

DOCKET NO. 586680

IN RE RAMON RODRIGUEZ, III	§	BEFORE THE
D/B/A THE KING PEN LOUNGE	§	
PERMIT NO. BG-292691	§	
	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1540)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 30th day of October, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on July 17, 2000, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 18, 2000. This 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. As of this date no exceptions have been filed.

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.

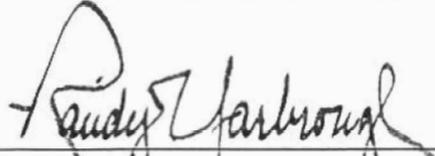
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Wine and Beer Retailer's Permit is hereby **DENIED**.

This Order will become final and enforceable on November 20, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 30th day of October, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE: (361) 884-5427

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE: (512) 475-4994

Ramon Rodriguez, III
d/b/a The King Pen Lounge
P.O. Box 224
Lavilla, Texas 78562
CERTIFIED MAIL NO. Z 473 042 602

McAllen District Office
Licensing Division



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333
http://www.tabc.state.tx.us Fax: (512) 206-3498

Doyne Bailey, Administrator

October 25, 2000

Mr. Randy Yarbrough
Assistant Administrator
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

Re: Docket No. 586680
TABC v. Ramon Rodriguez, III
d/b/a The King Pin Lounge

Dear Mr. Yarbrough:

Please find enclosed a Proposal for Decision and exhibits in the above-referenced cause. No exceptions to the Proposal have been filed.

After your review, please inform this office of your decision. We will then draft an Order conforming with your judgment.

Thank you for your attention to this matter

Yours truly,


Dewey A. Brackin
Legal Division

DAB/yt

*Adopt PFD
Deny Application
Randy Yarbrough
10/25/2000*

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Allan Shivers, Jr., Chairman
Austin

John T. Steen, Jr., Member
San Antonio

Gail Madden, Member
Dallas

An Equal Opportunity Employer

DOCKET NO. 458-00-1540

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
Vs.	§	OF
	§	
RAMON RODRIGUEZ III D/B/A KING PEN PERMIT NO. BG-292691 HIDALGO COUNTY, TEXAS (TABC CASE NO. 586680)	§	ADMINISTRATIVE HEARINGS
	§	
	§	
	§	SAN ANTONIO, TEXAS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) brought this action seeking a cancellation and denial of renewal of Permit No. BG-292691 issued to Ramon Rodriguez III d/b/a King Pen (Respondent). King Pen does business in Hidalgo County as a bar. The Staff alleged that King Pen violated Section 11.61(b)(2) of the TEXAS ALCOHOLIC BEVERAGE CODE (the Code) and Section 33.1(a)(1) of the TEXAS ALCOHOLIC BEVERAGE COMMISSION RULES. (the Rules). Staff is alleging that Ramon Rodriguez received deferred adjudication for a felony assault in violation of the Rules. After carefully considering the evidence and arguments of counsel, the Administrative Law Judge (ALJ) agrees with Staff's recommendation.

I. JURISDICTION AND NOTICE

The Commission has jurisdiction over this proceeding pursuant to §§ 5.43, 6.01, 11.62, and 25.04 of the Code, TEX. GOVT. CODE ANN. §2001, et seq., and 1 TAC §155.1, et seq.; The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOVT. CODE ANN. §2001, et seq.

Notice of the hearing was mailed to King Pen on June 7, 2000. 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, as required by TEX. GOVT. CODE ANN. §2001.052.

II. PROCEDURAL HISTORY

The hearing was convened on July 17, 2000 at the TWCC Office, Dove Plaza, 1508 Dove Avenue, McAllen, Texas. ALJ Leah Davis Bates presided. Dewey Bracken, Assistant Attorney General, represented the Commission's Staff. Ramon Rodriguez d/b/a King Pen appeared and represented himself. The Staff introduced only one exhibit, the Order of the Court Deferring Adjudication and Placing the Defendant on Community Supervision After Plea of Guilty.

Respondent testified only to the fact that he was placed on felony deferred adjudication. The hearing was concluded and the record closed on July 17, 2000.

III. DISCUSSION

A. Description of King Pen

King Pen Lounge, owned by Ramon Rodriguez III, located in Hidalgo County, Texas, and holds Beer and Wine Retailer's Permit No. 292691 issued by the Commission.

B. Summary of Allegations

The Commission Staff alleged that on February 22, 1999, Ramon Rodriguez plead guilty and was placed on deferred adjudication for the felony offense of assault.

C. Alleged Violations of §33.(a)(1)

Section 11.61(b)(2) of the Code authorizes suspension or cancellation of an original or renewal permit if, after notice and hearing, that any of the following are true: the permittee violated a provision of this code or a rule of the Commission. Respondent is said to have violated Section 33.1(a)(1) of the Rules which reads in part as follows:

Final Conviction of Deferred Adjudication (a) Final conviction or deferred adjudication for the following offenses may indicate that the applicant is not qualified or suitable to hold a permit or license under the Alcoholic Beverage Code, §109.532(b)(1)....

(1) any felony offense

The uncontroverted facts are as follows: King Pen was at all material times a bar owned by Ramon Rodriguez III and doing business under license in Hidalgo, Texas. On or about February 22, 1999, Respondent plead guilty and was placed on deferred adjudication for the felony offense of assault. Respondent testified at the hearing that he was placed on felony deferred adjudication.

The Staff met its burden in all respects. The evidence was admitted and Mr. Rodriguez's own testimony established that he was placed on deferred adjudication for a felony offense, which is in violation of TABC Rule 33.1(a)(1).

IV. FINDINGS OF FACT

1. The request for hearing in this case, was properly and timely filed with the State Office of Administrative Hearings.
2. Notice of the hearing was mailed to Ramon Rodriguez III d/b/a King Pen (Respondent) by certified mail, return receipt requested on June 7, 2000.

3. The notice of hearing 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.
4. The hearing was convened on July 17, 2000 at the Offices of the TWCC Office, Dove Plaza, 1508 Dove Avenue, Mc Allen, Texas. Administrative Law Judge Leah Davis Bates presided. Dewey Bracken, Assistant Attorney General, represented the Commission's Staff. Ramon Rodriguez III, represented himself. The hearing was adjourned July 17, 2000.
5. Respondent holds Permit No. BG-232691 from the Commission.
6. Respondent was placed on deferred adjudication on February 22, 1999.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding pursuant to §§2.02, 5.35, 6.01, 11.61, and 32.17 of the TEX. ALCO. BEV. CODE ANN. (Code).
2. The State Office Administrative Hearing (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with finding of fact and conclusions of law, pursuant to TEX. GOVT. CODE ANN. Ch. 2003.
3. Ramon Rodriguez III d/b/a King Pen Lounge (Respondent) received notice in accordance with TEX. GOVT. CODE ANN. §2001.052.
4. Respondent was placed on felony deferred adjudication on February 22, 1999.
5. Respondent's permit became subject to cancellation and denial under §11.61(b)(2) of the Code and §33.1(a)(1) of the TABC Rules because Respondent was placed on felony deferred adjudication.
6. Based on the foregoing findings of fact and conclusions of law, together and separately, Ramon Rodriguez's permit should be denied.

Signed this 18 day of September, 2000.


Leah Davis Bates
Administrative Law Judge
State Office Of Administrative Hearings