

TABC DOCKET NO. 585790

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
MARIA LOPEZ OQUENDO D/B/A EL MUNDO BILLARES	§	ALCOHOLIC
	§	
PERMIT/LICENSE NO(s). BG677441, BL	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-1221)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 3rd day of May 2010 the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on January 29, 2010 and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on March 29, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

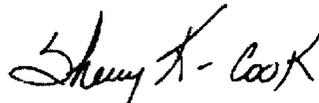
IT IS THEREFORE ORDERED that NO ACTION be taken by the Texas Alcoholic Beverage Commission against the Respondent's licenses.

This Order is final on the date it is signed.

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

SIGNED this the 3rd day of May, 2010, at Austin, Texas.

On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on May 4, 2010.



Alejandra Argueta, Paralegal
Texas Alcoholic Beverage Commission
Legal Division

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Michael F. Craig
ATTORNEY FOR RESPONDENT
1533 W. Alabama, Suite 100
Houston, Texas 77006
VIA FACSIMILE: (713) 521-7365

Maria Lopez Oquendo
d/b/a El Mundo Billares
RESPONDENT
9355 Long Point 'A'
Houston, Texas 77055
VIA U.S. FIRST-CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

MAR 30 2010

ABC HOUSTON
LEGAL

March 29, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-10-1221; Texas Alcoholic Beverage Commission v. Maria Lopez Oquendo d/b/a El Mundo Billares

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 § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "S Burger".

Stephen Burger
Administrative Law Judge

SB:rlm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and cd)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Michael Craig, Attorney, Craig Bureson, Attorney, 1533 W. Alabama, Suite 100, Houston, TX 77006 -**VIA REGULAR MAIL**

II. ALLEGATIONS AND LEGAL STANDARDS

Pursuant to the Notice of Hearing issued by the TABC, Staff alleges that on March 28, 2009, Respondent, its agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN §§ 61.71 and 104.01(9), and 16 TEX. ADMIN. CODE § 35.41(b).

III. EVIDENCE, ANALYSIS AND RECOMMENDATION

A. Testimony of witnesses is summarized as follows:

1. Robert Pelton

Robert Pelton, an enforcement agent with Petitioner, stated that on March 28, 2009, he went to Respondent's premises for a routine inspection. The Respondent's bar is in a high-crime area. In the bar's restroom, Agent Pelton observed a male drop into the trash a small baggie filled with white powder. The individual, identified as Jose Sanchez, was detained and a field test showed the baggie contained cocaine. Mr. Sanchez was arrested for having two bags of cocaine in his possession.

Upon further investigation, a security guard and a disc jockey at the bar identified Mr. Sanchez as a janitor at the bar. No other information pointed to Mr. Sanchez being a janitor at the bar.

2. Nicholas Vaughn

Nicholas Vaughn, another agent for the TABC, was also present at Respondent's bar on the date in question. An administrative violation notice was given to Salvador Lopez, the manager of the bar. Mr. Lopez never denied that Mr. Sanchez was an employee of the bar, although Agent Vaughn did not ask him that question.

3. Maria L. Oquendo

Maria L. Oquendo, Respondent, testified that she has owned the bar for the last two years. She helps out at the bar but her brother, Salvador Lopez, operates the bar. She does know Mr. Sanchez, but by another name, Tubr.

Ms. Oquendo knew that about six weeks prior to March 28, 2009, her brother had given Mr. Sanchez a few dollars to clean the parking lot. She stated that sometime after that, they were having trouble with Mr. Sanchez, as he was hanging-out with “bad” people, and he was told to stay off the property. She stated that Mr. Sanchez was never an employee of the bar, and that her brother only asked Mr. Sanchez to clean up the parking lot once or twice. Additionally, she stated that she never has permitted anyone to have drugs on the property.

4. Salvador Lopez

Salvador Lopez is an electrician, but also works as the manager of Respondent’s bar. He knows Mr. Sanchez as Tubr, who sometimes hung-out at the bar. Mr. Sanchez had asked him for money, so Mr. Sanchez twice gave him \$10 or so to clean the parking lot of trash. He felt sorry for Mr. Sanchez and wanted to help him out. Mr. Lopez never considered Mr. Sanchez to be an employee.

5. Jose Duran

Jose Duran is a Houston Police Officer. He confirmed that the Respondent’s bar is in a high-crime area, and that he had been called to the bar regarding vagrants causing problems at the property.

B. Exhibits

Three exhibits were offered by the TABC.

1. TABC official file.
2. Affidavit of Analysis (not admitted).
3. Certified Conviction.

C. ALJ's Analysis and Recommendation

The evidence shows that on March 28, 2009, agents for the TABC observed Mr. Sanchez in Respondent's restroom, and Mr. Sanchez was in possession of a bag of cocaine. Respondent's bar is in a high-crime area.

The evidence also shows that Mr. Sanchez, alias Tubr, was an individual who had frequented Respondent's bar. Both Salvador Lopez, who operates the bar, and Maria Oquendo, the owner, knew Mr. Sanchez, but only as a frequenter of the bar. Approximately six weeks prior to March 28, 2009, Mr. Sanchez had asked Mr. Lopez for a hand-out, and out of compassion, Mr. Lopez on two occasions allowed Mr. Sanchez to clean the parking lot of trash, giving Mr. Sanchez \$10.00 for his labors. However, there is insufficient evidence that on March 28, 2009, Mr. Sanchez was an employee of Respondent, as alleged by Staff. Although Agents Pelton and Vaughn had information from a security guard and a disc jockey who thought Mr. Sanchez was an employee, the ALJ finds that evidence outweighed by the testimony of Respondent and Mr. Lopez, which is to the contrary.

IV. FINDINGS OF FACT

1. Maria L. Oquendo, d/b/a El Mundo Billares (Respondent) is the holder of a Wine and Beer Retailer's Permit and Retail Dealer's On Premise Late Hours License, BG-677441, BL, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 9355 Long Point 'A,' Houston, Harris County, Texas, 77055.
2. On November 24, 2009, the Staff sent a Notice of Hearing to Respondent.
3. The November 24, 2009 Notice of Hearing contained a statement of the time, date, location and 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 the TABC.

4. On January 29, 2009, a public hearing in Houston, Texas was held before Administrative Law Judge Stephen J. Burger. The TABC appeared through its staff attorney Sandra Patton. Respondent appeared through its attorneys Michael Craig and Clyde Burleson. Evidence was presented and the record closed.
5. On March 28, 2009 Jose Sanchez was in possession of cocaine in the restroom of Respondent's bar.
6. Although Respondent had paid Jose Sanchez to clean Respondent's parking lot on two prior occasions, on March 28, 2009, Jose Sanchez was not on Respondent's payroll nor was he working in any capacity for Respondent.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Subchapter B of Chapter 5 and §§ 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 § 155.501.
4. Based on the above Findings of Fact, Mr. Sanchez was not an agent, servant, or employee of Respondent on March 28, 2009, and Respondent is not in violation of TEX. ALCO. BEV. CODE §§ 61.71 and 104.01(9), and 106.13, and 16 TEX. ADMIN. CODE § 35.41(b).
5. Based on Conclusion of Law 4, no suspension of Respondent's permit is warranted.

SIGNED March 29, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS