

DOCKET NO. 582089

IN RE	RAMIRO BOBBY ALANIZ	§	BEFORE THE
D/B/A	SELINA'S MIRAGE DISCO	§	
PERMIT NOS.	MB-418102, LB-418103	§	
		§	TEXAS ALCOHOLIC
		§	
HARRIS COUNTY,	TEXAS	§	
(SOAH DOCKET NO.	458-99-1869)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 28th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on October 28, 1999 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 November 19, 1999, and filed a corrected cover page on December 16, 1999. 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 all rights and privileges under Permit Nos. MB-418102 & LB-418103 will be **SUSPENDED for a period of five ( 5 ) days, beginning at 12:01 A.M. on the 15th day of March, 2000.** unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the **8th day of March, 2000.**

**This Order will become final and enforceable on January 19, 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 28th day of  
December, 1999.



On Behalf of the Administrator,

*Randy Yarbrough*

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001

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

Ramiro Bobby Alaniz  
d/b/a Selina's Mirage Disco  
**RESPONDENT**  
14 Berry Road  
Houston, Texas 77022  
CERTIFIED MAIL/RRR NO. Z 473 039 186

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office

Z 473 039 186

US Postal Service  
**Receipt for Certified Mail**  
No Insurance Coverage Provided.  
Do not use for International Mail (See reverse)

Sent to	<i>Ramiro Bobby Alaniz</i>	
Street & Number	<i>Houston</i>	
Post Office, State, & ZIP Code	<i>HW# 582089</i>	
Postage	\$	
Certified Fee		
Special Delivery Fee		
Restricted Delivery Fee		
Return Receipt Showing to Whom & Date Delivered		
Return Receipt Showing to Whom, Date, & Addressee's Address		
TOTAL Postage & Fees	\$	
Postmark or Date	<i>12/28/99</i>	

PS Form 3800, April 1995

*FOR*

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 582089  
NAME: Ramiro Bobby Alaniz

REGISTER NUMBER:  
TRADENAME: Selina's Mirage Disco

ADDRESS: 14 Berry Road, Houston, Texas 77022  
DATE DUE: March 8, 2000

PERMITS OR LICENSES: MB-418102, LB-418103  
AMOUNT OF PENALTY: \$750.00

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 8TH DAY OF MARCH, 2000, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711

**WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.**

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address P.O. Box No.

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Area Code/Telephone No.



INTER-OFFICE COMMUNICATION  
TEXAS ALCOHOLIC BEVERAGE COMMISSION

December 22, 1999

**TO:** Gayle Gordon, Director of Legal

**FROM:** Randy Yarbrough, Assistant Administrator

**SUBJECT:** Docket No. 458-99-1869  
TABC Case No. 582089  
Ramiro Bobby Alaniz d/b/a Selina's Mirage Disco  
Mixed Beverage Permit (MB-418102) Mixed Beverage Late Hours  
Permit (LB-418103)  
Harris County, Texas

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I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the license at the above referenced location should be **SUSPENDED**. Please prepare an **ORDER** adopting the Proposal for Decision, suspending the License for a period of **FIVE (5) days** unless a civil penalty in the amount of \$750.00 is paid in lieu of the suspension.

The Hearings Examiner recommended a suspension of ten days or a fine of \$750. However, Section 11.64 of the Texas Alcoholic Beverage Code requires that the penalty be a minimum of \$150 per day in lieu of a suspension. It is my finding that the penalty should be 5 days or \$750.00.

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

RY

# 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**

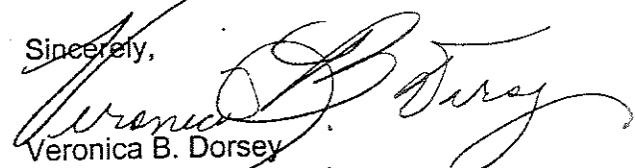
**RE: Docket No. 458-99-1869; TABC vs. Ramiro Bobby Alaniz d/b/a Selina's  
Mirage Disco, TABC Case No. 582089**

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.

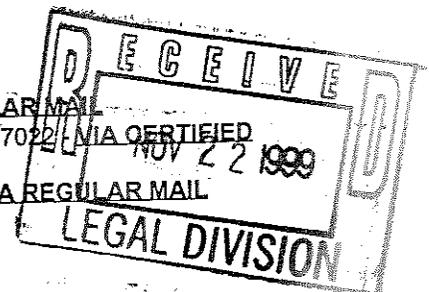
Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed 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

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