

DOCKET NO. 590442

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ANA MARIA VILLATORO D/B/A EL NUEVO AMANECER, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT NOS. BG456884, BL	§	
	§	
DALLAS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-5758)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of December, 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 Kyle J. Groves presiding. The hearing convened on March 15, 2011 and the SOAH record closed on March 22, 2011. The Administrative Law Judge (ALJ) made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on May 18, 2011. The PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the record herein. Exceptions were filed by Respondent on May 18, 2011 and Petitioner responded on May 23, 2011. The ALJ filed an Amended Proposal for Decision on June 27, 2011. Respondent filed Amended Exceptions, also on June 27, 2011. The ALJ submitted a letter on July 12, 2011 stating that he did not wish to amend the Amended PFD.

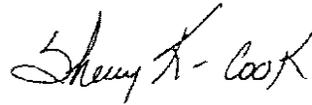
After review and due consideration of the PFD, Respondent's Exceptions, Petitioner's Response, the Amended PFD, Respondent's Amended Exceptions, and the ALJ's July 12, 2011 letter, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law 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.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on January 11th, 2012, and shall remain suspended for **FIVE (5)** consecutive days, **UNLESS** Respondent pays a civil penalty in the amount of **\$1,500.00** on or before January 3rd, 2012.

If this Order is appealed and judgment is issued affirming the Order, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **EIGHTEENTH (18th)** day following the date the judgment is signed and shall remain suspended for **FIVE (5)** consecutive days, **UNLESS** Respondent pays the civil penalty in the amount of **\$1,500.00** on or before the **TENTH (10th)** day following the date the judgment is signed.

This Order will become final and enforceable on the 29th day of December, 2011, unless a Motion for Rehearing is filed **BEFORE** that date.

SIGNED this the 5th day of December, 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 5th day of December, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Kyle J. Groves
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
633 Forest Park Road, Ste 150 A
Dallas, TX 75235
VIA FACSIMILE: (512) 322-0471

Ana Maria Villatoro
d/b/a El Nuevo Amanecer
RESPONDENT
4340 Maple Ave
Dallas, TX 75219
VIA REGULAR MAIL

Timothy E. Griffith
ATTORNEY FOR RESPONDENT
101 E. Park Blvd. Ste. 600
Plano, TX 75054
VIA REGULAR MAIL
AND VIA FACSIMILE: (469) 742-9521

Matthew M. Clark
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL
MATTHEW.CLARK@TABC.STATE.TX.US

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 590442 REGISTER NUMBER:

NAME: Ana Maria Villatoro

TRADENAME: El Nuevo Amanecer

ADDRESS: 4340 Maple Ave, Dallas, TX 75219

DUE DATE: January 3rd, 2012.

PERMITS OR LICENSES: BG456884, BL

AMOUNT OF PENALTY: \$\$1,500.00

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 with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

Overnight Delivery Address: 5806 Mesa Dr., 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.

DOCKET NO. 458-10-5758

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,**

Petitioner

v.

**ANA MARIA VILLATORO
D/B/A EL NUEVO AMANECER,**

Respondent

§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

AMENDED PROPOSAL FOR DECISION

Ana Maria Villatoro, d/b/a El Nuevo Amanecer, is the holder of wine and beer retailer’s on-premise permit and retailer’s on premise late hours license issued by Petitioner (TABC/Staff) for the premises located at 4340 Maple Ave., Dallas, Texas. Staff seeks a five-day suspension of the permit and license, alleging Respondent, or Respondent’s agent, servant or employee, solicited or permitted solicitation of a person to buy drinks for consumption by Respondent or her employee in violation of TEX. ALCO. BEV. CODE §§ 104.01(4), 11.61(b)(2) and/or 61.71(a)(1).

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is a sufficient basis for suspending the permit and license for a period of five days.

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 March 15, 2011, a hearing convened at the State Office of Administrative Hearings (SOAH) in Dallas, Texas, before ALJ Kyle J. Groves. Respondent was represented by attorney

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Proposal for Decision

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Timothy Griffith. Staff was represented by attorney Matthew Ciark. The record remained open until March 22, 2011 so the parties could file written closing arguments. Respondent timely filed exceptions to the proposal for decision issued May 18, 2011. Petitioner concurred with one of the exceptions. This amended proposal for decision reflects the concurrence of the parties.

II. APPLICABLE LAW

TEX. ALCO. BEV. CODE § 11.61 (b)(2):

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 violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV. CODE § 61.71 (a)(1):

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 § 104.01(4):

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: solicitation of any person to buy drinks for consumption by the retailer or any of his employees.

III. EVIDENCE

Staff presented the testimony of Victor Lucas. Mr. Lucas is a Dallas Police Department vice detective. Mr. Lucas testified that on August 11, 2009, he went to Respondent's establishment and purchased a Corona beer at the bar for \$5.00. He then sat at a table. A few minutes later, he was approached by a female who asked if he wanted another drink. Mr. Lucas told her that he did. The female then asked him if he would buy her a drink, and he said yes. Mr. Lucas gave the female \$20.00. The female went to the bar and bought the drinks. She returned with two Coronas.

Mr. Lucas asked the female if there was any change, and she said no. She explained to him that her drink cost \$15.00 and his was \$5.00. Mr. Lucas testified that the female acted as if she was an employee of Respondent. He observed her pick up empty bottles and deposit them in the trash.

Mr. Lucas asked the female how long she had worked at Respondent's place of business. She said only a short time, but she worked there everyday. Mr. Lucas testified that he and the female played a game of pool, and she asked him if he wanted another beer. Mr. Lucas told her that he did, and he purchased a Corona for himself and one for the female for \$20.00. The female again took the money from Mr. Lucas and purchased the beers at the bar.

Mr. Lucas testified that he did not know if the female was paid by Respondent. In addition, he said that he did not see the financial transactions between the female and the bartender.

Leigh Sosebee testified on behalf of Petitioner. Ms. Sosebee is an agent of the TABC. She testified that she went to Respondent's establishment on November 7, 2009, and spoke with Respondent. Respondent told Ms. Sosebee that she did not have any employees. She said that only she and her husband work there. Ms. Sosebee did not see the female that Mr. Lucas encountered.

Ms. Sosebee testified that she saw several females at Respondent's establishment with "tight fitting clothes and heavy makeup." She said it appeared the females were waiting for patrons to arrive. Ms. Sosebee said that it is a common practice in bars to have *ficheras* work there. She said that *ficheras* work at bars soliciting the purchase of alcoholic beverages from the patrons. In return, they provide companionship for the patrons.

Respondent testified that only she and her husband work at her establishment. She said the female that Mr. Lucas encountered has never been her employee. Respondent said that Corona beers are always \$5.00. Furthermore, she said that she was aware prior to this incident that *ficheras* are illegal.

IV. DISCUSSION

The ALJ found the testimony of Mr. Lucas and Ms. Sosebee credible and persuasive. The female that Mr. Lucas encountered admitted that she was an employee of Respondent. The female went to the bar and obtained alcoholic beverages for Mr. Lucas. Although Corona beer costs \$5.00, the female's Corona cost \$15.00. The evidence shows the higher price for her Corona was in exchange for the female's companionship. The preponderance of the evidence shows the female was Respondent's agent or employee who in that capacity solicited a person to buy an alcoholic beverage for consumption by Respondent's agent/employee in violation of §§ 11.61(b)(2) and 104.01(4) of the Code. Therefore, Respondent's permit and license should be suspended for a period of five days.

V. PROPOSED FINDINGS OF FACT

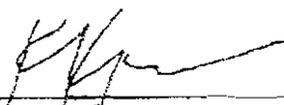
1. Ana Maria Villatoro, d/b/a El Nuevo Amanecer, is the holder of wine and beer retailer's on-premise permit and retailer's on premise late hours license issued by Petitioner (TABC/Staff) for the premises located at 4340 Maple Ave., Dallas, Texas.
2. The Staff of the Texas Alcoholic Beverage Commission (TABC/Staff) alleged Respondent, or Respondent's agent, servant or employee, solicited or permitted solicitation of a person to buy drinks for consumption by Respondent or her employee.
3. The Staff seeks a five-day suspension of Respondent's license and permit.
4. On August 24, 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 March 15, 2011, in Dallas, Dallas County, Texas, before ALJ Kyle Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The record remained open until March 22, 2011, so the parties could file written closing arguments.
6. On August 11, 2009, Victor Lucas went to Respondent's establishment and purchased a Corona beer for \$5.00.

7. Mr. Lucas was approached by a female who asked if he wanted another drink and if he would purchase a drink for her.
8. Mr. Lucas purchased another Corona for himself and one for the female.
9. The two drinks cost \$20.00. The female informed Mr. Lucas that her Corona cost \$15.00.
10. The female admitted to Mr. Lucas that she was an employee of Respondent.
11. The female was acting as if she was an employee of Respondent by picking up empty bottles and depositing them in the trash.
12. The female was acting as a *fichera*.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC 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 (TAC) § 155.401.
4. Based on the above Findings of Fact, on August 11, 2009, Respondent's employee, agent or servant, solicited a person to buy drinks for consumption by Respondent's agent, servant, or employee in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 104.01(4).
5. Based on the above Findings of Fact and Conclusions of Law the Respondent's permits should be suspended for a period of five days pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61.

Issued June 27, 2011



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