

DOCKET NO. 623180

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
	§	
VS.	§	
	§	
	§	
JOSE LUIS DE LA RIVA D/B/A BRONCO NITE CLUB, Respondent	§	ALCOHOLIC
	§	
	§	
	§	
PERMIT/LICENSE BG634178, BL	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3797)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of December, 2014, 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 Rex A. Shaver presiding. The hearing convened on June 13, 2014 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 22, 2014. 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, and with the following modification to Conclusion of Law No. 5, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

The modification to Conclusion of Law No. 5 corrects a discrepancy between what the Administrative Law Judge indicated was his recommendation in Section IV of the Proposal for Decision and the wording of the Conclusion of Law. Given the evidence cited by the

Administrative Law Judge in Paragraph IV, I find that a simple \$300.00 civil penalty would not be a reasonable sanction and would be inconsistent with the Commission's practices. A civil penalty in the amount of \$300.00 per each day of suspension assessed (i.e., \$7,500.00) would be reasonable and appropriate.

Conclusion of Law No. 5 is modified to read as follows:

No. 5. Based on the foregoing findings of fact and conclusions of law, Respondent's permit and license should be suspended for a period of 25 days or in lieu of suspension Respondent should be allowed to pay a civil penalty in the amount of \$7,500.00.

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.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and the activities authorized by the Code under the above permit and license will be **SUSPENDED beginning at 12:01 a.m. on February 4, 2015** and shall remain suspended **for TWENTY-FIVE (25) CONSECUTIVE DAYS, UNLESS** a civil penalty in the amount of **\$7,500.00 is paid ON OR BEFORE January 27, 2015.**

If this Order is appealed and is affirmed, the privileges granted by the Commission and the activities authorized by the Code under the above permit and license will be **suspended** beginning at 12:01 a.m. on the **tenth (10th)** day following the date the Order is affirmed, whether by Order of the Court or by operation of law, and shall remain suspended for twenty-five (25) consecutive days, unless a civil penalty in the amount of \$7,500.00 is paid in lieu of the suspension on or before the **seventh (7th)** day following the date this Order is affirmed, whether by Order of the Court or by operation of law.

This Order will become final and enforceable on the 13th day of January, 2015, unless a Motion for Rehearing is filed by the 12th day of January, 2015.

SIGNED this the 19th day of December, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 19th day of December, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

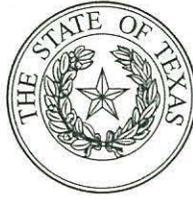
Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

Jose Luis de la Riva
d/b/a Bronco Nite Club
RESPONDENT
10318 Cascade Hills Dr.
Houston, TX 77064
VIA FIRST CLASS MAIL, CMRRR #70050390000575497254

Benjamin Pearce
ATTORNEY FOR RESPONDENT
701 N. Post Oak Road, Suite 425
Houston, TX 77024
VIA FIRST CLASS MAIL, CMRRR#70050390000575497261

Sandra Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: Sandra.patton@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 22, 2014

RECEIVED

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**TABC HOUSTON
LEGAL DEPT.**

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

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-14-3797; Texas Alcoholic Beverage
Commission vs. Jose Luis De La Riva d/b/a Bronco Nite Club**

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, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc Sandra Patton 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**
Benjamin Pearce, Attorney at Law, 701 N Post Oak Road, Suite 425, Houston, TX 77024 - **VIA
REGULAR MAIL**

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed only in the findings of fact and conclusions of law.

II. ALLEGATION AND LEGAL STANDARDS

In its Notice of Hearing, Staff alleged that on or about November 2, 2013, Respondent or Respondent's agent, servant, or employee sold or delivered, or offered to sell or deliver, beer during prohibited hours in violation of Code §§ 61.71 (a)(1), 61.71 (a)(7) and 105.05.

The Code provides that a permit may be cancelled or suspended if it is found, after notice and hearing, that the licensee sold, served, or delivered an alcoholic beverage at a time when its sale is prohibited.¹ In addition to selling beer between 7:00 a.m. and midnight on any day, a late hours permit holder may sell, offer for sale, and deliver beer between midnight and 2:00 a.m. on any day.²

III. DISCUSSION

On July 24, 2006, TABC issued a Wine and Beer Permit BG 634178, which included an on premise late hours license, for Respondent's premises located at 10071 Veterans Memorial Drive, Suite B, Houston, Harris County, Texas 77038.

On November 2, 2013, at approximately 2:30 a.m. TABC Enforcement Agents Sergio Saldavar and Juan Valdez entered Respondent's premise in an undercover capacity to investigate complaints of the sale of beer during prohibited hours. Upon arrival, Agent Saldavar observed several patrons drinking from red plastic cups. Agent Saldavar approached the bar and ordered two Corona beers and one Bud Light beer. The bartender, an Hispanic female, poured the beers from cans into red plastic cups and handed them to Agent Saldavar who then paid the bartender \$24. Agent Saldavar left the bar area and went to a table.

¹ Code § 61.71(a)(7).

² Code § 105.05(c).

Agent Saldavar advised the TABC agents waiting outside the premises that the Hispanic female bartender wearing a black shirt and leopard skin print skirt had sold him the beer. The team of agents entered the premises and identified the described bartender as Elive Urqvia. Agent Saldavar then confirmed that Ms. Urqvia was the person who sold him the beer. The agents took a photograph of Ms. Urqvia standing at the bar and in front of a wall clock indicating the time as 2:50 a.m.

IV. RECOMMENDATION

The evidence establishes that Respondent violated the Code by serving beer after hours. Respondent's late hour's permit allows the sale of beer until 2:00 a.m. At 2:30 a.m., on November 2, 2013, Agent Saldavar purchased beer from a bartender at Respondent's establishment.

Staff requests that Respondent's permit be suspended for 25 days or in lieu of suspension pay a fine of \$300 for each day of suspension. The evidence shows that Respondent has been cited for violations of the Code on four separate occasions by serving alcohol during prohibited hours and for place or manner violations. On October 15, 2013, Respondent entered into a Waiver Order that advised Respondent that further violations could result in the cancellation of his permit. Despite being on notice, Respondent permitted the sale of beer during prohibited hours. For these reasons, the ALJ concludes that the suspension period recommended by Staff is reasonable under the circumstances. Therefore, the ALJ recommends that Respondent's permit be suspended for 25 days or in lieu of suspension Respondent be allowed to pay \$300 for each day of suspension.

V. FINDINGS OF FACT

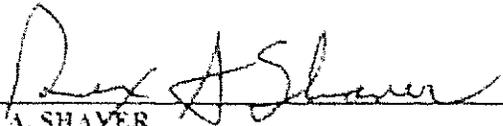
1. Jose Luis De La Riva, d/b/a Bronco Nite Club (Respondent) holds a Wine and Beer Permit BG 634178, which includes a Retailer's On Premise Late Hours License, for the premises located at 10071 Veterans Memorial Drive Suite B, Houston, Harris County, Texas 77064.

2. Pursuant to its permit, Respondent was not allowed to sell beer between 2:00 a.m. and 7:00 a.m. on November 2, 2013.
3. On Wednesday, November 2, 2013, at 2:30 a.m., Respondent or Respondent's agent, servant, or employee sold, served or delivered beer to an agent of the Texas Alcoholic Beverage Commission (TABC).
4. On May 27, 2014, Staff of the TABC issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
5. The hearing convened on June 13, 2014, before State Office of Administrative Hearings (SOAH) Administrative Law Judge Rex Shaver. Staff was represented by attorney Sandra Patton. Respondent was represented by attorney Benjamin Pearce. The hearing concluded and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Chapter 5 and § 11.61.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code Chapter 2003.
3. Notice of the hearing was provided as required by Texas Government Code §§ 2001.051 and 2001.052.
4. Respondent violated Code §§ 105.05, 61.71(a)(1), 61.71 (a)(7).
5. Based on the foregoing findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 25 days or in lieu of suspension Respondent be allowed to pay a fine of \$300.

SIGNED July 22, 2014.



REN A. SHAYER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS