

DOCKET NO. 587699

IN RE TOMAS CARREON ROMERO	§	BEFORE THE
D/B/A LAS PALMAS BAR	§	
PERMIT NO. BG445244	§	
LICENSE NO. BL445245	§	TEXAS ALCOHOLIC
	§	
POTTER COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1955)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of February, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B.L. Phillips. The hearing convened and adjourned on September 15, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 17, 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.

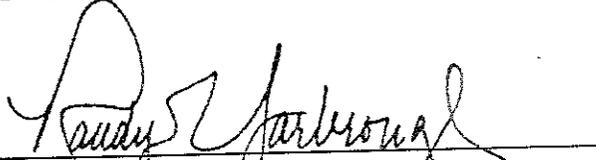
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the charges against Permit No. BG445244 and License No. BL445245 are herein dropped and dismissed.

This Order will become final and enforceable on March 14, 2001, 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 21st day of February, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable B.L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
Lubbock, Texas
VIA FACSIMILE (806) 792-0149

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

Tomas Carreon Romero
d/b/a Las Palmas Bar
RESPONDENT
312 S. Louisiana
Amarillo, Texas 79106-7548
CERTIFIED MAIL NO. Z 280 626 998

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Lubbock District Office

someone exited the front door to gain entrance. Contreras contacted Corporal Richard Anderson of the Amarillo Police Department who entered with him.

Inside the licensed premise Contreras observed that Santos Ramirez had a beer bottle in his waistband, slurred speech, bloodshot eyes and a strong odor of an alcoholic beverage on his breath, which led him to believe that Ramirez was intoxicated. Contreras testified that he contacted Respondent who told him that he was cleaning and that the two others in the Bar, including Ramirez, were helping him. Ramirez was arrested for public intoxication.

Respondent testified that he was aware that Ramirez was intoxicated and that he was waiting in the Bar until Respondent could drive him home. He recalls that he told the two officers that the two other people on the licensed premises were not helping him but were waiting to go home with him. He further testified that he was asked three times by Contreras if the two other people were working for him and that he said no. Finally, Santos Ramirez admitted that he was intoxicated and that he was on the licensed premises waiting for Respondent to take him home because he was intoxicated.

B. Analysis. Staff alleged that Santos Ramirez was assisting Respondent that evening, that he was an agent or servant of Respondent and that therefore Respondent violated the Texas Alcoholic Beverage Code (the Code). Pursuant to TEX. ALCO. BEV. CODE § 104.01 (5), no person authorized to sell beer at retail, *nor his agent, servant, or employee*, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including being intoxicated on the licensed premises (emphasis added). Respondent never denied that Ramirez was intoxicated, and indeed put him on the stand as his witness to admit to being intoxicated, but he denied that Ramirez was acting as his agent, servant or employee that night.

The Code is silent on the definition of agent or servant, but the dictionary defines agent as "one who acts for or in the place of another by authority from him" and servant as "one who serves others". The only evidence to prove that Ramirez fit either definition was the testimony of one police officer that Respondent said that the two others on the licensed premises were "helping him". Neither of the investigating officers testified that they observed Ramirez or anyone else helping Respondent that night. On the other hand, Respondent testified with specificity that he was asked by one officer on three occasions if the two others on the licensed premises were helping him and that he told him three times that they were not and were merely waiting for him to drive them home. This evidence is insufficient under the preponderance of the evidence standard to prove that Ramirez was an employee, agent or servant of Respondent while being intoxicated on the licensed premises.

A preponderance of the evidence demonstrates that Santos Ramirez was intoxicated on the licensed premises on the night of November 12, 1999, but Staff failed to demonstrate that he was the agent, servant or employee of Respondent that evening. As a result, Staff's recommendation to suspend Respondent's license and permit for 40 days is denied.

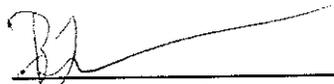
III. FINDINGS OF FACT

1. On January 22, 1999, the Texas Alcoholic Beverage Commission (Commission) issued a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License, which have been continuously renewed, to Respondent for the premises known as Las Palmas Bar, 2905 E. Amarillo Boulevard, Amarillo, Potter County, Texas.

2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (Staff) in a notice of hearing, dated July 19, 2000.
3. The hearing was convened on September 15, 2000, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent appeared and represented himself. Christopher Burnett, Assistant Attorney General, represented the Staff.
4. On November 12, 1999, Mr. Santos Ramirez was present on the licensed premises after hours with Respondent while waiting for a ride home.
5. On that same date, Ramirez was not helping Respondent in cleaning the licensed premises, but was merely waiting for Respondent to finish his work.
6. On that date, Ramirez was not acting as the agent, servant or employee of Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§ 6.01, 11.61 and 61.71 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over this matter, including the authority to issue a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003 (Vernon 2000).
3. Proper and timely notice of the hearing was provided as required by TEX. GOV'T CODE ANN §§ 2001.051 and 2001.052 (Vernon 2000).
4. Based on Findings of Fact Nos. 4-6, Staff failed to prove that Respondent violated the Code by having a servant, agent, or employee who was intoxicated on the licensed premises on November 12, 1999.



B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS