both parties filed additional arguments after that date, and these arguments were taken under consideration in this proposal for decision. The final argument was received December 1, 2010.
6. Ms. Ramirez' sole income is from her employer, G.P. Plastics.
7. Ms. Ramirez admitted that her son, Dennis Ramirez, controls El Indomable.

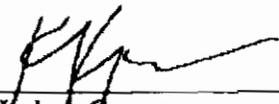
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VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01 and 11.46 (the Code).
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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. The parties received proper and timely notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent consented to or allowed the use or display of its permit by a person other than the person to whom the permit was issued. TEX. ALCO. BEV. CODE § 11.05.
5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should be cancelled.

Issued January 26, 2011

Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings