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**DOCKET NO. 608301**

IN RE PABLO LOMELI HERNANDEZ	§	BEFORE THE
D/B/A CLUB LATINO	§	
PERMIT/LICENSE NOS. MB402011,	§	
LB402012	§	TEXAS ALCOHOLIC
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-8860)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 30th day of November, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tommy L. Broyles. The hearing convened on September 20, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 9, 2005. 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.

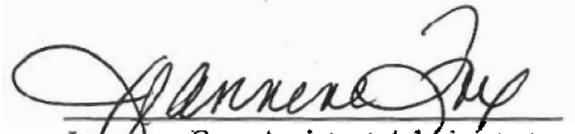
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the renewal of Respondent's permits be **DENIED** and Respondent's permits be **CANCELLED**.

**This Order will become final and enforceable on December 26, 2005** 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** this 30th day of November, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

CGG/bc

The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (512) 475-4994

Pablo Lomeli Hernandez  
d/b/a Club Latino  
**RESPONDENT**  
1907 E. Riverside  
Austin, Texas 78741  
VIA CM/RRR NO. 7001 2510 0000 7274 5339

Christopher G. Gee  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Austin District Office

SOAH DOCKET NO. 458-05-8860

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

PABLO LOMELI HERNANDEZ  
D/B/A CLUB LATINO  
PERMIT NOS. MB-402011 & LB-402012  
TRAVIS COUNTY TEXAS  
(TABC NO. 608301)

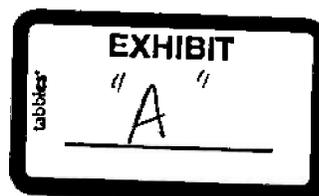
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Pablo Lomeli Hernandez, d/b/a Club Latino (Respondent) seeking cancellation of Respondent's Mixed Beverage Permit MB-402011 and Mixed Beverage Late Hours Permit LB-402012 and denial of renewal application. TABC alleged Respondent consumed or permitted others to consume an alcoholic beverage after hours; improperly supervised others, allowing them to breach the peace on the premises; and served or allowed others to serve an alcoholic beverage to a minor. This Proposal for Decision finds Respondent's permits should be canceled, and his renewal application denied.

I. PROCEDURAL HISTORY

On August 25, 2005, Petitioner served notice of hearing to Respondent at his last known address of 1907 East Riverside, Austin, Texas, 78741, via certified mail, return receipt requested. This address is the place of business for Club Latino. The hearing in this matter convened on September 20, 2005. Attorney Christopher Gee represented TABC. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Tommy L. Broyles presided. The hearing was concluded and the record closed that same day.



## II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below.

The ALJ finds that TABC Staff's penalty recommendation is appropriate because of the numerous violations committed by Respondent. Cancellation of Respondent's permits is therefore recommended.

## III. FINDINGS OF FACT

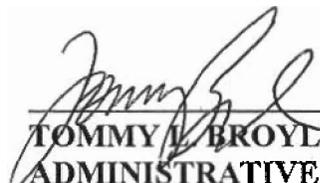
1. Pablo Lomeli Hernandez d/b/a Club Latino (Respondent) is the holder of Mixed Beverage Permit MB-402011 and Mixed Beverage Late Hours Permit LB-402012.
2. Numerous criminal violations occurred at Club Latino ("premises") from January 1, 2003 through July 30, 2004.
3. On or about May 16, 2004, Respondent, his agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the premises after hours of operation.
4. On or about May 30, 2004 and July 25, 2004, Respondent, his agent, servant, or employee, breached the peace on the premises which resulted from Respondent's improper supervision of persons under his control.
5. On or about July 30, 2004, Respondent, his agent, servant, or employee, sold, served, dispensed, or delivered an alcoholic beverage to a minor.
6. The notice of hearing was sent by mail to the place of business for Club Latino, 1907 E. Riverside, Austin, Texas and 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 statement of the matters asserted.

7. The notice of hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought granted by default.
8. On September 20, 2005, the hearing in this matter convened before ALJ Tommy L. Broyles. Christopher Gee appeared for Petitioner. Respondent failed to appear.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN .ch. 5 and §§ 6.01 and 11.61.
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. § 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 default judgment should be entered against Respondent and the factual allegations in the notice of hearing deemed admitted as true pursuant to 1 TEX. ADMIN. CODE § 155.55.
5. Based on the above Findings of Fact and Conclusions of Law, Respondent violated TEX ALCO. BEV. CODE ANN. §11.61(b)(2), §28.11, §105.6, and §106.13.
6. Based on the above Findings of Fact and Conclusions of Law, Respondent's Mixed Beverage Permit MB-402011 and Mixed Beverage Late Hours Permit LB-402012 should be canceled, and renewal application denied.

**SIGNED November 9, 2005.**

  
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**TOMMY L. BROYLES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 9, 2005



Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**HAND DELIVERY**

**RE: Docket No. 458-05-8860; Texas Alcoholic Beverage Commission v. Pablo Lomeli Hernandez d/b/a Club Latino Permit Nos. MB-402011 & LB-402012 (TABC No. 608301)**

Dear Mr. Steen:

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 § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

Tommy L. Broyles  
Administrative Law Judge

TLB/As  
Enclosure

xc: **Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY**  
**Christopher Gee, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA HAND DELIVERY**  
**Gayle Gordon, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA HAND DELIVERY**  
**Pablo Lomeli Hernandez, d/b/a Club Latino, 1907 E. Riverside, Austin, Texas 78741 - VIA REGULAR MAIL**