

DOCKET NO. 588355

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
ANN MAPES	§	OF
D/B/A TEXAS BRIAR PATCH	§	
PERMIT NOS. MB-096176, LB-096177	§	
& PE-096178	§	
LUBBOCK COUNTY, TEXAS	§	
(SOAH Docket No. 458-00-2195)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 8th day of March, 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 on October 10, 2000, and adjourned December 15, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 9, 2001. 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 Permit Nos. MB-096176, LB-096177 and PE-096178 are hereby **SUSPENDED**.

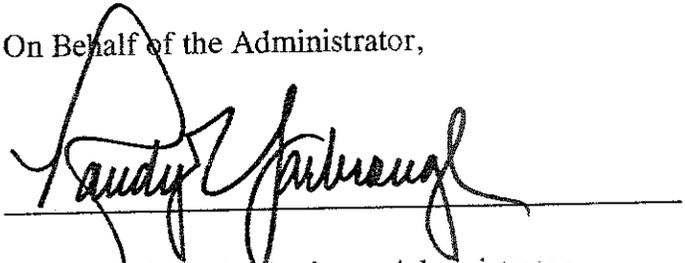
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **23rd** day of **May, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **ten (10) days**, beginning at **12:01 A.M.** on the **30th** day of **May, 2001**.

This Order will become final and enforceable on April 2, 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 12th day of March, 2001.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", is written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

W. J. Wade, Jr.
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Administrative Law Judge
State Office of Administrative Hearings
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Lubbock District Office
Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 588355

REGISTER NUMBER:

NAME: Ann Mapes

TRADENAME: Texas Briar Patch

ADDRESS: 1011 23rd Street, Lubbock, Lubbock County, Texas

DATE DUE: May 23, 2001

PERMITS OR LICENSES: MB-096176, 096177 & PE-096178

AMOUNT OF PENALTY: \$1,500.00

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 23RD DAY OF MAY, 2001, 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.

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LUBBOCK COUNTY, TEXAS	§	
(TABC CASE NO. 588355)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action against Ann Mapes, dba Texas Briar Patch (Respondent) for allegedly allowing a breach of the peace on the licensed premises which was not beyond Respondent's control and which resulted from Respondent's improper supervision of person on the premises (Allegation I) and for failure to report the breach (Allegation II). Staff recommended Respondent's permits be canceled. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner failed to prove Allegation I and recommends that no action be taken in regard to Respondent's permits on that issue. However, the ALJ finds that Petitioner did prove Allegation II by a preponderance of the evidence and Respondent's permits should be suspended accordingly.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The hearing on this matter convened on October 10, 2000, before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Staff was represented by Dewey Brackin, Assistant Attorney General. Respondent appeared and was represented by attorney W. J. Wade, Jr. After the taking of testimony, the hearing was continued, and it re-convened on November 14, 2000 when the remaining evidence was presented. The record closed on December 15, 2000, after receipt of written closing arguments by the attorneys.

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 require-

ments imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. DISCUSSION

A. Testimony.

Dennis Ramos, a patron of the Texas Briar Patch (the bar) who was involved in a fight. Ramos testified that on August 21, 1999, he, Sandra Reyna and her sister Susan went to the bar where he had words with a man in the bathroom. Ramos told Villarreal, a bartender, that the man was causing a lot of trouble, and she said she would take care of it. Villarreal at some point came to their table, and when Susan and Sandra got up to leave the table, Villarreal was bumped. Villarreal slapped Susan and grabbed her by the hair. The man who Ramos had words with hit him in the arm and then left the bar. Ramos admitted that he had been previously kicked out of the bar for drinking too much or getting into an argument but stated that he had been allowed back in the bar on the night in question by the manager.

Sandra Reyna, a patron involved in the fight. Reyna testified that Ramos went to the bathroom in the bar and that he spoke to Villarreal before returning to the table. Ramos told her that a man was talking "shit" to him in the bathroom and he told Villarreal about it. Villarreal then came to the table where the three were sitting, was rambling and loud, told them to stop starting "shit" and then told them to leave. Susan Reyna got up to leave when she bumped Villarreal and the fight started. Sandra testified the man Ramos had words with hit Ramos with something during the fight and then left. After Sandra, Susan and Ramos were pushed out of the bar, she observed that Ramos was bleeding and went back into the bar to call 911. However, before she could talk to the 911 operator, Villarreal hung up the phone, told her she had to go and pushed her out of the bar.

Susan Reyna, a patron involved in the fight. Reyna testified that Villarreal came to the table where she was sitting with Sandra and Ramos and began arguing with them. Susan then got up to leave the table, accidentally bumped into Villarreal, and Villarreal grabbed her by the hair and started fighting with her. She recalled that Sandra and Ramos attempted to break up the fight but that no one else in the bar intervened. She observed that Ramos had a gash on his arm and was bleeding after they were kicked out of the bar.

Yolanda Villarreal, a bartender at the Texas Briar Patch. She testified that on the night in question, Ramos asked for a pitcher of beer and was told by Toni Barnett, another employee, that they could not serve him because the management would not allow him to purchase alcohol at the bar. Ramos replied that they should call the manager. Villarreal then recalled that a man wearing an eyepatch complained that Sandra Reyna was cussing at him. Barnett then told Villarreal to tell Sandra either to stop cussing or leave the bar with her party. Villarreal testified that when she approached the party, Susan Reyna cussed at her and the fight occurred. She believed that both Susan and Sandra Reyna were fighting with her and that Toni broke up the

fight and told them to leave. She then recalled that Sandra came back into the bar to make a phone call and was told to leave.

Toni Barnett, an employee of The Texas Briar Patch. She stated that Susan and Sandra Reyna were cussing at a lot of the customers that night and that Ramos asked for a pitcher of beer but was refused service. She told Villarreal to tell the group to quit cussing and a fight ensued. She did not see who started the fight but felt that Villarreal was the victim. Barnett and some other customers forced the group to leave the bar that night.

Officer James Altgelt, Lubbock Police Department, investigating officer. He investigated a 911 call hang up placed from the Texas Briar Patch and made contact with Susan Reyna, Sandra Reyna and Dennis Ramos outside of the bar. The 911 records provided show a 911 call was made by a female and then hung up at 7:53 p.m., and when the call back was made less than a minute later a male answered and said that he did not know of any problem. Altgelt testified that Ramos and Sandra Reyna appeared intoxicated and upset but that he allowed them to leave the scene because he believed that Susan Reyna was driving them home. He also felt the waitresses at the bar, particularly Villarreal, were not being forthcoming with him. He said a bartender named Lesa Ross stated that the assault on Ramos took place in the bar and that a knife was used.

Ann Mapes, owner of the Texas Briar Patch. She was called to the bar that night by Barnett and attempted to contact the TABC by telephone unsuccessfully. She finally left a note for the TABC on a bulletin board in the bar's office regarding the fight. She admitted Toni Barnett was involved in a fight in the bar in May of 1999 for which Mapes paid a fine.

B. Analysis.

Staff alleged that Respondent allowed a breach of the peace to occur on the licensed premises on August 21, 1999 which was not beyond Respondent's control and which resulted from Respondent's improper supervision of persons on the premises. They further alleged that Respondent did not promptly report the breach of the peace to the Commission as required by the Code. Pursuant to TEX. ALCO. BEV. CODE §28.11, the Commission may suspend or cancel a mixed beverage permit if it finds that a breach of the peace has occurred on the licensed premises, the breach was not beyond the control of the permittee and resulted from the permittee's improper supervision of persons permitted to be on the licensed premises.

In this case, there is no dispute that a fight occurred on the licensed premises on August 21, 1999 or that this constituted a breach of the peace. However, the ALJ is unable to find by a preponderance of the evidence that the breach was not beyond Respondent's control and resulted from her improper supervision of her employees. The evidence offered to prove these issues is severely conflicting. However, the burden of proof is on the Petitioner whose witnesses lack sufficient credibility to carry Petitioner's burden on these factual allegations.

Dennis Ramos admitted that he had been refused service at the bar on several occasions for drinking too much and fighting and that on the night in question he was again refused service by Toni Barnett. He also testified that he got into a verbal altercation with a man at the bar before the alleged fight with Villarreal began. It is unclear whether he was ever served alcohol that night at the bar. However he was later described by Officer James Altgelt as "highly intoxicated. Altgelt testified that Ramos had the strong odor of an alcoholic beverage on his breath and person, slurred speech, that he was unsteady on his feet and was very emotional. Altgelt furthered stated that Sandra Reyna was in the same condition as Ramos as she appeared intoxicated and extremely emotional. The only person who was in Ramos' party who was not described as intoxicated was Susan Reyna. However, even Susan admits that it was her act of bumping Villarreal which precipitated the fight, although she states that it was an accident.

As previously mentioned, the evidence in this case contains extreme conflicts and it is difficult to ascertain which witnesses are being truthful. However, the ALJ is unwilling to accept the testimony of Petitioner's witnesses alone to establish the facts necessary to prove Allegation I. The ALJ finds that Petitioner did not prove by a preponderance of the evidence that Respondent allowed a breach of the peace to occur on August 21, 1999 which was not beyond her control and which resulted from her improper supervision of person on the premises.

Regarding the allegation that Respondent failed to report the breach of the peace, Respondent admitted that she attempted to call the TABC but was unable to get anyone to answer the phone and that instead left a note on her bulletin board regarding the fight. TEX. ALCO. BEV. CODE §11.61(b)(21) permits the Commission to suspend a permit if it is found that the permittee failed to report a breach of the peace to the TABC. Respondent admits that she failed to do so but she pleads that it was the result of no one answering the phone at the TABC. Her testimony and the questions propounded by her attorney seem to indicate that her attempts to contact TABC occurred after business hours and may have occurred the night of August 21, 1999 after Respondent had come down to the bar. There is no attempt to explain why Respondent could not contact TABC during regular business hours of the next business day or why she thought that her note to TABC posted on a bulletin board in the bars office would suffice as notice. The evidence is clear that Respondent failed to comply with this provision of the Code.

III. FINDINGS OF FACT

1. On August 2, 1976, the Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit No. MB-096176, a Mixed Beverage Late Hours Permit No. LB-096177 and a Beverage Cartage Permit No. PE-096178, which have been continuously renewed, to Respondent for the premises known as Texas Briar Patch, 1011 23rd Street, Lubbock, Lubbock 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 August 15, 2000.

3. The hearing was convened on October 10, 2000, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent appeared and was represented by attorney W. J. Wade, Jr. Dewey Brackin, Assistant Attorney General, represented Staff.
4. The hearing was continued on October 10, 2000, after the taking of testimony and was reset by Order of the Court for November 14, 2000. The hearing re-convened and was concluded on that date.
5. On August 21, 1999, a fight occurred on the licensed premises in which Dennis Ramos was stabbed in the arm by another patron.
6. The fight started when Susan Reyna bumped Yolanda Villarreal.
7. Dennis Ramos has been previously barred from purchasing alcoholic beverages at The Texas Briar Patch for drinking too much and fighting.
8. On August 21, 1999, Ramos was denied service at the Texas Briar Patch by employees.
9. On August 21, 1999, Ramos and Susan Reyna were intoxicated while at the Texas Briar Patch.
10. On August 21, 1999, Dennis Ramos got into a verbal altercation with another patron at the Texas Briar Patch.
11. Susan and Sandra Reyna and Dennis Ramos were Petitioner's only witness offered to prove that the fight was within Respondent's power to control and resulted from her improper supervision of persons permitted to be on the licensed premises.
12. Susan and Sandra Reyna and Dennis Ramos were not credible witnesses.
13. On August 21, 1999, Respondent called the number for TABC after hours to attempt to report that the fight occurred, but she never made contact with any TABC personnel.
14. Respondent put a note for TABC on the bulletin board in her office to report the fight but this was insufficient to report the fight as the note was never delivered to TABC.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 28.11 and 11.61 (Vernon 2000).

2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).
4. Based upon Finding of Fact No. 5, a breach of the peace occurred on the Respondent's licensed premises.
5. Based on Findings of Fact Nos.6-12, Petitioner failed to prove that the breach of the peace was not beyond the control of Respondent and resulted from her improper supervision of persons permitted to be on the licensed premises, in violation of Section 28.11 of the Code.
6. Based on Findings of Fact Nos. 13-14, Respondent failed to promptly report the breach of the peace to the Commission, in violation of Section 11.61(b)(21).
6. Based on the foregoing, suspension of Respondent's Mixed Beverage Permit No. MB-096176, Mixed Beverage Late Hours Permit No. LB-096177 and Beverage Cartage Permit No. PE-096178 for a period of 10 days is warranted.

SIGNED this 9th day of February, 2001.



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

DISTRIBUTION LIST

458-00-2195

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