

TABC DOCKET NO. 585194

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ELIEL SEGURA	§	
D/B/A HABANA NITES	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BE604169, BL	§	
	§	
BRAZORIA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-2176)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 2nd day of July 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on **March 12, 2010**. [Erroneously the court stated in the Jurisdiction, Notice and Procedural History section of the Proposal that the hearing was held on March 12, 2009 rather than the date actually held, March 12, 2010. (See Proposal for Decision, Page 1)]. The record was closed on the same date.

The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on May 5, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent’s permits/licenses be **CANCELED FOR CAUSE**.

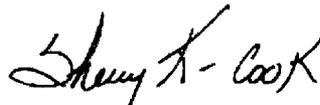
IT IS FURTHER ORDERED that Respondent’s conduct surety bond in the amount of \$5,000.00 is **FORFEITED** pursuant Texas Alcoholic Beverage Code § 61.13 and 16 TAC Texas Alcoholic Beverage Commission Rule § 33.24(j), for which Respondent must forfeit Respondent’s conduct surety bond.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on July 26, 2010, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 2nd day of July, 2010, at Austin, Texas.

On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 2, 2010.



Alejandra Argueta, Paralegal
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Jim L. Defoyd
ATTORNEY FOR RESPONDENT
103 Eastway
Galena Park, Texas 77547
VIA FACSIMILE: (713) 672-7420

Eliel Segura
d/b/a Habana Nites
RESPONDENT
14027 Hwy 288 South 'B'
Angleton, Texas 77515
VIA U. S. FIRST CLASS MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division

RMP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 5, 2010

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

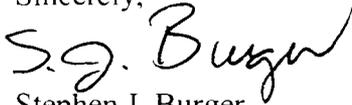
VIA REGULAR MAIL

RE: Docket No. 458-10-2176; Texas Alcoholic Beverage Commission vs. Eliel Segura d/b/a Habana Nites

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Stephen J. Burger
Administrative Law Judge

SJB:mr
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Jim Defoyd, Attorney at Law, 103 Eastway, Galena Park, Texas 77547 -**VIA REGULAR MAIL**
Eliel Segura d/b/a Habana Nites, 14027 Hwy 288 South B, Angleton, Texas 77515 - **VIA REGULAR MAIL**

RECEIVED

MAY 11 7 2010

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
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<http://www.soah.state.tx.us>

**TABC HOUSTON
LEGAL**

DOCKET NO. 458-10-2176

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

BEFORE THE STATE OFFICE

V.

OF

**ELIEL SEGURA
D/B/A HABANA NITES
PERMIT/LICENSE NO(s).
BE 604169, BL,
Respondent**

**BRAZORIA COUNTY, TEXAS
(TABC NO. 585194)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Petitioner) requests the cancellation of Eliel Segura's d/b/a Habana Nites (Respondent) license for violations of the Texas Alcoholic Beverage Code (Code). The Administrative Law Judge (ALJ) finds that there is sufficient evidence for canceling Respondent's license because Respondent surrendered control of the business to another, and made a false statement on a renewal application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On March 12, 2009, a public hearing was held before Stephen J. Burger, ALJ, in Houston, Harris County, Texas. Petitioner was represented by attorney Ramona Perry. Respondent did not appear. Because the Notice of Hearing contained insufficient factual allegations, Petitioner

presented evidence. The hearing concluded and the record closed that same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

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 violated a provision of the code or a rule of the commission during the existence of the license or during the preceding license period. TEX. ALCO. BEV. CODE ANN. § 61.71(a)(1).

Any device, scheme or plan which surrenders control of the employees or business to persons other than the permittee is unlawful. TEX. ALCO. BEV. CODE ANN. § 109.53.

The commission may suspend or cancel a license if a licensee makes a false statement in an original or renewal application, in violation of TEX. ALCO. BEV. CODE ANN. § 61.71(a)(4).

III. EVIDENCE

A. Petitioner's Evidence

1. Petitioner's Witnesses

Thomas Chadwick

Thomas Chadwick is an agent for Petitioner. In January of 2009, while investigating a report of a breach of peace at Respondent's premises, he interviewed Eliel Segura, Respondent. Agent Chadwick discovered that Mr. Segura had difficulty answering any questions regarding the operation of Respondent's bar. Mr. Segura was only vaguely familiar with the bar's bank account, and only paid some of the bar's employees. Mr. Segura and Leon Damian, Respondent's manager, paid Respondent's lease payments, with Mr. Damian paying the most. Mr. Damian was found to be paying for the bar's beer out of his own personal account. Mr. Segura did not know where the bar's

inventory was being purchased. Mr. Damian was not being paid by Mr. Segura and Mr. Segura worked for Mr. Damian's two other businesses.

Agent Chadwick noted that Mr. Damian was present every time Agent Chadwick visited Respondent's bar, and also noted that Mr. Damian appeared to be in sole control of all of the bar's operations.

Agent Chadwick reviewed the records he received from Respondent and discovered that Mr. Damian and Mr. Segura were both signators on Respondent's bank account. In interviewing security employees at Respondent's premises, Agent Chadwick discovered that they were paid in cash by Mr. Damian. Agent Chadwick could find no evidence of Mr. Segura receiving any income from the bar's operation.

Upon further investigation, Agent Chadwick discovered Mr. Damian had a criminal history of possessing gambling devices and keeping a gambling place. This would have prevented Mr. Damian from receiving a TABC license to operate a business like Respondent's. Agent Chadwick determined that Mr. Segura was being used as a "front man" to secure a TABC license for Mr. Damian.

Agent Chadwick pointed out false statements made by Mr. Segura on his license renewal applications for 2007, 2008, and 2009. Specifically, Mr. Segura answered "No" on question 6: "Is this application being made by you for the benefit of someone else? If "YES," indicate below or attach explanation." Agent Chadwick believes this was a false statement, based on his investigation.

B. Respondent's Evidence

Respondent did not appear.

IV. ANALYSIS

The uncontroverted evidence shows that the Respondent, Eliel Segura, in January, 2009, could not answer many of the questions posed to him by a TABC agent regarding the operation of his bar. There was no evidence that Mr. Segura received any income from the bar, and Mr. Segura did not know where the inventory for the bar was being procured.

However, Leon Damian, Respondent's manager, personally paid for beer for the bar; paid at least some of the employees; and was listed on the bar's bank statements. Additionally, Mr. Damian was at the bar every time the TABC agent visited, and appeared to be in sole control of all of the bar's business. There was no evidence that Mr. Damian received any salary from Respondent.

The TABC agent testified that his investigation revealed Mr. Damian owned other businesses that were in violation of gambling laws, which would have prevented Mr. Damian from receiving a liquor license. The TABC agent also testified that he discovered that Mr. Segura worked for Mr. Damian's two other businesses.

Finally, based on the above evidence, there is sufficient evidence as shown above that Mr. Segura made a false statement on his 2007, 2008, and 2009 renewal applications when he answered "No" to the question whether the applications were being made for the benefit of someone else. The uncontroverted evidence shows that Respondent's bar is being operated by and for Mr. Damian, not Mr. Segura.

V. RECOMMENDATION

The ALJ recommends that Applicant's license be canceled.

VI. FINDINGS OF FACT

1. Eliel Segura, D/B/A Habana Nites (Respondent) is the holder of a Beer Retailer's On Premises License and a Retail Dealer's On Premise Late Hours License, BE 604169, BL,

- issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 14027 Hwy. 288 South 'B', Angleton, Brazoria County, Texas 77515.
2. On January 20, 2010, a Notice of Hearing was sent to the Respondent which contained a statement of the location and the 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 allegations and the relief sought by the TABC.
 3. On March 12, 2010, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing, and was represented by Ramona Perry, attorney. Respondent did not appear. Evidence was received and the record closed on the same date.
 4. On the Respondent's Renewal Applications of July 21, 2009, July 14, 2008, and July 10, 2007, Eliel Segura answered "No" to the question: Is this application being made by you for the benefit of someone else?
 5. In January, 2009, Eliel Segura did not know where inventory for the bar, Habana Nites, was purchased.
 6. In January 2009, Eliel Segura received no income from the operation of Habana Nites.
 8. In January 2009, Eliel Segura knew little of the day-to-day operations of Habana Nites.
 9. In January 2009, Leon Damian was a signator on Habana Nites bank account.
 10. In January 2009, Leon Damian managed and operated Habana Nites, including purchasing beer and paying security personnel with his own money.
 11. In January 2009, Leon Damian owned two businesses, and employed Mr. Segura at these businesses.
 12. In 2008, Leon Damian was charged with possessing gambling devices and with keeping a gambling place.

VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above Findings of Fact, Respondent Eliel Segura or his agent, servant, or employee, engaged in a device, scheme or plan which surrendered control of the employees, premises or business to persons other than the Respondent, in violation of TEX. ALCO. BEV. CODE ANN. §§ 109.53 and 61.71(a)(1).
5. Based on the above Findings of Fact, Respondent Eliel Segura or his agent, servant, or employee, made a false statement or a misrepresentation in a renewal application, in violation of TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(4) and 61.71(a)(1).

SIGNED May 5, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS