

DOCKET NO. 594782

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

FRED M ADAMS INCORPORATED
D/B/A THE LANDING STRIP
PERMIT NO. MB-458638 & LB-458639
BEXAR COUNTY, TEXAS
(SOAH Docket No. 458-01-3568)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of February, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on October 23, 2001, and adjourned the same day. The record was left open until November 15, 2001 for receipt of additional evidence. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 31, 2002. This 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, 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 Assistant 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 Permit Nos. MB-458638 & LB-458639 are hereby **SUSPENDED**.

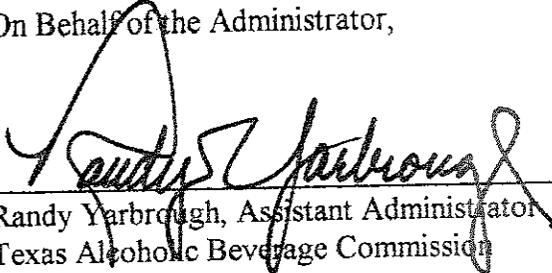
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$6,750.00 on or before the 1st day of May, 2002, all rights and privileges under the above described permit will be **SUSPENDED** for a period of forty-five (45) days, beginning at 12:01 A.M. on the 8th day of May, 2002.

This Order will become final and enforceable on March 21, 2002, unless a Motion for Rehearing is filed **before that date.**

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 28th day of February, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Administrative Law Judge
State Office of Administrative Hearings
San Antonio, Texas
VIA FACSIMILE: (210) 308-6854

Lawrence Letchford
ATTORNEY FOR RESPONDENT
19315 Fm. 2252, Suite 310
Garden Ridge, Tx 78206
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Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 594782

REGISTER NUMBER:

NAME: Fred M. Adams, Incorporated

TRADENAME: The Landing Strip

ADDRESS: 3710 Roosevelt, San Antonio, Bexar County, Texas

DATE DUE: May 1, 2002

PERMITS OR LICENSES: MB-458638 & LB-458639

AMOUNT OF PENALTY: \$6,750.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 1ST DAY OF MAY, 2002, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

DOCKET NO. 458-01-3585

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
Vs.	§	OF
	§	
FRED M. ADAMS, INCORPORATED	§	ADMINISTRATIVE HEARINGS
d/b/a THE LANDING STRIP	§	
PERMIT NO. MB-458638 & LB-458639	§	
BEXAR COUNTY, TEXAS	§	(SAN ANTONIO, TEXAS)
(TABC CASE NO. 594783)		

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC and Staff) brought this action against Fred Adams, Incorporated d/b/a The Landing Strip (Respondent). Staff alleged three violations of the Texas Alcoholic Beverage Code (Code), by Respondent or his agent, employee, or servant. First, soliciting a customer to buy drinks for consumption by Respondent or his employee. Second, soliciting or permitting the solicitation of persons for immoral or sexual purposes, and lastly, his agent or employee was intoxicated on the licensed premises. This proposal finds that Respondent's employee did solicit a customer to buy a drink for the employee's consumption and solicited persons for immoral or sexual purposes, and an employee was intoxicated while on the licensed premises. The Administrative Law Judge (ALJ) recommends a forty-five-day suspension and that Respondent be given an opportunity to pay a civil penalty in lieu of suspension in the amount of \$6750.00.

PROCEDURAL HISTORY, JURISDICTION AND NOTICE

At a hearing on October 23, 2001, Staff appeared through its attorney, Dewey Brackin. Lawrence Letchford appeared to represent Respondent. There were no disputed issues of notice or jurisdiction so those matters will be discussed only in the findings of fact and conclusions of law. ALJ Leah Davis Bates presided over the hearing which concluded on October 23, 2001. The record was left open until November 15, 2001, for the receipt of additional evidence.

LEGAL STANDARD, EVIDENCE AND ANALYSIS

A . Allegations

1. On or about March 16, 2001, Respondent, his employee, servant or agent, did then and there on the licensed premises solicit a customer to buy drinks for consumption by Respondent, and /or his employee, in violation of Section 104.01 (4) of the Texas Alcoholic Beverage Code.

Staff presented the testimony of San Antonio police officer Detective Lowe, who testified that he, along with two other undercover officers, went to the licensed premise on March 16, 2001. When inside the club, a woman he believed to be a dancer at the club, came and sat with them at their table. The dancer, who referred to herself as "Tiffany" asked him to purchase her a tequila sunrise. He further questioned Tiffany on why she wanted a drink. She stated that she was required to sell at least fifteen drinks a night.

Ms. Anita San Miguel testified she was the bartender on the evening of March 16, 2001. She was in charge of all the girls that evening, and she watches the girls very closely. Ms. San Miguel stated she knew which girls were underage and she would not serve them drinks. Ms. San Miguel remembers when the undercover officers arrived, Tiffany, Jordan, and Heaven, dancers in the bar, went and sat with the officers. She knew that Tiffany was a minor and served her only Coke that evening.

2. On or about March 16, 2001, the Respondent, his agent, servant, or employee, solicited or permitted solicitation of persons for immoral or sexual purposes in violation of Sections 11.61 (b) (2) and 104.01 (7) of the Texas Alcoholic Beverage Code.

Detective Lowe testified that on March 16, 2001, after being approached by Tiffany, they talked for a while and he then requested a table dance. For the table dance they both moved away to another area of the club. Once the dance was over Detective Lowe asked her if she did private engagements. Tiffany stated that she would charge \$150.00 for "straight sex." On cross examination, Detective Lowe stated that it was Tiffany's choice of words, when she referred to "straight sex" and that he never discussed what exactly she was going to do for the \$150.00 dollars.

3. On or about May 25, 2001, Respondent, his agent, servant, or employee was intoxicated on the premises in violation of Section 11.61(b)(13) of the Texas Alcoholic Beverage Code.

TABC Agent Riley testified that on the evening of May 25, 2001, he went to the licensed premises to investigate various complaints. When he entered the premises, he observed only one person standing behind the bar, a woman which he knew to be "Harley." Agent Riley testified he had known Harley for years as a dancer at various clubs and he knew that she was both a dancer and a manager at the Landing Strip. He further testified that later that evening is when he learned that Harley's name was Anita San Miguel. While conducting his inspection Agent Riley observed that Harley had unsure balance, impaired speech, and bloodshot eyes. Agent Riley, having arrested her in the past, believed that on this occasion she was intoxicated and asked that she submit to a portable breath test (P.B.T.). Ms. San Miguel first refused the breath test, but after Mr. Adams arrived, she submitted a sample.

Detective Lopez of the San Antonio Police Department testified that he was asked to provide a portable breath test instrument. He observed Harley to have slurred speech, bloodshot eyes, and a strong odor of intoxicants on her breath. He stated that at first she had refused to submit a breath sample, but later did submit a sample. The sample disclosed a breath alcohol concentration of 0.22.

Mr. Adams testified that on May 25, 2001, he was called on his cell phone and told that TABC agents were inspecting the premises. When he entered, Debra Rocha was standing behind the bar watching the agents, and he stated that Ms. Rocha was the person responsible for the bar that evening. He admitted that Ms. San Miguel was an employee of his, but on that evening she was not working and had come to the bar to borrow money. Respondent's exhibits one and two were marked and admitted into evidence. Exhibit number one is an acknowledgment of the Landing Strip's servers rules signed by Anita San Miguel, and exhibit number two is a time sheet for Ms. San Miguel for the week of May 21, 2001, through May 26, 2001. The time sheet indicates that on May 24, 2001, and early morning hours of May 25, 2001, Ms. San Miguel was not scheduled to work.

Ms. Anita San Miguel testified her normal day off was Sunday, but May 25, 2001, was a Thursday, and she was off because she was sick. She stated that she had been drinking that day with her brother, and around 11:00 or 12:00 a.m. she went to the bar to borrow thirty dollars from Mr. Adams. When she arrived she went straight to the bathroom, then walked over to Mr. Adams and Agent Riley. While talking to Agent Riley he reached over and grabbed her breast and slapped her on the buttocks.

Ms. Debra Rocha testified she was in charge of the bar on May 25, 2001. She stated when the TABC agents arrived, Mr. Adams was already in the bar, back in his office, and that Ms. San Miguel had not arrived. Ms. Rocha stated she kept excellent records of her work schedule and her records show she was working as a bartender that evening. She stated that Agent Riley did grab Ms. San Miguel and slapped her on the buttocks.

B. Analysis

Concerning the allegations of solicitation of a drink and solicitation for sexual purposes, the testimony of Detective Lowe was credible and undisputed. Detective Lowe was specific regarding the type of drink the dancer requested and why she wanted him to purchase her a drink. He also adequately described the dancers response when he requested a private engagement. The dancers choice of words "straight sex" is sufficient for the Detective to establish his case.

Although Ms. San Miguel testified she did not serve Tiffany a tequila sunrise, actual service of the drink is not required. Her testimony corroborates Detective Lowe; she witnessed Tiffany approaching and sitting with Detective Lowe on May 16, 2001. Ms. San Miguel stated she knew Tiffany to be an underage dancer at the Landing Strip. The Respondent never disputed the fact that Tiffany was an employee of the Landing Strip on that evening.

The allegation that an employee, Ms. San Miguel, was intoxicated on the licensed premise is also virtually undisputed. Agent Riley and Detective Lopez describe sufficient indicators of intoxication, and this combined with a P.B.T of 0.22 establishes Ms. San Miguel was intoxicated. Mr. Adams admitted that Ms. San Miguel was an employee of his. Ms. San Miguel admitted that she was an employee, and she had been drinking that day, and was at the bar to borrow money. Therefore, Ms. San Miguel was an employee on the licensed premises while intoxicated.

An inordinate amount of time and testimony was spent on an issue that is not relevant to this hearing. The issue of Agent Riley grabbing Ms. San Miguel is neither an allegation in the pleadings, nor a defense to the allegation of an intoxicated employee on the premises. The testimony only established that Ms. San Miguel was on the licensed premise that evening. It appears the Respondent was attempting to prove that Agent Riley had some ulterior motive for requesting Ms. San Miguel submit to a portable breath test. Agent Riley's motive is irrelevant based on the evidence. Ms. San Miguel admitted she was an employee on the premises that evening, and the results of 0.22 on the P.B.T. established she was highly intoxicated.

Ms. San Miguel's testimony was entirely contradictory. First, she stated that her normal day off was Sunday, but she was off this Thursday because she was sick. She stated she was sick, but drank that day at her brother's house, and in fact, went sometime around midnight to borrow money to buy more beer. Ms. San Miguel's entire testimony on what occurred that evening is suspect, based on her admissions of drinking and the breath specimen she submitted, which showed she was highly intoxicated that evening.

Ms. Rocha's testimony appeared credible, but made no sense. Mr. Adams previously testified he was not at the bar when the TABC agents arrived. If that were the case, Ms. Rocha's testimony that Mr. Adams was in his office when the agents arrived is incorrect. Ms. Rocha further testified that Ms. San Miguel arrived after the TABC agents. Since we know Mr. Adams was not at the bar, and according to Ms. Rocha, neither was Ms. San Miguel, then the agents would have had to initially approach Ms. Rocha, if in fact, she was working as bartender that evening.

C. Sanctions

TABC has the burden to show that it is more likely than not that Respondent's employee or agent was intoxicated while on the licensed premises and solicited a drink for consumption, and solicitation for sexual purposes. TABC met that burden. TABC is authorized to suspend a permit for not more than 60 days, pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §11.61(b)(2), if a licensee violates any provision of the Code. When TABC is authorized to suspend a permit or a license, it must give the permittee an opportunity to pay a civil penalty in lieu of suspension. The amount may not be less than \$150 or more than \$25,000 for each day the permit was to have been suspended. If the penalty is not paid before the sixth day after TABC notifies him of the amount, the permittee loses the opportunity to pay it and TABC is required to impose the suspension. In this case, TABC has requested a 45-day suspension for the solicitation allegation, 15-day suspension for the drink solicitation allegation and a 30-day suspension for the intoxicated employee allegation.

The ALJ recommends that Respondent's license be suspended for 45 days. However, the ALJ recommends that Respondent be given an opportunity to pay a civil penalty in the amount of \$6750 in lieu of suspension before the sixth day after TABC notifies him of its order.

PROPOSED FINDINGS OF FACT

1. Fred Adams d/b/a The Landing Strip (Respondent) holds Permits, MB-458638 and LB-458639, issued by the Texas Alcoholic Beverage Commission (TABC).
2. On August 20, 2001, TABC timely sent Notice of Hearing by certified mail, return receipt requested to Respondent's attorney, Lawrence Letchford, 19315 FM. 2252 Suite 310, Garden Ridge, Texas, 78266. The Notice of Hearing informed Respondent of the issues to be decided, the right to appear and be represented by counsel, the date and place of the hearing, and the statutes and rules involved.
3. The hearing was held on October 23, 2001, at the State Office of Administrative Hearings (SOAH), located at 10300 Heritage, Suite 250, San Antonio, Texas with Administrative Law Judge (ALJ) Leah Davis Bates presiding. Dewey Brackin, an attorney with TABC, appeared to represent TABC and Lawrence Letchford appeared to represent Respondent. The record was reopened on October 29, 2001, and closed, with no additional evidence submitted, on November 15, 2001.
4. On or about March 16, 2001, Respondent's employee, servant or agent, Tiffany, did then and there on the licensed premises solicit a customer to buy drinks for her consumption, in violation of Section 104.01 (4) of the Texas Alcoholic Beverage Code
5. On or about March 16, 2001, the Respondent's agent, servant, or employee, Tiffany, solicited or permitted solicitation of persons for immoral or sexual purposes in violation of Sections 11.61 (b) (2) and 104.01 (7) of the Texas Alcoholic Beverage Code.
6. On or about May 25, 2001, Respondent's employee, Anita San Miguel was intoxicated on the licensed premises in violation of Section 11.61(b)(13) of the Texas Alcoholic Beverage Code.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 104.01.
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. Ch. 2003.
3. Proper and timely notice of the hearing was effected upon the Respondent, pursuant to TEX. GOV'T CODE ANN. Ch. 2001.
4. Based on the foregoing Findings of Facts, Respondent's employee did solicit a customer to buy

drinks for her consumption, in violation of TEX. ALCO. BEV. CODE ANN. §104.01(4).

5. Based on the foregoing Findings of Facts, Respondent's employee did solicit persons for immoral or sexual purposes in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2) and 104.01(7).

6. Based on the foregoing Findings of Facts, Respondent's employee was intoxicated while in The Landing Strip, the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. §11.61(b)(13).

7. Based on the foregoing Findings of Facts and Conclusions of Law number 4, Respondent's Permits, MB-458638, and LB-458639 should be suspended for ten days.

8. Based on the foregoing Findings of Facts and Conclusions of Law number 5, Respondent's Permits, MB-458638, and LB-458639 should be suspended for fifteen days.

9. Based on the foregoing Findings of Facts and Conclusions of Law number 6, Respondent's Permits, MB-458638, and LB-458639 should be suspended for twenty days.

10. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to TEX. ALCO.BEV. CODE ANN. §11.61, Respondent should be permitted to pay a civil penalty of \$6750.00 in lieu of the suspension of his license.

Signed this 31st day of January 2002.


Leah Davis Bates
Administrative Law Judge