

**DOCKET NO. 589506**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
SALOMON GALLEGOS	§	
D/B/A EL PARIAN	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG252360, BL	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-4326)	§	BEVERAGE COMMISSION

**AMENDED ORDER ADOPTING THE PROPOSAL FOR DECISION**

The above-styled and numbered cause is before the Administrator of the Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

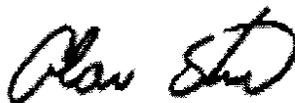
After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on the 22<sup>nd</sup> day of June, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on the 9<sup>th</sup> day of July, 2010. The 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 Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision 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 other motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party, which are not specifically adopted herein, are denied. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**IT IS THEREFORE ORDERED**, by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to §5.43(b) of the Texas Alcoholic Beverage Code and 16 TAC §31.1(b)(10), of the Commission Rules, that Respondent's permits are hereby **SUSPENDED** beginning at **12:01 A.M.** on **November 10, 2010** and shall remain suspended for **(25) twenty-five days**. Respondent may pay a civil penalty in the amount of **\$7,500.00** in lieu of suspension on or before **November 2, 2010**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above license or permit by the Code will be **SUSPENDED**.

This Order will become final and enforceable on the 25<sup>th</sup> day of October, 2010, unless a Motion for Rehearing is filed **before** that date.

**SIGNED** on September 29, 2010, at Austin, Texas.



Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

JWS/cb

**CERTIFICATE OF SERVICE**

I certify that service of this Order has been made upon all parties in the manner indicated below on this the 29<sup>th</sup> day of September, 2010.



Emily Helm  
General Counsel, Texas Alcoholic Beverage Commission

Honorable Judge Tanya Cooper  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
Fort Worth, Texas  
**VIA FACSIMILE: (817) 377-3706**

Salomon Gallegos  
d/b/a El Parian  
**RESPONDENT**  
6313 Twin Oaks Drive  
Fort Worth, TX 76119  
**VIA REGULAR MAIL**

John W. Sedberry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Lt. Gene Anderson  
Arlington District Office  
**VIA E-MAIL**

TABC Licensing Division

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 589506**

**REGISTER NUMBER:**

**NAME: SALOMON GALLEGOS**

**TRADENAME: EL PARIAN**

**ADDRESS: 3425 Deen Road, Fort Worth, Texas**

**DUE DATE: November 2, 2010**

**PERMITS OR LICENSES: BG 252360**

**AMOUNT OF PENALTY: \$7,500.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

Mail this form with your payment to:

**TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**P.O. Box 13127**

**Austin, Texas 78711**

**Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted.** Your payment will be returned if anything is incorrect. You **must** pay the entire amount of the penalty assessed.

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
P.O. Box No.

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

DOCKET NO. 458-10-4326

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
V.	§	OF
	§	
	§	
SALOMON GALLEGOS D/B/A	§	
EL PARIAN	§	
TARRANT COUNTY, TEXAS	§	
(TABC CASE NO. 589506)	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Salomon Gallegos d/b/a El Parian (Respondent), alleging a violation of the Texas Alcoholic Beverage Code (the Code). In TABC Staff's notice of hearing, it alleged that Respondent, or Respondent's agent, servant, or employee, possessed a narcotic on the licensed premises. TABC Staff requested that Respondent's permit and license be suspended<sup>1</sup> for 25 days or in lieu of any suspension, that Respondent pay a civil penalty<sup>2</sup> in the amount of \$7,500 in relation to this violation.

<sup>1</sup> (a) A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit. TEX. ALCO. BEV. CODE ANN. § 25.04.

\* \* \* \*

The Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found after notice and hearing, that any the permittee/retail dealer violated a provision of this Code or rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 61.71(a)(1).

\* \* \* \*

Permittee means a person who is the holder of a permit provided for in this Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE ANN. § 1.04(11).

<sup>2</sup> TEX. ALCO. BEV. CODE ANN. §§ 11.64 and 11.641.

The Administrative Law Judge (ALJ) finds the evidence was sufficient to establish that Respondent's employee possessed a narcotic on the licensed premises. Accordingly, the ALJ agrees with TABC Staff that a 25-day suspension of Respondent's permit and license, or payment of a civil penalty in the amount of \$7,500 in lieu of the permit and license's suspension, is appropriate.

## I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction in this proceeding. Therefore, those issues are addressed only in the Findings of Facts and Conclusions of Law.

On June 22, 2010, a hearing convened before ALJ Tanya Cooper, at the SOAH offices located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. TABC Staff was represented at the hearing by John Sedberry, TABC Staff Attorney. Respondent appeared and represented himself at the hearing. The hearing concluded and the record closed on that same day.

## II. EVIDENCE

Respondent holds a Wine and Beer Retailer's On Premise Permit, BG-252360, which includes a Retailer's On Premise Late Hours License, issued by TABC for Respondent's premises located at 3425 Deen Road, Fort Worth, Tarrant County, Texas. Respondent's permit and license were initially issued February 12, 1990, and have been continuously renewed since that date. TABC Agent Shawn Miller, TABC Agent Korah Pounds, Ricky Rodriguez and Respondent testified at the hearing. Several items of documentary evidence were admitted, including Respondent's TABC licensing history,<sup>3</sup> a photograph of the powdery substance in four bags confiscated at Respondent's licensed premise, and the laboratory results obtained after analysis of the powdery substance revealing that the substance was a narcotic, cocaine.

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<sup>3</sup> Respondent's licensing history contains eight closed violations. He received warnings on five citations, but paid civil penalties for a cash law violation, permitting consumption during prohibited hours violation, and possessing an uninvoiced/unauthorized alcoholic beverage on the premises.

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**A. TABC Staff's Evidence.**

TABC Agent Miller testified that he received an anonymous complaint that narcotics were being sold by Ricky Rodriguez, an employee at Respondent's licensed premises. Agent Miller stated that on October 24, 2009, he and Agent Pounds went to Respondent's licensed premises. They contacted Respondent telling him why they were at Respondent's premises and asked if Mr. Rodriguez was at the licensed premises. Respondent directed both agents to the parking lot where they observed Mr. Rodriguez directing patrons into parking places. Mr. Rodriguez was wearing a black shirt with "Staff" printed on it.

According to Agent Miller, he and Agent Pounds approached Mr. Rodriguez and told him why they were there. Mr. Rodriguez placed his hands in his pants' pockets after the agents began conversing with him. Agent Miller said he asked if Mr. Rodriguez was armed or if he had any narcotics on his person. Mr. Rodriguez replied, "no." Nevertheless, for their safety, Agent Miller said he patted Mr. Rodriguez down for concealed weapons. While patting Mr. Rodriguez down, Agent Miller stated he felt baggies in Mr. Rodriguez's pockets. Agent Miller removed these items from Mr. Rodriguez's pockets and recovered four bags of a white powdery substance. Mr. Rodriguez told the agents he had forgotten the bags were in his pants. At that point, Mr. Rodriguez was placed under arrest.

Agent Miller said the seized baggies were transmitted to the Texas Department of Public Safety laboratory in Garland with a proper chain of custody being observed. Results from analysis of the seized powder revealed that Mr. Rodriguez was in possession of 1.82 grams of cocaine at the time of his arrest.<sup>4</sup>

TABC Agent Pounds confirmed Agent Miller's account of their contact with Mr. Rodriguez at Respondent's licensed premises. Agent Pounds opined that Mr. Rodriguez's statement about

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<sup>4</sup> TABC Staff's Exhibit 4.

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forgetting the narcotic was in his pants suggested that he was aware of possessing the narcotic at some point.

**B. Respondent's Evidence.**

Ricky Rodriguez is Respondent's grandson. On October 24, 2009, he was working at the licensed premises. Mr. Rodriguez said he never tried to sell narcotics at the licensed premises, but he had friends that would ask him to get drugs for them. According to Mr. Rodriguez, he had never discussed narcotics with Respondent or brought drugs to the family home. He admitted that bringing narcotics to the licensed premises was a mistake and said he took full responsibility for his actions.

Respondent testified that he had operated this licensed premise for 20 years. He described it as a "family place" operated by him and his family members. He acknowledged receiving a few previous citations from TABC Staff over the course of 20 years, but opined that none of the citations received were for serious violations.

Respondent agreed that Mr. Rodriguez was working at the licensed premises when this incident occurred, but maintained that he had no idea that Mr. Rodriguez was in possession of drugs. Respondent stated that he did not condone any drug usage at the licensed premises. He described another incident when he discovered a drug dealer at the licensed premises. According to Respondent, he reported the matter to the police and detained the dealer until law enforcement officers arrived. Respondent said when a police officer arrived, the officer told the dealer to leave the premises and not return. Respondent stated that he asked the officer why he did not arrest the dealer and was told that it was too much paperwork to do for an offense in which the dealer would be out on bond the following day. Respondent opined it was unfair for him to be penalized by TABC Staff so severely for a situation that he was not aware of when drug dealers are not arrested even when caught by the police.

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Respondent completed his testimony stating that he did not have \$7,500 to pay a civil penalty in this case, and that if he were to be closed for 25 days, it would work an even greater financial hardship on him. He opined that if Mr. Rodriguez had possessed the drugs on the licensed premises, then it should be Mr. Rodriguez who is penalized and not Respondent.

### III. ANALYSIS

The issue to be determined concerning this alleged violation is whether Respondent's employee possessed a narcotic on the licensed premises. The evidence in this case clearly established that Respondent's employee, Ricky Rodriguez, possessed narcotics, four bags of cocaine, on Respondent's licensed premises.<sup>5</sup> The ALJ understands Respondent's contention that he was not aware of Mr. Rodriguez's activities and that Mr. Rodriguez, as opposed to Respondent, should be held accountable for his actions. However, Respondent, as the TABC-issued permit/license holder, is the person ultimately responsible for the actions of any employee on the licensed premises that are in violation of the Code or rules adopted by TABC.

TABC Staff has requested assessment of a 25-day suspension of Respondent's permits, or in the alternative, payment of a civil penalty in the amount of \$7,500. Based upon the factors discussed above, the ALJ agrees with TABC Staff that the requested penalty for this violation is appropriate.

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<sup>5</sup> Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person. TEX. ALCO. BEV. CODE ANN. § 11.49(a). See also TEX. ALCO. BEV. CODE ANN. § 1.04(19).

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**IV. RECOMMENDATION**

The ALJ recommends that Respondent's permits be suspended for a period of 25 days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$7,500.

**V. PROPOSED FINDINGS OF FACT**

1. Salomon Gallegos d/b/a El Parian (Respondent) holds a Wine and Beer Retailer's On Premise, BG-252360, which includes a Retailer's On Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC) for Respondent's premises located at 3425 Deen Road, Fort Worth, Tarrant County, Texas.
2. On October 24, 2009, Ricky Rodriguez was working at Respondent's licensed premises; he was observed by TABC agents on the premises' parking lot directing the parking of patrons' cars.
3. On that day, TABC agents recovered four bags of a white powdery substance from Mr. Rodriguez's pants pocket, while Mr. Rodriguez was working at Respondent's licensed premises.
4. The substance seized from Mr. Rodriguez at Respondent's licensed premises was cocaine, a narcotic.
5. A hearing in this matter was conducted on June 22, 2010, at the State Office of Administrative Hearings, 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas. Administrative Law Judge Tanya Cooper presided. TABC Staff was represented by TABC Staff Attorney, John Sedberry. Respondent appeared in person and represented himself. The hearing concluded and the record closed on that same day.

**VI. PROPOSED CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, and 61.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting 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. chs. 2001 and 2003.
3. Respondent received adequate notice of the proceedings and hearing as required by TEX.

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GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. Based upon Proposed Findings of Fact Nos. 1 - 4, Respondent's employee possessed a narcotic on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 25.04, 61.71(a)(1), and 104.01(9).
4. Based on the foregoing Findings of Fact Nos. 1 - 4 and Conclusion of Law No. 3, Respondent's Wine and Beer Retailer's On Premise, BG-252360, which includes a Retailer's On Premise Late Hours License, issued by TABC should be suspended for a period of 25 days, or in lieu of any suspension, Respondent should be allowed to pay a civil penalty in the amount of \$7,500 pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 11.64, 11.641, and 61.71(a)(1).

SIGNED July 9, 2010.



TANYA COOPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS