DOCKET NO. 589020

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC BEVERAGE
CHRISTOPHER ESTALA	§	
D/B/A COOL ARROWS	§	
PERMIT NO. BG404950	§	
LICENSE NO. BL404951	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1795)	§	COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jonathan Kaplan. The hearing convened on September 20, 2000, and adjourned on September 20, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 21, 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 above-referenced Permit No. BG404950 and License No. BL404951 are hereby **SUSPENDED.**

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **$2,250.00** on or before the **28th** day of **February, 2001**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of fifteen (15) days, beginning at 12:01 A.M. on the 7th day of March, 2001.**

This Order will become final and enforceable on January 18, 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.

SIGNED on this the 28th day of December, 2000.

On Behalf of the Administrator,

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/vr

Administrative Law Judge Jonathan Kaplan
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

Holly Wise, Docket Clerk
State Office of Administrative Hearings
Austin, Texas
VIA FACSMILIE (512) 475-4994

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d/b/a Cool Arrows
RESPONDENT
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CERTIFIED MAIL/RRR NO. Z 280 626 874

Licensing Division
San Antonio District Office

NOV 2 7 2000

DOCKET NO. 458-00-1795

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
vs.	§	OF
	§	
CHRISTOPHER ESTALA, d/b/a COOL ARROWS BEXAR COUNTY, TEXAS PERMIT NO. BG-404950 &BL-404951 (TABC CASE NO. 589020)	§	ADMINISTRATIVE HEARINGS
	§	(SAN ANTONIO, TEXAS)

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Commission or TABC) brought this action against a licensee of the Commission for permitting the consumption of an alcoholic beverage during prohibited hours. The Staff recommended that the subject license and permit be suspended for 15 days for the violation and the licensee be allowed to pay $150.00 per day in lieu of suspension. The licensee appeared at the hearing and was represented by counsel. This Proposal For Decision recommends that the license and permit be suspended for 15 days for the prohibited hours violation and that the licensee be allowed to pay $150.00 per day in lieu of suspension.

I. Procedural History

On June 29, 2000, the Staff of the Texas Alcoholic Beverage Commission (the Staff), notified Christopher Estala, d/b/a Cool Arrows (Respondent) that the Staff would seek disciplinary action against the Respondent because he permitted consumption of alcoholic beverages during prohibited hours.

The hearing commenced on September 20, 2000, in the offices of the State Office of Administrative Hearings, Castle Hills Executive Center, 1015 Jackson Keller, Suite 102B, San Antonio, Bexar County, Texas, and was heard by Administrative Law Judge (ALJ) Jonathan Kaplan. After the taking of evidence, the hearing was concluded and the record was closed the same day. Staff was represented by Christopher Burnett, Attorney for the Texas Alcoholic Beverage Commission. Respondent was represented by attorney Michael De La Paz.

II. Jurisdiction and Notice

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §6.01 (Vernon 2000) and TEX. GOV'T CODE ANN. Chapter 2001 et seq. (Vernon 2000) . The State Office of Administrative Hearings has jurisdiction over matters related

to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Chapter 2003.

On February 14, 2000, Staff sent Respondent a Notice of Hearing concerning the allegation of permitting consumption of alcoholic beverages during prohibited hours.

There were no challenges of jurisdiction or notice in this matter.

III. Discussion

TABC's Case

1. Testimony of Nina Gonzales

Agent Nina Gonzales of the Texas Alcoholic Beverage Commission testified that on March 4, 2000, she visited Cool Arrows accompanied by Agent Michael Cantrell, also an agent with TABC. They arrived at approximately 2:55 a.m. She stated that they were checking for licensees selling alcohol after-hours. Agent Gonzales explained that the type of license that the Respondent has, it allows the sale of alcohol up to 2:00 a.m. and drinking up to 2:30 a.m. She and Agent Cantrell looked inside the establishment and saw an unidentified Hispanic man holding a drink in a plastic cup in front of the bar and an unidentified Hispanic female behind the bar. Other people were observed around the bar area. She observed the unidentified man pick up the cup and take a drink from it.

They went inside through the back door and identified themselves as TABC agents. The female behind the bar announced, "TABC is here," and attempted to take the drink away from the man. The TABC agents requested ID from the man holding the drink and determined him to be Christopher Estala, the Respondent. Mr. Estala told Agent Gonzales that he was drinking because he was celebrating a good night of business and asked that he be given a warning since he had just paid a large civil fine of $13,000.00. Agent Gonzales wrote a citation to the Respondent for consuming during prohibited hours.

2. Testimony of Michael Cantrell

Agent Cantrell of the TABC testified he accompanied Agent Gonzales at approximately 3:00 a.m. on March 4, 2000, to Cool Arrows. He stated that he observed an individual, later identified as Christopher Estala, holding a glass with an amber liquid. As they approached the bar, the female bartender noticed the agents and announced that, "TABC is here." She then took the beverage out of the Respondent's hand. Agent Cantrell seized the cup and identified the liquid inside as beer, based on the color and smell.

Respondent's Case

The Respondent presented no evidence and did not call any witnesses.

IV. Statutory Criteria

TEX. ALCO. BEV. CODE ANN § 61.71(a)(18) provides:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

* * *

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

TEX. ALCO. BEV. CODE ANN § 105.06

(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a. m. and 12 noon and on any other day between 2:15 a. m. and 7 a. m. [1]

V. Discussion

The ALJ finds that the TABC has met its burden and has proven beyond a preponderance of the evidence that Respondent consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.

The evidence presented shows that on March 4, 2000, at approximately 2:55 a.m., Agents Gonzales and Cantrell of the TABC were investigating after-hours violations. While outside the Respondent's business, Cool Arrows, they saw the Respondent through the window holding and

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[1] §105.06 of the Texas Alcoholic Beverage Code defines an "Extended hours area" to be an area subject to the extended hours of sale provided in Section 105.03 or 105.05 of this code. These sections both define this as "a county having a population of 500,000 or more, according to the last preceding federal census. . ." The Court takes notice that Bexar County, Texas has a population over 500,000.

drinking from a glass. Upon entering the business, they confronted the Respondent and identified the liquid as beer.

The Respondent, in argument, claimed that the agents could not know for certain that the beverage was beer and that non-alcoholic beers would have the same color and smell as regular beer, However, Agent Cantrell said that he could positively identify the beverage as beer, and no evidence was presented that the beverage was a non-alcoholic beer. In addition, when the agents entered the bar, the bartender announced, "TABC's here," and attempted to take the beverage away from the Respondent, which further indicates the drink was alcohol. Furthermore, the Respondent asked the agents to give him a warning because he had just paid a large civil penalty in another TABC case.

These factors indicate, beyond a preponderance of the evidence, that the drink that Respondent was consuming was an alcoholic beverage, which at 2:55 a.m. would be in violation of TEX. ALCO. BEV. CODE ANN § § 105.06 and 61.71.

PROPOSED FINDINGS OF FACT

1. Christopher Estala, d/b/a Cool Arrows (Respondent) is the holder of licenses BG-404950 & BL-404951, which allow consumption of alcoholic beverages until 2:30 a.m.

2. The Texas Alcoholic Beverage Commission sent a notice of hearing to Respondent dated June 29, 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 September 20, 2000, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Respondent appeared and was represented by Attorney Michael De La Paz. Attorney Christopher Burnett, represented Staff. The record was closed on September 20.

5. On March 4, 2000, Agents Nina Gonzales and Michael Cantrell of the TABC were investigating after-hours violations.

6. At 2:55 a.m. on March 4, 2000, Agents Gonzales and Cantrell were outside of the Respondent's business, Cool Arrows, when they observed the Respondent consuming a beverage.

7. The Agents entered the business, identified the Respondent as Christopher Estala, and verified the beverage he was consuming was beer.

8. Bexar County, Texas, has a population of over 500,000 people according to the last federal census.

PROPOSED CONCLUSIONS OF LAW

1 The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.61(b)(2) (Vernon 2000).

2. The State Office of Administrative Hearings has jurisdiction in matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T. CODE ANN. § 2003 (Vernon 2000).

3. Service of proper and timely notice of the hearing was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001.51, 2001.52 and 1 TEX. ADMIN. CODE § 155.27.

4. Based upon the foregoing Findings of Fact, Respondent consumed alcohol on the licensed premises during prohibited hours in violation of TEX. ALCO. BEV. CODE ANN § § 105.06, and 61.71.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that the Respondent's Wine and Beer Retailer's License and Retail Dealer's On-Premise Late Hours License should be suspended for a period of 15 days and Respondent should be allowed to pay a civil penalty in the amount of $300.00 per day in lieu of suspension.

Signed this 21 day of November, 2000.

JONATHAN KAPLAN
Administrative Law Judge
State Office of Administrative Hearings

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