

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

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**FABC HOUSTON
LEGAL**

July 12, 2011

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

VIA REGULAR MAIL

RE: Docket No. 458-11-3174; Texas Alcoholic Beverage Commission vs. Michael Ezekiel Sanchez d/b/a Accoralados Nite Club

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 black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**(with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Michael Ezekiel Sanchez d/b/a Accoralados Nite Club, 2508 Hwy 249, Suite D, Houston, Texas 77038 -**VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

4. The hearing was held and the record closed on May 20, 2011.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. 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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T CODE ch. 2001 and 1 TEX. ADMIN. CODE ch. 155.
4. The allegations in the notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested and Respondent's Permit should be cancelled.

SIGNED July 12, 2011.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599023

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
MICHAEL EZEKIEL SANCHEZ D/B/A ACCORALADOS NITE CLUB, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. BG670827, BL	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-3174)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of October, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Timothy Horan presiding. The hearing convened on May 20, 2011 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 12, 2011. 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.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, **with the following exceptions:**

Finding of Fact No. 7 in the Proposal for Decision is deleted, and the following Finding of Fact No. 7 is substituted in its stead:

- 7. On August 27, 2010, Respondent Michael Ezekiel Sanchez or Respondent’s agent, servant or employee purchased, sold, offered for sale, distributed or delivered an alcoholic beverage, or consumed or permitted one to be consumed on the licensed premises while his permit was under suspension.

Conclusion of Law No. 5 in the Proposal for Decision is deleted and the following Conclusion of Law No. 5 is substituted in its stead:

5. Selling, offering for sale, distributing or delivering an alcoholic beverage, or consuming or permitting one to be consumed on the licensed premises while Respondent's permit was under suspension is a violation of Texas Alcoholic Beverage Code §§61.71(a)(22) and 25.04(b).

With these modifications, I incorporate the Findings of Fact and Conclusions of Law that are contained in the Proposal for Decision into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, IT IS ORDERED that Respondent's Wine and Beer Retailer's Permit No. BG670827 and accompanying Retail Dealer's On Premise Late Hours License are **CANCELLED**.

This Order will become final and enforceable on the 21st day of November, 2011, unless a Motion for Rehearing is filed **BEFORE** that date.

SIGNED this the 26th day of October, 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 26th day of October, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 N Loop West, Ste. 111
Houston, TX 77018
VIA FACSIMILE: (12) 322-0474

Michael Ezekiel Sanchez
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VIA ELECTRONIC MAIL