

DOCKET NO. 614608

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
RENACUAJO ENTERPRISES, INC. D/B/A LOS SAPITOS, Respondent	§	ALCOHOLIC
	§	
LICENSES BE506876, BL	§	
	§	
TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-13-4737)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this the 8th day of November, 2013, 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 (ALJ) Monica Garza presiding. The hearing convened on July 25, 2013 and the SOAH record closed on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 13, 2013. 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. No exceptions were 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, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

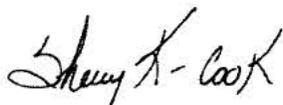
All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, IT IS ORDERED that 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 **December 18, 2013**, and shall remain suspended for **SIX (6)** consecutive days **UNLESS** Respondent pays a civil penalty in the amount of **\$1,800.00 ON OR BEFORE December 10, 2013**.

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 **SIX (6)** consecutive days, **UNLESS** Respondent pays the civil penalty in the amount of **\$1,800.00** on or before the **tenth (10th)** day following the date the judgment is signed.

This Order will become final and enforceable on the 3rd day of December, 2013, unless a Motion for Rehearing is filed on or before the 2nd day of December, 2013.

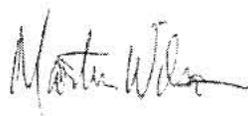
SIGNED this the 8th day of November, 2013, at Austin, Texas.



Sherry K-Cook, 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 8th day of November, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Monica Garza
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
VIA FACSIMILE: (512) 322-2061

Renacuajo Enterprises, Inc.

d/b/a Los Sapitos

RESPONDENT

325 E Jefferson

Dallas, Texas 75203

VIA 1st CLASS MAIL, CMRRR #70120470000133006947

Shelia Lindsey

ATTORNEY FOR PETITIONER

TABC Legal Division

VIA E-MAIL: shelia.lindsey@tabc.state.tx.us

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBERS: 614608 REGISTER NUMBER:

NAME: Renacuajo Enterprises, Inc.

TRADENAME: Los Sapos

ADDRESS: 325 E. Jefferson, Dallas, Texas 75203

DUE DATE: December 10, 2013

PERMITS OR LICENSES: BE506876, BL

AMOUNT OF PENALTY: \$1,800.00

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.

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 13, 2013

RECEIVED
AUG 16 2013
TABC HOUSTON
LEGAL DEPT.

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-13-4737; TABC Docket No. 614608
Texas Alcoholic Beverage Commission vs Renacuajo Enterprises Inc.,
D/B/A Los Sapos**

Dear Ms. Cook:

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

Sincerely,

A handwritten signature in black ink that reads "Monica Garza".

MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

MG/lal

Enclosure

xc ✓ Sheila A. Lindsay, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)
Renacuajo Enterprises Inc. d/b/a Los Sapos, 325 East Jefferson, Dallas, Texas 75203 - VIA REGULAR MAIL

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

**SOAH DOCKET NO. 458-13-4737
TABC DOCKET NO. 614608**

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

V.

**RENACUAJO ENTERPRISES, INC.,
D/B/A LOS SAPITOS,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Renacuajo Enterprises, Inc. d/b/a Los Sapitos (Respondent), alleging that Respondent acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder, in violation of the Texas Alcoholic Beverage Code. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) finds Petitioner proved its allegations. The ALJ recommends a 6-day suspension of Respondent's license. In lieu of suspension, Respondent should be allowed to pay an administrative penalty in the amount of \$300 per day.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Proper notice and jurisdiction were not contested and are addressed only in the Proposed Findings of Fact and Conclusions of Law sections of this Proposal for Decision.

On July 25, 2013, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Shelia A. Lindsey, TABC Staff Attorney. Raul Estrada, Respondent's owner, appeared for Respondent. Following presentation of evidence, the record closed on July 25, 2013.

II. APPLICABLE LAW

Pursuant to Texas Alcoholic Beverage Code § 61.71(a)(20), TABC may suspend for not more than 60 days or cancel a license if it is found, after notice and hearing, that the licensee “acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages.”

III. EVIDENCE

A. Respondent’s Permit

Respondent holds a Beer Retailer’s On-Premise License with accompanying Retailer’s On-Premise Late Hours License, BE-506876, issued by TABC, for the premises located at 2100 E. Abram Street, Suite 114, Arlington, Tarrant County, Texas. The permit was originally issued on December 14, 2001.

B. Acquisition of an Alcoholic Beverage from a Retail Dealer for Purpose of Resale

The facts in this case are uncontested. On August 21, 2012, Jose Mota was employed by Respondent. Mr. Mota was scheduled to operate Los Sapos for the evening shift. While en route to Los Sapos, Mr. Mota stopped at the 7-Eleven convenience store at 2120 E. Abrams in Arlington, Texas. That store was also licensed by TABC to sell alcoholic beverages. Mr. Mota purchased one 12-pack of Miller Lite beer and two 6-packs of Heineken beer while at the 7-Eleven. Mr. Mota then transported the purchased beer to Los Sapos, where he offered it for resale to customers.

Mr. Mota’s activities were witnessed by TABC Agent Travis Shirley. Agent Shirley had been following Mr. Mota prior to the 7-Eleven visit because he thought Mr. Mota might be a witness for an unrelated case. When Agent Shirley continued following Mr. Mota to Los Sapos, he observed him unloading the purchased beer and carrying it into the establishment. Agent Shirley

entered Los Sapitos and observed that the beer had been placed for resale in the establishment.

There is no evidence that the owner of Los Sapitos, Mr. Estrada, knew or condoned of Mr. Mota's activities. The licensing history for Los Sapitos shows only one prior incident over the past 12 years. That incident was a failure to report a breach of the peace, for which the establishment was issued a written warning.

C. Parties' Positions

TABC requested a 10-day suspension of Respondent's permit, or alternatively, a \$300 per day administrative penalty in lieu of suspension.

Mr. Estrada did not dispute that the violation occurred, but he testified that Mr. Mota was terminated following the incident. Mr. Estrada was most concerned about the status of his performance bond and the future of his exemption from filing a conduct surety bond for Los Sapitos and other licensed establishments which he owns.

IV. ANALYSIS

The undisputed evidence clearly establishes that Respondent's employee, Mr. Mota, purchased alcoholic beverages from another retail license holder for the purpose of resale. On August 21, 2012, Mr. Mota stopped at a 7-Eleven convenience store while en route to Los Sapitos. While there, Mr. Mota purchased a 12-pack of Miller Lite beer and two 6-packs of Heineken beer. The purchased beer was then unloaded and carried into Los Sapitos, where it was offered for resale to customers.

Respondent's owner, Mr. Estrada, is concerned about the effect the violation will have on his performance bond for Los Sapitos, as well as any future exemption from filing a conduct surety

bond. At this time, the ALJ only has jurisdiction to make recommended findings and conclusions regarding the violation alleged by TABC. The ALJ does not have jurisdiction over the status of Respondent's performance bond or future conduct surety bond requirements.

The ALJ finds that Petitioner proved the alleged violation. Based on Respondent's long history of compliance with TABC rules and regulations, the ALJ recommends a 6-day suspension of Respondent's license. In lieu of suspension, Respondent should be allowed to pay a \$300 per day administrative penalty.

V. PROPOSED FINDINGS OF FACT

1. Renacuajo Enterprises, Inc. d/b/a Los Sapos (Respondent) holds a Beer Retailer's On-Premise License with accompanying Retailer's On-Premise Late Hours License, BE-506876, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2100 E. Abram Street, Suite 114, Arlington, Tarrant County, Texas.
2. The permit was originally issued on December 14, 2001.
3. On August 21, 2012, Jose Mota was employed by Respondent.
4. On that date, Mr. Mota purchased a 12-pack of Miller Lite beer and two 6-packs of Heineken beer at a TABC-licensed convenience store.
5. Mr. Mota then transported the beer to Los Sapos where he offered it for sale to customers.
6. TABC Agent Travis Shirley witnessed the violation and cited Respondent.
7. Respondent's permit history shows only one prior incident over the past 12 years. That incident was a failure to report a breach of the peace, for which Respondent was issued a written warning.
8. On June 7, 2013, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent's address of record.
9. The notice contained a statement of the time, place, 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 matters asserted.

10. On July 25, 2013, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
11. Petitioner was represented at the hearing by Shelia A. Lindsey, TABC Staff Attorney. Respondent appeared through its owner, Raul Estrada.
12. Following presentation of evidence, the record closed on July 25, 2013.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this case. Tex. Alco. Bev. Code ch. 5 and § 61.71.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper notice of the hearing. Tex. Gov't Code § 2001.052.
4. Respondent acquired an alcoholic beverage for purpose of resale from another retail license holder. Tex. Alco. Bev. Code § 61.71(a)(20).
5. TABC should suspend Respondent's license for a period of 6 days. In the alternative, Respondent should be allowed to pay a \$300 per day administrative penalty in lieu of suspension.

SIGNED August 13, 2013.


MONICA GARZA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE
6777 Camp Bowie Blvd Suite 400
Fort Worth, Texas 76116
Phone: (817) 731-1733
Fax: (512) 322-0473

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: RENACUAJO ENTERPRISES INC - LOS SAPITOS
SOAH DOCKET NUMBER: 458-13-4737
REFERRING AGENCY CASE: 614608

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ MONICA GARZA

REPRESENTATIVE / ADDRESS

PARTIES

SHELIA A. LINDSEY
STAFF ATTORNEY
TEXAS ALCOHOLIC BEVERAGE COMMISSION
427 W. 20TH STREET, Suite 600
HOUSTON, TX 77008
(713) 426-7900 (PH)
(713) 862-7478 (FAX)
Shelia.lindsey@tabc.state.tx.us

TEXAS ALCOHOLIC BEVERAGE COMMISSION

RENACUAJO ENTERPRISES INC. d/b/a LOS SAPITOS
325 EAST JEFFERSON
DALLAS, TX 75203
(214) 946-0404 (PH)

RENACUAJO ENTERPRISES INC. d/b/a LOS SAPITOS

xc: Docket Clerk, State Office of Administrative Hearings
Emily Helm GENERAL COUNSEL, TABC, Fax No. 512-206-3498