

DOCKET NO. 497229

IN RE JOE GONZALES	§	BEFORE THE
D/B/A DOGHOUSE SALOON, THE	§	
PERMIT/LICENSE NOS. BG546442	§	
	§	TEXAS ALCOHOLIC
	§	
SAN PATRICIO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0901)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of June, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on March 21, 2006, and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 5, 2006. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 in this cause.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

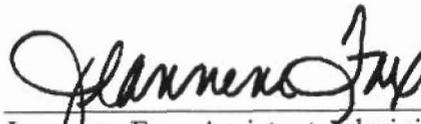
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permit(s) and license(s) shall be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on July 20, 2006, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on this 29th day of June, 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

WMC/bc

The Honorable Melissa M. Ricard, ALJ
State Office of Administrative Hearings
VIA FAX (361) 884-5427

Epimenio Ysassi
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JOE A. GONZALES
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W. Michael Cady
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

DOCKET NO. 458-06-0901

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

JOE GONZALES
D/B/A DOGHOUSE SALOON
PERMIT NO. BG-546442
SAN PATRICIO COUNTY, TEXAS
(TABC CASE NO. 497229)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Joe Gonzalez d/b/a/ Doghouse Saloon (Respondent), alleging that Respondent violated the Texas Alcoholic Beverage Code (the Code). Staff argues that on March 30, 2005, a breach of the peace occurred that was not beyond the control of the Respondent, and that the Respondent failed to report the breach. Staff further argues that Respondent violated the Code by allowing the use or display of his alcoholic beverage permit in the conduct of its business for the benefit of a person not authorized by law to have an interest in the permit. Staff seeks cancellation of Respondent's permit. The Administrative Law Judge (ALJ) recommends that Respondent's permit be canceled.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5 and §§ 11.61(b)(21), 25.04, 61.71(a)(15), 106.13 and 109.53. The State Office of Administrative Hearings (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, under TEX. GOV'T CODE ANN. § 2003.021. There were no timely contested issues of notice or jurisdiction in this proceeding.

On March 21, 2006, a hearing convened before Administrative Law Judge (ALJ) Melissa M. Ricard, in the SOAH offices, located at 5155 Flynn Parkway, Suite 200, Corpus Christi, Nueces County, Texas. TABC Staff was represented at the hearing by W. Michael Cady, TABC Staff Attorney. Respondent appeared and was represented by his attorney, Epimenio Yassi. The hearing was reopened on April 6, 2006 and the record closed that day.

II. DISCUSSION

A. Applicable Law

TABC may suspend or cancel a permit if it finds that a breach of the peace has occurred on the licensed premises under the permittee's control and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 25.04, 61.71(a)(1), & 69.13.

TABC may suspend or cancel a permit if the permittee fails to report a breach of the peace on the permit premises to TABC. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(21) and 61.71(a)(31).

The term "breach of the peace" is not statutorily defined. However, the Court of Criminal Appeals has approved the definition set out in *Andrade v. State*, 6 S.W.3d 584, 590 (Tex. App.-Houston [14th Dist.] 1999):

The term "breach of the peace" is generic, and includes all violations of the public peace or order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm disturbs the peace and quiet of the community.

A wine and beer retailer's permit may be suspended or canceled if the permittee allows the use or display of the permit in the conduct of a business for the benefit of a person not authorized by law to have an interest in the permit. TEX. ALCO. BEV. CODE ANN. §§ 25.04(b), 61.71(a)(15).

Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored, or sold on the licensed premises. Any device, scheme, or plan which surrenders control of the employees, premises, or business of the permittee to persons other than the permittee shall be unlawful. TEX. ALCO. BEV. CODE ANN. § 109.53.

The commission or administrator may cancel a permit if it is found, after notice and hearing, that the licensee violated a provision of the 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 ANN. § 61.71(a)(1).

B. Staff's Evidence

A Wine and Beer Retailer's Permit BQ-546442 was issued by TABC to Joe Angel Gonzalez d/b/a The Doghouse Saloon, 112 E. Sinton, San Patricio County, Texas (the Premises). TABC Staff argues that on March 30, 2005, a breach of the peace occurred that was not beyond the control of the Respondent and that the Respondent failed to report the breach to the TABC. TABC Staff further alleges that Respondent participates in a subterfuge in its business operation because he allows an unauthorized person to have an interest in the permit and the licensed premises.

1. Josephine Franco

Sinton Police Department Officer Josephine Franco testified at the hearing. On March 31, 2005, the Sinton Police Department was contacted by Onesima Rodriguez who claimed that she was being harassed by telephone and that the harassment was related to an incident which had happened the prior day at the Premises. Officer Franco interviewed Ms. Rodriguez and her boyfriend, Mr.

Artie Rodriguez. Mr. Rodriguez stated that he was in the Premises on March 30, 2006, when he was assaulted in the men's room and his money and jewelry was stolen from him by five other men. Mr. Rodriguez identified several men involved in the incident, including Mr. Michael Tobar. Officer Franco verified with other officers in the Department that six individuals could be in the men's room of the Premises at one time.

The Premises were searched on March 31, 2005. Mr. Michael Tobar was interviewed as the owner of the Premises. Mr. Tobar was known by the Sinton Police Department as the owner of the Premises. Officer Franco did not speak to the Respondent. Officer Franco took pictures of Mr. Rodriguez' injuries, the men's room and issued a report, all of which were admitted into evidence.

2. Pam Sliva

TABC Agent Pam Sliva conducted an investigation into the Respondent's activities. Her incident report was admitted into evidence. On April 21, 2005, Agent Sliva received a report from Lieutenant Leo Martinez of the Sinton Police Department indicating that a robbery and other organized criminal activity had taken place at the Premises on March 30, 2005. The report indicated that Mr. Rodriguez alleged that Mr. Tobar, an employee of the Premises, was involved in the incident and that Mr. Tobar had kicked Mr. Rodriguez in the ribs during the attack.

Agent Sliva and Agent Robert Samford conducted an inspection of the Premises on April 21, 2005. Upon arrival, the agent asked someone who seemed to be an employee or manager for the owner of the Premises. The Respondent was pointed out as the owner. Agent Sliva contacted the Respondent who indicated that he knew nothing of the incident. He also indicated that his sister, Ms. Jennifer Tobar, did not notify him about the incident. When Agent Sliva asked to speak to Mr. Tobar, the Respondent indicated that Mr. Tobar was not available, and that Mr. Tobar had taken a few days off.

Respondent provided a written statement to Agent Sliva on April 29, 2005. In the statement Respondent indicated that he is the owner of the Premises and that Ms. Tobar manages the business.

All utilities for the Premises are in Ms. Tobar's name. Mr. Michael Tobar is Ms. Tobar's husband and worked at the Premises for about a year and helps out when customers get out of hand.

Respondent indicated that he has two female employees, Barbie and Roxanne, but he did not know their last names. He is present at the Premises three times a week, while Ms. Tobar is there every night. Profits are split evenly between Respondent and Ms. Tobar. Everything is handled by Ms. Tobar and Respondent greets customers and plays darts. Respondent claimed to be in the process of buying the land and the building from the landlord, Ms. Mata.

During the initial investigation, Agent Sliva determined that Ms. Tobar had originally applied for the alcoholic beverage permit, but did not qualify because her husband Michael Tobar's criminal record. Agent Sliva then began to investigate a possible subterfuge with regard to the Premises.

Mr. Tobar provided a sworn written statement on May 5, 2005. Agent Sliva discovered that — Mr. Tobar was in the Premises during the April 21, 2005 inspection. In fact, Mr. Tobar was the individual who had pointed out the Respondent to the agents, therefore Respondent had lied to the agents when he alleged that Mr. Tobar had taken a few days off.

In his sworn written statement, Mr. Tobar stated that on March 30, 2005, he was contacted by a customer who indicated that there was an argument taking place in the men's room. Mr. Tobar separated the men involved and made them leave the Premises using different entrances. He verified that the Sinton police conducted a search the next day, while Roxanne Ibarra was the waitress on duty. Mr. Tobar was arrested about a week later and charged with robbery and organized criminal activity for the March 30, 2006 incident.

Tax returns and bank records obtained by Agent Sliva as part of her investigation were admitted into evidence at the hearing. Payroll records were requested, however none were provided. The Premises' bookkeeper, Eloy Rodriguez, informed Agent Sliva that no such records exist, and that employees were paid in cash. Agent Sliva also verified that all utilities for the

Premises are in Ms. Tobar's name. Agent Sliva contacted the landlord of the Premises, Coy Tijerina. Agent Sliva could not determine who the Ms. Mata was that the Respondent identified as the landlord in his written statement.

Ms. Jennifer Tobar provided a sworn written statement on May 25, 2005. Ms. Tobar indicated that she manages the Premises, orders inventory, does payroll and makes the hiring and firing decisions. Ms. Tobar stated that the Premises had one male employee who was paid in cash. Ms. Tobar was present at the Premises on March 30, 2005, but did not observe a fight. Ms. Tobar did see her husband escort Mr. Artie Rodriguez to the door.

During the course of her investigation, Agent Sliva determined that Ms. Tobar had originally applied for the alcoholic beverage permit for the Premises but was not eligible. After learning she was not qualified to hold the permit, the Respondent appeared in the TABC office two weeks later to apply for the permit.

Agent Sliva believes that Respondent obtained that permit for the benefit of Ms. Tobar who does not qualify to hold it.

3. John Placette

John Placette, a Lieutenant with the TABC, testified at the hearing. He is supervising Agent who reviewed Agent Pam Sliva's report and investigation. Lt. Placette agreed with Agent Sliva's analysis. The Code precludes someone from holding an alcoholic beverage permit if they or a spouse have been convicted of a felony and the end of parole or probation for such felony is within five years of the application. Based upon the fact that Ms. Tobar signs all checks for the business, all utilities were in Ms. Tobar's name, and the other facts discovered by Agent Sliva, Lt. Placette believed that Ms. Tobar was attempting to hide her ownership in the Premises. Lt. Placette indicated that at the very least, the agreement between Ms. Tobar and Respondent to split profits was a partnership. Under TABC rules, both partners in a partnership must be eligible to hold the permit, therefore, the partnership was also a violation of TABC rules.

Lt. Placette indicated that in cases of subterfuge ownership of a permitted premises the field offices of the TABC always seek cancellation of the permit as the appropriate remedy for the violation.

4. Frances Morrow

Frances Morrow, an Accounts Examiner for the TABC, testified at the hearing. Ms. Morrow indicated that her records showed that on September 9, 2003, Ms. Tobar attempted to apply for an alcoholic beverage permit for the Premises. She was told at the time that she was not eligible due to her relationship with Mr. Tobar, a convicted felon. No fees were paid by Ms. Tobar at the time, therefore the application was never formally processed. On September 25, 2006, Respondent applied for the permit, and paid the application fees. Respondent's relationship to Ms. Tobar was not indicated on the application.

5. Robert Samford

TABC Agent Robert Samford testified at the hearing. Agent Samford indicated that he and Agent Sliva inspected the Premises on April 21, 2006. The inspection was conducted since the Sinton Police Department report indicated that Mr. Tobar was alleged to have been involved in the incident. TABC records showed that Mr. Tobar was an employee of the Premises, and as such, had a duty to report the incident to the TABC. No such report had been made. Also, Agent Samford verified that on that day, Respondent stated that Mr. Tobar was not present and available for interview. However, after Mr. Tobar later appeared in the TABC offices to give a statement, Agent Samford recognized Mr. Tobar as being present on that day. The Respondent had lied to the agents about the whereabouts of Mr. Tobar. Agent Samford indicated that in cases where subterfuge ownership of a permit is found, TABC seeks to cancel the permit.

C. Respondent's evidence

Respondent argues that the breach of the peace did not happen. The police were not called until the day after the alleged incident happened, and no one on the Premises was aware of the incident until it had already taken place, therefore it was not within the Respondent's control. Respondent argues that the business is owned by Respondent and only managed by Ms. Tobar. Respondent has never relinquished total control of the Premises, and the business has never made a profit.

1. Jennifer Tobar

Jennifer Tobar testified at the hearing. Ms. Tobar is the manager of the Premises. She does have an agreement with her brother to split the profits equally, however the business has never made a profit. She lets her brother know everything going on with the business. She and Respondent get together two to three times a week. She gives him the cash for deposits. She lets Respondent know if she is going to fire someone, about the bills and other matter that affect the business. All checks are signed by Ms. Tobar. Her husband, Michael Tobar, is a D.J. for the Premises.

In 2003, she and her husband remodeled the Premises and she opened utilities account in her name to accomplish this. When applying for the permit with the TABC, Ms. Morrow advised Ms. Tobar that her application would be denied. Ms. Tobar stated that Ms. Morrow advised her to find someone she trusts to get the permit in his name and then go back in a year and a half to get the permit in her own name. Ms. Morrow denies this statement, nonetheless, Ms. Tobar claims Ms. Morrow made it and that she relied upon it. Ms. Tobar had spent a great deal of money remodeling the Premises, so she asked her brother to take over the business. She never changed the name for the utilities over to Respondent.

Respondent has a full time job at Shaffer Mufflers. Only the TABC permit is in the Respondent's name. There is no written lease agreement lease. The business does not make a profit, all funds go into purchasing alcohol and paying bills. Ms. Tobar stated that she makes no profits from the business despite spending all her time there.

Ms. Tobar was present on the Premises on March 30, 2005, and she saw Mr. Rodriguez there that night. She also saw several of Mr. Rodriguez' family members there. She saw Mr. Tobar escort a couple of individuals to the door, but denies that there was a fight. The police conducted an investigation the following night, stating that the Premises was a crime scene. She did not inform Respondent about either the incident or the search. Mr. Tobar was arrested for the incident a few days later for the incident.

2. Respondent

Respondent testified at the hearing. Respondent opened the Premises to have his own business. Respondent has a full time job and needs someone to manage the Premises. He is there three to four times a week and sits down with Ms. Tobar to make relevant decisions with her for the operation of the Premises.

Ms. Tobar is paid cash and Mr. Tobar is paid for D.J. services. Respondent verified that his tax returns show that in 2003 the business reported an \$11,000 loss while paying Mr. Tobar \$3600 and in 2004, the business reported a \$5,600 loss while paying Mr. Tobar more than \$13,000. Respondent's brother and sisters work for the business and are paid cash. Payroll and wage records are not kept. Respondent has a verbal lease agreement with Mr. Coy Tijerina. Respondent pays \$350 cash every month for rent.

D. Analysis

1. Breach of the peace

Staff argues that on March 30, 2005, a breach of the peace occurred as a result of the assault and robbery of Mr. Rodriguez in the Premises. Staff further argues that since Mr. Tobar, an employee of the Respondent was involved in the incident, that the incident was under the Respondent's control. Further, the Respondent failed to notify TABC that the breach had occurred as required by the Code.

The Respondent argues that the incident never happened as Mr. Rodriguez alleged. Therefore, there was nothing for the Respondent to control and nothing to report.

Mr. Rodriguez claims the incident happened and Mr. and Ms. Tobar claim it did not. No other evidence regarding the incident was introduced into the record. Without more, it is not clear that Staff met its burden to establish that the incident occurred as alleged with regard to Mr. Tobar's involvement. However, Mr. Tobar was arrested for the incident. The outcome of the arrest is not a part of the record. In any event, it is clear from the fact of the arrest that, at the very least, the Sinton Police Department believed that the incident happened and that Mr. Tobar was involved. At the very least, at that point, the Respondent had a duty to report the incident to the TABC whether or not Mr. and Ms. Tobar agreed with the allegations. The Respondent failed to do so. Further, the Respondent did not know of the incident either when it happened, when the police conducted an investigation and search or when Mr. Tobar was arrested. The Respondent's lack of oversight of employees is no excuse for the failure to report the incident. The Respondent should have known what was going on at the Premises.

For the failure to report the breach of the peace, the ALJ recommends that the Respondent's permit be suspended for ten days. While the standard penalty chart contained in 16 TEX. ADMIN. CODE § 37.60(a) recommends a penalty of up to five days for a first time offense, 16 TEX. ADMIN. CODE § 37.60(f) provides that a fact finder may deviate from the chart if aggravating circumstances are involved. In this case aggravating circumstances are involved where the Respondent's employee was alleged to have been involved, there was a search on the Premises and the employee was arrested for the incident. The Respondent's total lack of reporting to the TABC warrants at least a ten day suspension.

2. Subterfuge

Respondent's argument that he maintains exclusive control over the operation of the Premises is less than compelling. As noted above, Respondent did not know of the allegations regarding the March 30, 2005 incident, the investigation, search of the Premises, and the arrest of Mr. Tobar.

Respondent lacks knowledge of the day to day operation of the Premises. There is conflicting testimony over how many employees work there. Respondent claimed there were two women employees, but he did not know their last names. Ms. Tobar says there was one male employee, while Mr. Tobar admits that one waitress was working with him the evening of the police search. In such a small operation, something so basic as to the number of employees and their full names would be known to the Respondent if he maintained control over the Premises. Similarly, in his written statement, Respondent misidentified landlord whom should have been known to him, had he the role of owner and operator of the Premises.

Further, the 2003 and 2004 tax returns of the Respondent submitted into evidence show that while the business has purported to operate at a loss, Mr. Michael Tobar is the one person who has benefitted from the business, since he was compensated with over \$3600 and \$13,000 respectively. Further, Respondent claimed that Ms. Tobar was paid in cash, however, Ms. Tobar claimed that she was not compensated for her time. Ms. Tobar's claim that she was not compensated is less than credible. There must be some reward obtained by Ms. Tobar for her to put in so much time everyday. Regardless, Ms. Tobar does have the expectation of benefit as a result of the agreement to split all profits with the Respondent. In addition, Ms. Tobar benefits from the wages paid to Mr. Tobar. Therefore, Respondent's business has been operated to benefit Mr. and Ms. Tobar, who are not authorized to hold an interest in the alcoholic beverage permit issued to Respondent, in violation of the Code.

All the bills are in Ms. Tobar's name and all checks are signed by Ms. Tobar. Respondent admits that the only item in his name is the TABC permit. Ms. Tobar admits that she asked the Respondent to put the permit in his name with the intention of circumventing the TABC rule which disqualified her application and that she relied on advice from Ms. Morrow to do so. The Respondent argues that with the act of obtaining the permit in his name, he also took over the operation of the Premises. There is simply no evidence to support this contention. In fact, Mr. Tobar held himself out to law enforcement as the owner of the Premises. In addition, the Respondent's willingness to lie to the TABC investigators and lack of payroll records and payment of employment taxes show that the Respondent's statements and contentions are not credible and that he is not trustworthy.

The evidence shows that the Respondent is participating in a device, scheme or plan which surrenders control of the employees, premises, or business of the permittee to persons other than the permittee, in violation of the Code.

For participating in such a scheme and for allowing individuals not authorized to benefit from the permit, the ALJ recommends that the permit be cancelled.

III. FINDINGS OF FACT

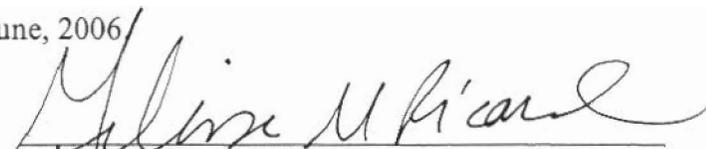
1. Joe Angel Gonzalez d/b/a The Doghouse Saloon (Respondent) was issued Wine and Beer Retailer's Permit BQ-546442 (the Permit) for the premises located at 112 E. Sinton, San Patricio County, Texas (the Premises) by the Texas Alcoholic Beverage Commission (TABC).
2. A breach of the peace occurred at the Premises on March 30, 2005 when Mr. Artie Rodriguez was assaulted and robbed on the Premises, which acts of violence constituted a breach of the peace.
5. On March 31, 2005, a report of the incident was made to the Sinton Police Department who conducted an investigation, and a search of the Premises.
6. Mr. Rodriguez identified Mr. Michael Tobar as one of the individuals who had assaulted him. Mr. Tobar was arrested and charged with robbery and criminal activity for the incident. Mr. Tobar is the D.J. for the Premises and is married to the manager, Ms. Jennifer Tobar.
7. TABC Staff (Staff) did not establish that Respondent could have reasonably prevented the assault on Mr. Rodriguez.
8. Respondent failed to promptly report this breach of the peace to TABC.
9. In 2003, Ms. Jennifer Tobar, sister of Respondent, made substantial improvements to the Premises in order to open an establishment to serve alcohol there. Ms. Tobar prepared an application with the TABC to obtain an alcoholic beverage permit.
10. On September 9, 2003, Ms. Tobar was informed by Staff that she was ineligible to hold an alcoholic beverage permit because her husband Michael Tobar's, criminal history.
11. On September 26, 2003, the Respondent applied for the Permit for the Premises with the TABC. The Permit was issued on October 24, 2003.

12. Respondent holds a full time job. He relies on Ms. Tobar to manage and operate the Premises. Ms. Tobar handles all aspects of the business, hiring and firing employees, ordering and paying for alcohol inventory, signing all checks and paying utilities. Respondent is on the Premises two to three times a week, while Ms. Tobar there all the time.
13. Respondent was not informed about the breach of the peace on March 30, 2006.
14. Respondent does not know how many employees work at the Premises.
15. Respondent misidentified the landlord of the building to TABC investigators.
16. The only item of documentation noting that the Respondent is the owner of the Premises is the Permit.
17. Respondent lied about the whereabouts of Michael Tobar to TABC investigators.
18. Mr. Tobar held himself out to law enforcement as the owner of the Premises.
19. Respondent participates in a device, scheme or plan which surrenders control of the employees, Premises and business of the permittee to Ms. Jennifer Tobar.
20. Respondent and Ms. Tobar have an agreement to split all profits from the business operated on the Premises.
21. In 2003, the Respondent claimed a loss of \$11,000 for the business operated at the Premises. That year Mr. Tobar was paid \$3600 for DJ services. In 2004, Respondent claimed a \$5600 loss and paid Mr. Tobar \$13,200.
22. Respondent's business has been operated to benefit Mr. and Ms. Tobar, who are not authorized to hold an interest in the Permit.
23. On January 3, 2006, Petitioner issued its notice of hearing, directed to Respondent.
24. 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.
25. On March 21, 2006, a hearing convened before Administrative Law Judge (ALJ) Melissa M. Ricard, in the State Office of Administrative Hearings offices, located at 5155 Flynn Parkway, Suite 200, Corpus Christi, Nueces County, Texas. TABC Staff was represented at the hearing by W. Michael Cady, TABC Staff Attorney. Respondent appeared and was represented by his attorney, Epimenio Yassi. The hearing was reopened on April 7, 2006 and the record closed that day.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 and §§ 11.61(b)(21), 25.04, 61.71(a)(15), 106.13 and 109.53 Texas Alcoholic Beverage Code (the Code).
2. The State Office of Administrative Hearings 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 TEX. GOV'T CODE ANN. Chapter 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. A breach of the peace occurred on Respondent's permitted premises. TEX. ALCO. BEV. CODE ANN. § 25.04
5. Respondent failed to comply with TABC reporting requirements regarding the breach of the peace. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(21).
6. Based on the foregoing Findings of Fact and Conclusion of Law No. 6, Respondent's permit should be suspended for ten days. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(21) and 16 TEX. ADMIN. CODE § 37.60(g).
7. Based on the foregoing Findings of Fact, Respondent allowed the use or display its Wine and Beer Retailer's Permit BQ-546442 in the conduct of a business for the benefit of persons not authorized by law to have an interest in the permit in violation of TEX. ALCO. BEV. CODE ANN. §§ 25.04(b), 61.71(a)(15).
8. Based on the foregoing Findings of Fact, Respondent participated in a device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee in violation of TEX. ALCO. BEV. CODE ANN. §109.53.
9. Based on the foregoing Findings of Fact and Conclusion of Law Nos. 7 and 8, Respondent's Wine and Beer Retailer's Off-Premise permit BQ-546829 should be canceled for cause.

SIGNED on the 5th day of June, 2006



MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS