

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 19, 1999

Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**CERTIFIED MAIL NO. Z 409 580 954**  
**RETURN RECEIPT REQUESTED**

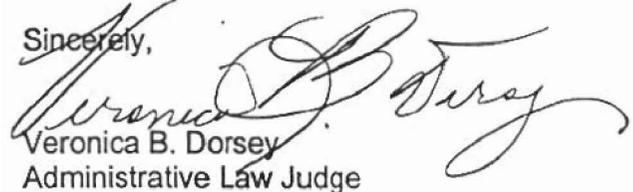
**RE: Docket No. 458-99-1869; TABC vs. Ramiro Bobby Alaniz d/b/a Selina's  
Mirage Disco, TABC Case No. 582089**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Ramiro Bobby Alaniz, d/b/a Selina's Mirage Disco. For reasons discussed in the Proposal for Decision, I have recommended a ten-day suspension of the permit and license or Permittee should be allowed to pay a \$750.00 civil penalty in lieu of suspension of its permits and licenses.

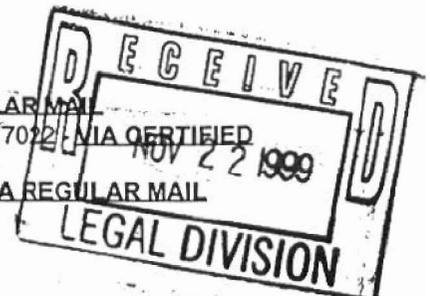
Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

  
Veronica B. Dorsey  
Administrative Law Judge

VD/rfm  
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**  
Ramiro Bobby Alaniz, d/b/a Selina's Mirage Disco, 14 Berry Rd., Houston, TX 77022 - **VIA CERTIFIED MAIL NO. Z 409 580 955, RETURN RECEIPT REQUESTED**  
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**



North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

DOCKET NO. 458-99-1869

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE  
COMMISSION §  
§  
V.S. § OF  
§  
RAMIRO BOBBY ALANIZ §  
D/B/A SELINA'S MIRAGE DISCO §  
PERMIT NOS. MB-418102, LB-418103 § ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Ramiro Bobby Alaniz d/b/a Selina's Mirage Disco (the Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). TABC alleged that Permittee made payments for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code. The violations are as follows:

1. On or about September 17, 1998, Permittee, its agent, servant, or employee gave a check for \$424.35 to Houston Distributing Ltd., of Houston, Texas. On or about September 23, 1998, Drawee, Citizens National Bank, of Houston, Texas returned the check for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
2. On or about August 6, 1999, Permittee, its agent, servant, or employee gave a check for \$438.00 to Silver Eagle Distributing, Inc., of Houston, Texas. On or about August 23, 1999, Drawee, Banco Popular, of Houston, Texas returned the check for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

The Permittee did not make an appearance at the hearing on October 28, 1999. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 5 days or that Permittee be allowed to pay a fine of \$750.00.00 in lieu of a suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on October 28, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Gayle Gordon represented the staff of the Commission (Staff). Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §61.73(b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee gave a distributor a check for payment which is dishonored when presented for payments. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by writing checks to a distributor that were subsequently returned for insufficient funds.

The staff attorney introduced the following four exhibits into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenther, Licensing Department Director, evidencing that Permit Nos. MB-418102, LB-418103, were issued to Ramiro Bobby Alaniz, doing business as Selina's Mirage Disco, by the Texas Alcoholic Beverage Commission and evidencing Permittee's history of violations. The mailing address of Ramiro Bobby Alaniz is 14 Berry Road, Houston, Texas.

Exhibit TABC 2 is the 18(c) letter to Permittee, setting out the violations.

Exhibit TABC 3 is the Notice of Hearings to Ramiro Bobby Alaniz with attached green card showing Permittee received notice.

Exhibit TABC 4 contains copies of affidavits of Silver Eagle Distributing, Inc., and Houston Distributing Ltd. The affidavits evidence receipt of returned checks in the amounts of \$438.00 and \$424.35 which Drawees, Citizens National Bank of Houston, Texas and Banco Popular of Houston, Texas dishonored.

The ALJ took official notice of the Court's file which shows the hearing was scheduled October 28, 1999. Notice was properly sent via certified mail on September 13, 1999.

## III. RECOMMENDATION

Because the Permittee made payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code, the license should be suspended for a period of five days, or in lieu of suspension, Permittee should pay a fine of \$750.00.

## IV. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission issued Permit Nos. MB-418102, LB-418103 to Ramiro Bobby Alaniz, doing business as Selina's Mirage Disco. The mailing address of Ramiro Bobby Alaniz is 14 Berry Road, Houston, Texas.
2. Staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee, and Permittee received the Notice as shown by the attached green card which bears the signature of Permittee or his agent.

3. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee made payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b) of the code. A violation occurred on or about September 17, 1998, when Permittee, its agent, servant, or employee gave a check for \$424.35 to Houston Distributing Ltd., of Houston, Texas. On or about September 23, 1998, the check was returned by Drawee, Citizens National Bank, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

Another violation occurred on or about August 6, 1999, when Permittee, its agent, servant, or employee gave a check for \$438.00 to Silver Eagle Distributing, Inc., of Houston, Texas. On or about August 23, 1999, the check was returned by Drawee, Banco Popular, of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by making payment for beer in its original containers and packages with dishonored checks in violation of Section 61.73(b).

6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten-day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64, the Permittee should be allowed to pay a \$750.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this \_\_\_\_\_ day of November, 1999.

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Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings

VD:\rfm\458:d:99-1869