

DOCKET NOS. 514670, 519530 & 565988

| | | |
|-------------------------------------|---|---------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE TEXAS |
| | § | |
| | § | |
| VS. | § | |
| | § | |
| JESUS BARCENAS FLORES | § | |
| D/B/A MANDO'S BAR | § | ALCOHOLIC |
| PERMIT/LICENSE NO(s). BE540174 | § | |
| BASTROP COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-07-3591) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this day, in the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on the 22nd day of October 2007 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 14th day of January 2008. 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.

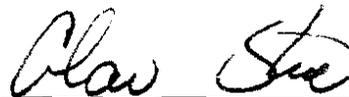
IT IS THEREFORE ORDERED, by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your license(s) are hereby **SUSPENDED**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$2,250.00 on or before the 2nd day of April 2008, all rights and privileges under the above described permits will be **SUSPENDED for a period of fifteen (15) days, beginning at 12:01 A.M. on the 9th day of April 2008.**

This Order will become final and enforceable on March 25, 2008, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this February 29, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

The Honorable Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

Don E. Walden
ATTORNEY FOR RESPONDENT
7200 N. Mopac, Ste. 300
Austin, TX. 78731
VIA FAX (512) 795-8079

JESUS BARCENAS FLORES
RESPONDENT
d/b/a MANDO'S BAR
112 S AVE C
ELGIN, TX 78621

JUDITH L. KENNISON
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBERS: 514670, 519530 & 565988

REGISTER NUMBER:

NAME: JESUS BARCENAS FLORES

TRADENAME: MANDO'S B AR

ADDRESS: 112 S Ave C, Elgin, TX 78621

DATE DUE: March 21, 2008

PERMITS OR LICENSES: BE540174

AMOUNT OF PENALTY: \$2,250.00

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 along with your payment to:

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

Overnight Delivery Address: 5806 Mesa Drive, 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.

LEGAL

I. PROCEDURAL HISTORY AND JURISDICTION

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits convened October 22, 2007, at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Fourth Floor, Austin, Texas, before ALJ Sharon Cloninger. TABC was represented by its staff attorney Christopher G. Gee. Respondent appeared through attorney Don E. Walden. The record closed November 19, 2007, after the submission of written closing arguments.

II. ALLEGATIONS AND APPLICABLE LAW

Respondent is the holder of a Beer Retailer's On-Premise License (BE540174)³ issued by TABC for the premises known as Mando's Bar (Mando's), located at 112 S. Ave. C, Elgin, Bastrop County, Texas. On November 1, 2005, Respondent signed a TABC Agreement and Waiver of Hearing agreeing to either a 10-day suspension of his permit or a civil penalty of \$1,500 for the sale of an alcoholic beverage to an intoxicated person that occurred on the licensed premises on October 7, 2005.⁴

Staff alleges Respondent committed the following violations, as set out in the Amended Notice of Hearing⁵ issued by TABC on October 2, 2007:

³ TABC Exh. 3.

⁴ *Id.*

⁵ TABC Exh. 2.

A. Violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(5), 11.61(b)(13), 25.04 and/or 61.71(a)(1)

1. Allegation

Staff alleges that on November 6, 2005, Respondent or his agent, servant, or employee was intoxicated on the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(5), 11.61(b)(13), 25.04 and/or 61.71(a)(1).

2. Applicable law

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, any of the following acts: being intoxicated on the licensed premises. TEX. ALCO. BEV. CODE ANN. § 104.01(5).

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. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13).

A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license. The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit. TEX. ALCO. BEV. CODE ANN. § 25.04.

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during

the existence of the license sought to be cancelled or suspended or during the immediately preceding license period. TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1).

B. Violation of TEX. ALCO. BEV. CODE § 61.71(a)(6)

1. Allegation

Staff alleges that on January 27, 2006, Respondent or his agent, servant, or employee, sold, served, or delivered an alcoholic beverage to an intoxicated person, in violation of TEX. ALCO. BEV. CODE § 61.71(a)(6).

2. Applicable law

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee sold, served, or delivered an alcoholic beverage to an intoxicated person. TEX. ALCO. BEV. CODE § 61.71(a)(6).

C. Violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9) and 11.61(b)(2) and 16 TEXAS ADMIN CODE (TAC) § 35.41(b)

1. Allegation

Staff alleges that on June 24, 2007, Respondent or his agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9) and 11.61(b)(2) and 16 TAC § 35.41(b).⁶

⁶ Staff cites 16 TAC § 35.41(b), but the rule contains parts (1) and (2) rather than parts (a) and (b).

2. Applicable law

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, possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so. TEX. ALCO. BEV. CODE ANN. § 104.01(9).

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 the permittee violated a provision of this code or a rule of the commission. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

A narcotic is any substance defined in the Texas Controlled Substances Act § 481.002(5), (6), (7), or (26). [See Texas Alcoholic Beverage Code § 104.01(9).] 16 TAC § 35.41(2).

IV. EVIDENCE, ARGUMENT, AND ANALYSIS

Staff offered seven exhibits, which were admitted,⁷ and the testimony of four witnesses. Respondent testified on his own behalf, offered two exhibits, that were admitted, and presented the testimony of one additional witness.

⁷ Statements attributed to Jesse Barrellessa in TABC Exh. 5 were not admitted over a hearsay objection, because the ALJ finds Mr. Barrellessa was not Respondent's employee, servant, or agent on the date of the alleged violation.

A. On November 6, 2005, was Respondent or Respondent's agent, servant, or employee intoxicated on the licensed premises?

1. Testimony of Darryl Hart

Elgin Police Sergeant Darryl Hart arrived at Mando's Bar between 10 p.m. and midnight on November 6, 2005, after being requested to accompany TABC Agent John King to the location. While there, Jesse Barrellessa – who Sgt. Hart identified to Agent King as a Mando's employee – walked inside. Sgt. Hart said Mr. Barrellessa was obviously intoxicated. He smelled of alcohol, had glassy eyes and slurred speech, and was staggering.

Sgt. Hart testified that he had seen Mr. Barrellessa empty the trash and clear tables at Mando's on other occasions, so he told Agent King that Mr. Barrellessa was a Mando's employee. But on the night in question, Sgt. Hart did not see Mr. Barrellessa perform any work, because Mr. Barrellessa was arrested right after he entered the bar. Sgt. Hart said he does not know if Mr. Barrellessa was in the bar that night to work or to order beer.

Sgt. Hart said Agent King's incident report⁸ accurately reflects the events of November 6, 2005.

2. Testimony of TABC Agent John King

TABC Agent King arrived at Mando's at 12:10 a.m. on November 6, 2005, and spoke with Armando Maldonado about not serving alcoholic beverages to intoxicated persons.⁹ While they were speaking, Mr. Barrellessa walked inside, and Agent King told Mr. Maldonado that Mr. Barrellessa was an "example of the type of person you don't need here," because Mr. Barrellessa

⁸ TABC Exh. 3.

⁹ Mr. Maldonado testified he leases the licensed premises to Mr. Flores, who holds the Beer Retailer's On-Premise License, but sometimes helps manage the bar himself.

was "hammered." After Sgt. Hart told Agent King that Mr. Barrellessa was a Mando's employee, Agent King went inside the bar to look for him. He said the bar was so crowded inside and outside, that he spent two-to-four minutes looking for Mr. Barrellessa before finding him. He said Mr. Barrellessa had no time to perform work duties in the interim. Agent King escorted Mr. Barrellessa outside and spoke to him with assistance from Sgt. Hart, who speaks Spanish.

Agent King observed Mr. Barrellessa to have extremely slurred speech, to sway while standing, to display six out of six clues on the horizontal gaze nystagmus field sobriety task, and to jump from one train of thought to another. Agent King did not ask Mr. Barrellessa to perform the walk and turn field sobriety task because Mr. Barrellessa has a disability in one leg. Agent King arrested Mr. Barrellessa for public intoxication.

3. Testimony of Armando Maldonado

Mr. Maldonado, who goes by "Mando," owns the property at 112 Ave. C, Elgin, known as Mando's Bar. He leases the property to Respondent, who holds the TABC permit for the licensed premises. Mr. Maldonado does not hold any TABC permit.

Mr. Maldonado said he has hired Mr. Barrellessa on occasion to cut the grass at Mando's Bar, paying him between \$6 and \$7 per hour. Sometimes Mr. Maldonado helps manage Mando's Bar, but he does not hire bar employees or get involved with bar operations, he said. To Mr. Maldonado's knowledge, Respondent has not hired Mr. Barrellessa to perform work at the bar.

4. Respondent's testimony

Respondent testified that he has never hired Mr. Barrellessa to perform work for him.

5. ALJ's analysis

Staff proved Mr. Barrellessa was intoxicated on the licensed premises on November 6, 2005, but provided insufficient evidence to prove he was Respondent's employee, agent, or servant. The only evidence in support of the allegation is that Sgt. Hart had seen Mr. Barrellessa working at the bar on previous occasions. Mr. Maldonado said he has hired Mr. Barrellessa to cut grass at Mando's Bar on occasion, but Mr. Maldonado is not the licensee. Respondent testified that he has never hired Mr. Barrellessa to work at the bar. Therefore, Staff did not prove Respondent, his agent, servant, or employee was intoxicated on the licensed premises on November 6, 2005, in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(5), 11.61(b)(13), 25.04 and/or 61.71(a)(1).

B. Did Respondent or Respondent's agent, servant, or employee, sell, serve, or deliver an alcoholic beverage to an intoxicated person on January 27, 2006?**1. Testimony of TABC Agent Joe Chavez¹⁰**

On January 27, 2006, TABC agents Joe Chavez and William Helpenstell worked undercover at Mando's Bar investigating sales of alcoholic beverages to intoxicated persons. After 10 minutes inside the bar, Agent Chavez observed a Hispanic male holding a Bud Light stagger from the bar to the restroom. The man, later identified as Jesus Sena, nearly fell backwards when he ran into another customer, maintaining his balance by holding the other customer's arm. Agent Chavez engaged Mr. Sena in conversation, and found him to have slurred speech, to emit a very strong odor of alcohol, and to have bloodshot eyes. Agent Chavez observed Mr. Sena to slouch in a chair, nearly sliding off the seat. After that time, Agent Chavez heard wait staff, later identified as Claudia Juarez, ask Mr. Sena if he needed another beer, then saw her take money from him and deliver two 12 ounce Bud Lights to Mr. Sena's table. Agent Chavez then contacted Agent King, the "open" agent, who came inside with Elgin police officers. Agent Chavez identified both Mr. Sena and Ms. Juarez to

¹⁰ See also Agent Chavez' case report at TABC Exh. 4.

Agent King, who removed Mr. Sena from the premises and arrested him for public intoxication. Ms. Juarez was arrested for selling alcoholic beverages to an intoxicated person.

2. Testimony of TABC Agent King¹¹

Agent King testified that after removing Mr. Sena from Mando's Bar, he observed him to have very slurred speech, sway while standing, have a heavy odor of alcoholic beverage, have bloodshot eyes, display six out of six clues on the horizontal gaze nystagmus task, and exhibit seven out of eight clues on the walk and turn field sobriety task. Agent King found Mr. Sena to be highly intoxicated and arrested him for public intoxication.

3. Agent King's supplement¹²

Agent King spoke with Ms. Juarez with the assistance of Elgin Police Sgt. Hart, who provided English-Spanish translation. Ms. Juarez told Agent King she is not seller-server trained; he verified she was not trained via a search of the TABC data base. Ms. Juarez also told Agent King she was not aware of any policies against selling alcoholic beverages to intoxicated persons or minors, and was not aware of any posted policies. Agent King was not able to find any policies regarding service to intoxicated persons posted at Mando's Bar.

4. ALJ's analysis

Staff proved Ms. Juarez, wait staff at Mando's Bar, served two 12-ounce beers to an intoxicated person, Mr. Sena, on January 27, 2006. Agent Chavez observed Mr. Sena to have a heavy odor of alcoholic beverage, bloodshot eyes, slurred speech, and to be nearly sliding off his chair, all signs of intoxication that should have been noted by Ms. Juarez when she took Mr. Sena's

¹¹ See also Agent King's supplemental report at TABC Exh. 4.

¹² See TABC Exh. 4.

order for two beers, took his money, and delivered two beers to him. Therefore, Staff proved that Respondent's employee served or sold an alcoholic beverage to an intoxicated person on January 27, 2006, and that Respondent's on-premise license may be suspended pursuant to TEX. ALCO. BEV. CODE § 61.71(a)(6).

C. Did Respondent or Respondent's agent, servant, or employee, possess or permit others to possess a narcotic on the licensed premises on June 24, 2007?

1. Testimony of Elgin Police Officer Eric Edwards¹³

Elgin Police Officer Eric Edwards said he was driving past Mando's at about midnight on June 24, 2007, when he saw Agent Chavez and Agent Helpenstell questioning people in a car parked in a parking lot off Austin Street, around the corner from the bar. He testified he stopped to assist, and the agents told him two of the people they would like to question had disappeared into a gated area attached to one side of Mando's. Officer Edwards said he checked the gated area, and discovered approximately 13 marijuana plants inside, identifying the plants by their shape and smell, and his allergic reaction to them.¹⁴

Officer Edwards described the fenced area as being attached to Mando's and containing the bar's air conditioner unit, but admitted he does not know where the Mando's property line is. He said he did not speak to either Mr. Maldonado or Mr. Flores about the marijuana plants being inside the fenced area.

2. Testimony of Agent Chavez¹⁵

Agent Chavez testified he was at Mando's Bar around midnight June 24, 2007, when he observed two women who appeared to be soliciting for prostitution. He began questioning one of

¹³ See also TABC Exh. 6, which is Officer Edwards' case report.

¹⁴ Officer Edwards said his eyes watered, he sneezed, and his nose bled, all reactions he has to marijuana plants.

¹⁵ See also TABC Exh. 7, which is Agent Chavez' case report.

them, but the second woman disappeared around the back of the bar. About that time, Officer Edwards stopped to provide backup, and began looking for the other woman inside the fenced area adjacent to Mando's Bar. In a couple of minutes, Officer Edwards returned to Agent Chavez and reported there were marijuana plants inside the fenced area. Agent Chavez said he took a flashlight into the area and saw three or more flowerpots containing marijuana, among other plants. He testified that marijuana is defined as a narcotic pursuant to TABC rules,¹⁶ and it is a violation for a licensee or permittee to possess a narcotic on the licensed premises.

On cross examination, Agent Chavez said the fenced area is accessible to any trespasser. He said the marijuana plants were about a foot high, and appeared to have been in the area for a while, although he did not know how long the plants had been there, who had put them there, or if Respondent knew they were there. But he said a licensee is required to be familiar with the licensed premises, and is responsible for any narcotics found on the licensed premises.

3. Testimony of Mr. Maldonado

Mr. Maldonado testified that he owns both the Mando's Bar property and the house adjacent and around the corner from the bar at 206 W. Austin St., Elgin, Texas. He said the fenced area is leased to the resident of the house, not to Respondent.¹⁷ The lease agreement between Mr. Maldonado and the house tenant is dated December 21, 2005, for the period from January 1, 2006, through December 31, 2007. The marijuana plants in the fenced area were found by Officer Edwards more than six months into the lease. Mr. Maldonado explained that Respondent is only allowed access to the fenced area to service the air conditioner that cools Mando's.

4. ALJ's Analysis

It is undisputed that marijuana plants were found inside a fenced area connected to the licensed premises. However, the evidence establishes that while the air conditioner for Mando's Bar

¹⁶ See 16 TAC § 35.41.

¹⁷ See Respondent's Exhibits 1 and 2.

is located in the fenced area, the area is actually leased to the tenant who rents a house next to the bar, and is not leased to Respondent as part of the licensed premises. Therefore, the evidence does not support the allegation that Respondent violated ALCO. BEV. CODE ANN. §§ 104.01(9) and 11.61(b)(2) and 16 TAC § 35.41(b) by possessing a narcotic on the licensed premises.

V. CONCLUSION

Staff proved by a preponderance of the evidence that Respondent or its employees violated the Texas Alcoholic Beverage Code or TABC rules by serving an intoxicated person on January 27, 2006, but did not prove Respondent's agent, servant or employee was intoxicated on the licensed premises on November 6, 2005, or that Respondent or his agent, servant, or employee possessed or permitted others to possess a narcotic on the licensed premises on June 24, 2007. Respondent has one prior TABC violation. Accordingly, the ALJ recommends that Respondent's permit not be canceled as requested by Staff, but rather a 15-day suspension or \$2,250 civil penalty be imposed.

VI. FINDINGS OF FACT

1. Jesus Barcenas Flores d/ba/ Mando's Bar (Respondent) is the holder of a Beer Retailer's On-Premise License (BE540174) issued by the Texas Alcoholic Beverage Commission (TABC) for the premises known as Mando's Bar located at 112 S. Ave. C, Elgin, Bastrop County, Texas.
2. On November 6, 2005, Jesse Barrellessa was intoxicated on the licensed premises, but was not Respondent's agent, servant, or employee.
 - a. Mr. Barrellessa was hired on occasion by Armando Maldonado, who leases the licensed premises to Respondent, to cut grass at Mando's Bar.
 - b. Mr. Maldonado is not the permittee or licensee for Mando's Bar.
 - b. As of November 6, 2005, Respondent had never hired Mr. Barrellessa to perform any work for him.
3. On January 27, 2006, Respondent's employee served beer to an intoxicated person on the licensed premises.

- a. On January 27, 2006, TABC Agent Joe Chavez was working undercover with TABC Agent Helpenstell at Mando's Bar.
 - b. After 10 minutes inside the bar, Agent Chavez observed a customer – later identified as Jesus Sena – holding a Bud Light beer staggering from the bar to the restroom.
 - c. Mr. Sena nearly fell backwards when he ran into another customer, maintaining his balance by holding the other customer's arm.
 - d. Mr. Sena had slurred speech, a very strong odor of alcohol, bloodshot eyes, and nearly slid off the chair he was sitting on.
 - e. Claudia Juarez , who was working as wait staff at Mando's Bar, took money from Mr. Sena and served him two 12-ounce Bud Light beers.
 - f. At the time Ms. Juarez served Mr. Sena the two beers, she should have noticed he had slurred speech, an odor of alcoholic beverage, bloodshot eyes, and was nearly sliding off his chair.
 - g. After Ms. Juarez served Mr. Sena the beers, Agent Chavez contacted TABC Agent John King, who was an "open" agent.
 - h. Agent King and three Elgin police officers entered the bar and escorted Mr. Sena and Ms. Juarez outside after the two were identified by Agent Chavez.
 - i. Agent King arrested Mr. Sena for public intoxication after observing him to have very slurred speech, to sway while standing, to have a heavy odor of alcoholic beverage, to have bloodshot eyes, to display six out of six clues on the horizontal gaze nystagmus field sobriety task, and to exhibit seven out of eight clues on the walk and turn field sobriety task.
 - j. On November 6, 2005, Ms. Juarez was not seller-server certified by TABC.
 - k. No policies regarding service of alcoholic beverages to an intoxicated person were posted inside Mando's on November 6, 2005.
4. On June 24, 2007, approximately 13 marijuana plants were found in a fenced area adjacent to Mando's Bar.
 - a. The fenced area is on property belonging to Armando Maldonado, who leases the licensed premises to Respondent, but is not part of the licensed premises.
 - b. The fenced area was included in the lease to the tenant who rented the house next to Mando's Bar from January 1, 2006, through December 31, 2007.

- c. Respondent had access to the fenced area to service the air conditioner unit that cools Mando's.
5. On November 18, 2005, TABC sent its Second Amended Notice of Hearing to Respondent.
6. The Second Amended Notice of Hearing contained a statement of the location and the 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 allegations and the relief sought by TABC Staff.
7. The hearing on the merits was held October 22, 2007, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas, before Administrative Law Judge Sharon Cloninger. TABC appeared through its staff attorney Christopher G. Gee. Respondent appeared through its attorney Don E. Walden. The record closed November 19, 2007, after the parties submitted written closing argument.
8. On November 1, 2005, Respondent signed a TABC Agreement and Waiver of Hearing agreeing to either a 10-day suspension of his permit or a civil penalty of \$1,500 for the sale of an alcoholic beverage to an intoxicated person that occurred on the licensed premises on October 7, 2005.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue 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 provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on the above Findings of Fact, Respondent or his agent, servant, or employee was not intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(5), 11.61(b)(13), 25.04 and/or 61.71(a)(1).
5. Based on the above Findings of Fact, Respondent's agent, servant, or employee sold, served, or delivered an alcoholic beverage to an intoxicated person in violation of TEX. ALCO. BEV. CODE ANN. § 61.71(a)(6).

6. Based on the above Findings of Fact, Respondent or his agent, servant, or employee did not possess or permit others to possess a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9) and 11.61(b)(2), and 16 TAC § 35.41(b).
7. Based on Conclusion of Law No. 5 and Finding of Fact No. 8, imposition of a 15-day suspension of Respondent's permit or a \$2,250 civil penalty is warranted pursuant to the Standard Penalty Chart.

SIGNED January 14, 2008.



**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

January 14, 2008



HAND DELIVERY

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

RE: Docket No. 458-07-3591; Texas Alcoholic Beverage Commission vs. Jesus Barcnas Flores d/b/a Mando's Bar, License No. BE-540174, Bastrop County, Texas (TABC Case Nos. 514670, 519530, 565988)

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger
Administrative Law Judge

SC/pp
Enclosure

xc Christopher G. Gee, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Don E. Walden, Don E. Walden, Attorney and Counselors at Law, 7200 North Mopac, Suite 300, Austin, TX 78731- **VIA REGULAR MAIL**