

SOAH DOCKET NO. 458-09-1902

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
JUAN ISABEL SOTO D/B/A EL NORTINO Respondent		ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission's Staff (Petitioner) brought this disciplinary action against Juan Isabel Soto dba El Nortino (Respondent) alleging that: (1) on or about October 9, 2008, Respondent, or his agent, servant or employee, possessed or permitted others to possess a narcotic on the licensed premises, in violation of Texas Alcoholic Beverage Code (the Code) §§ 104.01(9), 61.71(a)(1) and 16 Texas Administrative Code (TAC) § 35.41(b); and (2) on or about October 9, 2008, Respondent conducted his business in a place or manner which warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of the Code §§ 61.71(a)(1) and (17) and 16 TAC § 35.31(a)(b)(c)(15). Based on the evidence, the Administrative Law Judge (ALJ) recommends Respondent's permit and license be cancelled.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

On March 10, 2009, a hearing convened before ALJ B. L. Phillips at the State Office of Administrative Hearings (SOAH), 8212 Ithaca, Suite W3, Lubbock, Texas. Petitioner appeared at the hearing and was represented by Emily Helm, attorney. Respondent appeared at the

hearing represented by Marvin Williams, attorney. After presentation of evidence and argument, the hearing concluded and the record was closed.

## II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. §§ 104.01(9), 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 possession of an narcotic or permitting a person on the licensed premises to do so.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1) and (17), the Texas Alcoholic Beverage Commission (TABC or Commission) may suspend or cancel a retail dealer's on- or off-premise license if it is found that the licensee: violated a provision of the Code or rule of the commission during the existence of the license sought to be cancelled, or conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and public sense of decency of the people.

Pursuant to 16 TEX. ADMIN. CODE § 35.31 (a)(b) and (c)(15), a licensee or permittee violates the provisions of the Code cited in 61.71(a)(17) if a narcotics related offense is committed by the licensee in the course of conducting his/her alcoholic beverage business or by any person on the licensed premises; and the licensee knew, or in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

## III. DISCUSSION AND ANALYSIS

### A. Background

The following facts were not disputed at the hearing. Respondent's licensed premises are located at 4411 E. Amarillo Boulevard, Amarillo, Potter County, Texas. Respondent holds a Wine and Beer Retailer's On-Premise permit and Retailer's On-Premise Late Hours License,

issued by the TABC. On October 9, 2008, officers from the Amarillo Police Department entered the licensed premises and discovered narcotics on the licensed premises. The narcotics were sent to the Texas Department of Public Safety Drug Analysis lab and found to contain cocaine.

### **B. Petitioner's and Protestant's Evidence and Contentions**

Petitioner presented the testimony of several witnesses and extensive documentary evidence. Officer Tim Roberts of the Amarillo Police Department testified that he arrived at the licensed premises on October 9, 2008, to do an inspection after receiving a Crime Stopper's tip alleging that narcotics were being sold on the premises by the owner. The tip included the name of the licensed premises, the identification of the owner, a description of his vehicle, and information that the narcotics were in a room across from the bathroom. Roberts entered the licensed premises, identified the owner and told him the police were investigating a Crime Stopper's tip. The owner, identified as Respondent Juan Soto, unlocked the room where the tipster said the narcotics would be, and Roberts located cocaine in that room. He also located cocaine in the bar area, in a room used as an office and on Soto's person, along with a large amount of cash. Respondent was arrested for possession of narcotics.

Corporal Toby Hudson of the Amarillo Police Department testified about the search of the licensed premises and subsequent arrest of Respondent and essentially confirmed Officer Roberts' testimony. Agent Robert Russell, Jr. of the TABC testified and recommended cancellation of Respondent's permit, citing the evidence showing that Respondent exercised a lack of control of the premises and that the premises constituted a public safety concern due to the narcotics on the premises, and evidence from the cocaine and large amount of money Respondent's possession which suggested that he was trafficking in narcotics from the premises.

### **C. Respondent's Evidence and Contentions**

Respondent did not present any witnesses or evidence at the hearing. The witnesses for Petitioner were extensively questioned regarding the Crime Stopper's tip, the search of the licensed premises, and the subsequent arrest of Respondent.

#### **D. Analysis**

After considering the evidence, the ALJ concludes that Petitioner proved that Respondent violated the Code by possessing narcotics on the licensed premises and by conducting its business in a manner which warrants the cancellation of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Respondent has failed in its obligation to provide responsible operation of its establishment. The evidence demonstrates that narcotics were present on the licensed premises, some of which were clearly under the control of Respondent because they were behind a locked door to which he had a key and because narcotics were found on his person. It would appear that narcotics were located in numerous places within the premises that Respondent could have observed, and that he could have responded to the violation and corrected it if that had been his intent. Respondent also carried a large amount of cash on his person, which supports a conclusion that he was actually trafficking in narcotics on the premises.

The evidence demonstrates that Respondent possessed or allowed others to possess a narcotic on the licensed premises in violation of the Code. The evidence also demonstrates that Respondent was likely trafficking in narcotics from the licensed premises. These two facts demonstrate that the manner in which Respondent conducted his business constitutes a public safety concern as well as a violation of the general welfare, health, peace, morals of the people and public sense of decency, in violation of Code §§ 61.71(a)(1) and (17) and 16 TAC § 35.31(a)(b) and (c)(15).

#### **IV. RECOMMENDATION**

Having reviewed all the evidence, the ALJ finds that the evidence proved that; (1) on or about October 9, 2008, Respondent, his agent, servant or employee, possessed or permitted others to possess a narcotic on the licensed premises in violation of the Code; and (2) the manner in which Respondent operates its business warrants cancellation of Respondent's permit and license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. The ALJ recommends that the permit and license be cancelled.

## V. FINDINGS OF FACT

1. Juan Isabel Soto dba El Nortino holds a Wine and Beer Retailer's On-Premises Permit and Retailer's On-Premise Late Hours License, issued by TABC for the premises located at 4411 E. Amarillo Boulevard, Amarillo, Potter County, Texas.
2. Respondent received proper and timely notice of the hearing from TABC in a notice of hearing dated January 22, 2009.
3. The hearing on the merits convened March 10, 2009, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Texas. The TABC was represented by attorney Emily Helm. Respondent was represented by attorney Marvin Williams. The record closed on the same day.
4. On or about October 9, 2008, Amarillo Police Department officers conducted an inspection of the licensed premises to investigate a tip from Crime Stoppers that narcotics were being sold on the premises by the owner.
5. The tip included the name of the licensed premises, identification of the owner, a description of his vehicle, and information that narcotics were located in a room across from the bathroom.
6. Officers identified the owner as Juan Soto (Respondent), and informed him that they were investigating tip from Crime Stoppers.
7. Respondent unlocked the room where the tipster alleged that narcotics were located, and officers located cocaine in that room. Cocaine was also located in a room used as an office and in the bar area.
8. Respondent was arrested for possession of narcotics and more cocaine was found on his person as well as a large amount of cash.
9. The narcotics were analyzed by the Department of Public Safety Drug Analysis lab and found to contain cocaine.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).

2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2008).
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2008).
4. On or about October 9, 2008, Respondent, or his agent, servant or employee, possessed or permitted others to possess a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 104.01(9).
5. On or about October 9, 2008, Respondent conducted his business in a place or manner which warrants the cancellation of the permit and license based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency, pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1) and (17).
6. The ALJ recommends that Respondent's permit and license be cancelled.

Signed: APRIL 7<sup>th</sup>, 2009.



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**B. L. Phillips**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS