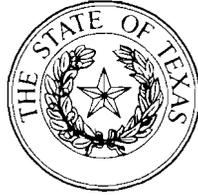


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED

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TABCOHOUSTON  
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December 2, 2011

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-11-6857**  
***Thomas Nunley Warren, Senior d/b/a Sandy's Lounge***

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera", written over a horizontal line.

**VERONICA S. NAJERA**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Enclosure

xc Sandra K. Patton, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008 - **VIA REGULAR MAIL**  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
James D. Jepson, 410 N. Nelson, Fort Stockton Tx. 79735 -**VIA REGULAR MAIL**

El Paso State Office Building  
401 East Franklin Avenue Suite 580 El Paso, Texas 79901  
915.834.5650 (Telephone) 915.834.5657 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

SOAH DOCKET NO. 458-11-6857

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
	§	
<b>Petitioner</b>	§	
V.	§	
	§	
THOMAS NUNLEY WARREN	§	OF
d/b/a SANDY'S LOUNGE,	§	
<b>Respondent</b>	§	
	§	
(TABC CASE NOS. 598575,	§	
598576, 598577 & 598822)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks the cancellation of the alcoholic beverage permit issued to Thomas Nunley Warren d/b/a Sandy's Lounge (Respondent) based on the allegation that narcotics were sold on the licensed premises. Staff alleges business was conducted by Respondent in a manner which was against the public's general welfare, health, peace, morals, safety, and sense of decency.

After a review of the evidence of record and applicable law, the Administrative Law Judge (ALJ) recommends cancellation.

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

There are no contested issues of notice and jurisdiction. Petitioner issued Notice of Hearing (NOH) on July 7, 2011. An Amended NOH was issued on July 12, 2011. The hearing convened on October 4, 2011. ALJ Veronica S. Najera presided over the hearing at the State Office of Administrative Hearings, El Paso Regional Office. Staff was represented by Sandra Patton, staff attorney. Respondent was represented by James D. Jepson, attorney. The record closed on October 4, 2011.

**II. DISCUSSION**

**A. Background**

Sandy's Lounge is located in Fort Stockton, Pecos County, Texas, and is owned and operated by permittee Thomas Nunley Warren. The TABC issued Respondent a wine and beer retailer's on premise permit number BG-650053, which includes a retailer's on premise late hour license, in January 2007. Permittee operates another establishment known as the Goodtime Lounge in Fort Stockton, which is licensed under a different permit. Respondent has not been

## II. DISCUSSION

### A. Background

Sandy's Lounge is located in Fort Stockton, Pecos County, Texas, and is owned and operated by permittee Thomas Nunley Warren. The TABC issued Respondent a wine and beer retailer's on premise permit number BG-650053, which includes a retailer's on premise late hour license, in January 2007. Permittee operates another establishment known as the Goodtime Lounge in Fort Stockton, licensed under a different permit. Respondent does not have any prior adjudicated administrative violations.

### B. Petitioner's Allegations

TABC agents conducted an undercover operation in 2009, which resulted in the purchase of narcotics at Sandy's Lounge. Staff alleges the bartenders were in charge and assisted and/or facilitated the purchase of narcotics on the premises. Staff further alleges the drug sales, attempted drug sales, and criminal convictions illustrate a place or manner violation, and plead the following:

- Petitioner alleges Respondent engaged in lewd, immoral, or offensive to the public decency conduct by possessing narcotics or permitting a person on the licensed premises to do so, in violation of TEX. ALCO. BEV. CODE ANN. (Code) § 104.01(9).
- Petitioner alleges that Respondent conducted his business in a place or manner which warrants the cancellation of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people, in violation of Code § 61.71(a)(1) and § 61.71(a)(17).

**C. Petitioner's Direct Case**

TABC agent Ronald Swenson testified he was the agent in charge of an undercover operation which began in May 2009. In the span of one year, approximately 20 undercover visits were conducted at various bars in Fort Stockton, and about 10 visits were made to Sandy's Lounge. He saw the permittee only once at Sandy's Lounge. Agent Swenson provided background information regarding the inception of the investigation. He said gambling complaints regarding permittee's other bar, the Goodtime Lounge, ultimately led the TABC to Sandy's Lounge. He became familiar with the bartenders because both bars share employees.

On July 3, 2009, agent Swenson and his partner agent Prieto<sup>1</sup> were in an undercover capacity at the Goodtime Lounge. He said he asked bartender Chasidy Cameron about purchasing narcotics. A purchase was not done that evening, but subsequent purchases were completed:

1. On July 11, 2009, agent Swenson and his partner arrived at Sandy's Lounge and observed the bartender Ms. Cameron from the Goodtime Lounge working the bar. She was the only employee at the establishment and was behind the bar serving drinks and taking orders. The agent said it was "fairly busy with 10 to 12 patrons." Agent Swenson observed the bartender approach a group at a pool table, and returned to the bar area accompanied by a man. Agent Swenson said the man was "checking them out." A moment later, another man, later identified as Alex Ramirez said to them, "I hear you guys are looking to score." Agent Swenson testified he had not spoken to the bartender about purchasing narcotics that evening. The agent said that once it was confirmed they wanted to purchase drugs, Mr. Ramirez instructed another man to go to the bathroom. The bartender was behind the bar throughout the encounter. Ultimately, the agent paid \$60.00 for 0.16 grams of cocaine<sup>2</sup> which was handed over to the agent in the restroom. After the sale, Mr. Ramirez demanded another beer even though it was closing

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<sup>1</sup> Agent Prieto's first name is not of record.

<sup>2</sup> Petitioner's Exhibit No. 3, photographs; and Petitioner's Exhibit No. 4 (a) and (b), drug analysis lab report.

time, and the bartender obliged. Agent Swenson noticed the friendly interaction between the bartender and Mr. Ramirez.

2. On August 1, 2009, Deborah Rios was the bartender at Sandy's Lounge when the agents arrived. There were no other employees working. Initially, the two agents were the only persons in the bar. Agent Swenson testified he had previously established contact with Ms. Rios by inquiring about a drug purchase. Agent Swenson said the manager of both bars, Paul Carrasco, entered the bar and instructed the bartender to close early and then left. Agent Swenson explained Mr. Carrasco had been previously identified by the TABC as manager of both establishments.

Sandy's Lounge remained open because a large group of people subsequently arrived. Shortly thereafter, a man the agents knew, identified as Rene Valdez Lopez, entered the bar. They had been previously introduced to him on May 22, 2009, by a bartender at Goodtime Lounge. On that occasion, the agents purchased drugs from Mr. Lopez at the Goodtime Lounge.

On August 1, 2009, Mr. Lopez procured the narcotic from his brother Orlando Valdez Lopez who was also at the establishment. Mr. Lopez handed a baggie to agent Prieto who was sitting at the bar. The narcotic exchange occurred in front of the bartender. Agent Swenson testified the bartender was behind the bar, close enough to hear the conversation and see the actions. The bartender and Mr. Lopez conversed in a personal and friendly manner. The agents purchased one gram of cocaine for \$50.00 on August 1, 2009.<sup>3</sup>

3. On October 23, 2009, Agent Swenson testified he was at the Goodtime Lounge and upon inquiring about the purchase of drugs with the bartender Billie Jean Harvey; he was specifically referred to Sandy's Lounge. Ms. Harvey called the bartender at Sandy's Lounge to arrange the purchase. When agent Swenson and agent Prieto arrived at Sandy's Lounge, the bartender Amber Roghair said, "You must be the guys from Goodtime Lounge" and asked them

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<sup>3</sup> Petitioner's Exhibit No. 8, photographs; and Petitioner's Exhibit No. 9 (a) and (b), drug analysis lab report.

what they wanted to purchase. They told her a “couple of 50’s.” Agent Swenson said the bartender made two calls and sent multiple text messages attempting to procure the purchase. The bartender was not able to arrange the purchase that evening, but gave them her telephone number and told the agents to give her more notice next time. The bartender was the only employee at the establishment.

4. Agent Swenson said that he sent bartender Ms. Roghair a text message on October 29<sup>th</sup> requesting a purchase of one-half ounce of cocaine. On October 30, 2009, he went to Sandy’s Lounge. Ms. Roghair was the only employee at the establishment. Agent Swenson asked her if she “had the stuff,” and she replied, “I’m working on it.” Verbal exchanges and text messages were exchanged regarding amount and price of purchase. While the agent was waiting, Mr. Carrasco arrived, went behind the bar, served himself a coke, and sat a couple of seats down from the agents. A man arrived and made contact with Ms. Roghair. The man followed agent Swenson into the restroom where he gave the agent two baggies for \$400.00. When he exited the restroom, agent Swenson gave Ms. Roghair a thumbs-up and tipped her \$50.00. He slid the money across the bar and said to her, “Thanks for the hook up.” She replied, “Was it good?” Mr. Carrasco remained seated at the bar throughout the verbal exchange. Agent Swenson said Mr. Carrasco knew he was seeking to buy drugs because he had asked him for a hook-up on a prior occasion. The agent purchase 5.45 grams of cocaine on October 30, 2009.<sup>4</sup>

Agent Swenson said four administrative notices were issued to Respondent. Eight federal criminal convictions resulted from the undercover investigation under a federal conspiracy case. Four persons convicted were employees of Respondent.

#### **D. Respondent’s case**

Respondent argued Mr. Warren did not have actual knowledge of the narcotic sales. At this point in the hearing, the parties stipulated the permittee did not have actual knowledge.

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<sup>4</sup> Petitioner’s Exhibit No. 14, photographs; and Petitioner’s Exhibit No. 15 (a) and (b), drug analysis lab report.

Respondent's granddaughter testified briefly that changes were made after the investigation. Specifically, the employees are now screened; and an uncle helps manage the establishment.

### III. DISCUSSION AND RECOMMENDATION

Respondent argued the TABC is "trying to make his client at fault for what others did at the bar and that he would have been federally indicted if he were at fault." Staff, however, is not alleging Respondent sold narcotics. Staff is alleging Respondent engaged in lewd, immoral, or conduct which is offensive to the public decency by permitting a person on the licensed premises to possess narcotics. The persons permitted to possess narcotics were Respondent's employees and patrons. Specifically, Staff asserts the bartenders were in charge of the establishment and they assisted and/or facilitated the purchase of narcotics on the premises. The Code § 1.04 (11) defines "permittee" as a person who is the holder of a permit or an agent, servant, or employee of that person. Under the Code, Respondent is responsible for his employees and the management of the licensed premises. Actual knowledge of the criminal activity is not required. Therefore, Respondent's argument is not persuasive. The ALJ agrees with Staff that the drug sales which took place and the attempted drug sales constitute a place or manner violation.

Furthermore, the evidence of record reveals Respondent was not at the licensed premises routinely. In a year span, he was observed once at Sandy's lounge. The lack of presence poses an issue because the facts in evidence indicate Respondent did not maintain exclusive control or manage the daily operations of the establishment. There is no evidence to the contrary, aside from the testimony indicating employees are now being screened and the granddaughter and uncle help manage the premises on a part-time basis. But, there are not any details in evidence regarding the daily management of the licensed premises.

The ALJ recommends cancellation based on the gravity and extent of the violations; on the fact the sale of cocaine is a narcotics related offense defined as an offense against the general welfare under 16 TAC § 35.31; and on the fact Respondent has failed to control and manage the

licensed premises permitting a person on the licensed premises to engage in lewd, immoral, or conduct which is offensive to the public decency.

#### IV. FINDINGS OF FACT

1. Notice of Hearing (NOH) was issued on July 7, 2011. An Amended NOH was issued on July 12, 2011. 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 statement of the matters asserted. The notice of hearing also contained the required 12-point, bold-face type default language.
2. A hearing convened on October 4, 2011, in the matter of the Texas Alcoholic Beverage Commission (Petitioner) versus Thomas Nunley Warren d/b/a Sandy's Lounge (Respondent).
3. The hearing was held before Administrative Law Judge (ALJ) Veronica S. Najera at the State Office of Administrative Hearings, El Paso Regional Office, State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas.
4. Staff was represented by Sandra Patton, staff attorney. Respondent was represented by James D. Jepson, attorney.
5. The record closed on October 4, 2011.
6. Sandy's Lounge operates under the authority of a wine and beer retailer's on premise permit number BG-650053, which includes a retailer's on premise late hour license, issued in January 2007 by the Texas Alcoholic Beverage Commission.
7. Sandy's Lounge is situated in Fort Stockton, Pecos County, Texas.
8. Respondent is licensed to operate another establishment known as the Goodtime Lounge in Fort Stockton, Pecos County, Texas.
9. TABC agents conducted an undercover operation in 2009 in Fort Stockton, which resulted in the purchase of narcotics at Sandy's Lounge.
10. On July 3, 2009, agent Ronald Swenson and his partner agent Prieto asked bartender Chasidy Cameron about purchasing narcotics at the Goodtime Lounge. A purchase was not done that evening.

11. On July 11, 2009, agent Swenson and his partner arrived at Sandy's Lounge and observed the bartender Ms. Cameron from the Goodtime Lounge working the bar. She was the only employee at the establishment.
12. The bartender, Ms. Cameron, approached patrons by a pool table, and one of those patrons said to the agents, "I hear you guys are looking to score." The agents were seated at the bar.
13. Ms. Cameron was behind the bar throughout the encounter between the drug dealer and the TABC agents.
14. On July 11, 2009, TABC agents purchased 0.16 grams of cocaine for \$60.00 inside the licensed premises.
15. On August 1, 2009, a narcotic exchange occurred at the bar in front of the bartender Deborah Rios. A drug dealer handed a baggie to a TABC agent seated at the bar.
16. The agents purchased one gram of cocaine for \$50.00 on August 1, 2009, inside the licensed premises.
17. On October 23, 2009, Agent Swenson inquired about purchasing drugs with the bartender Billie Jean Harvey at the Goodtime Lounge.
18. On October 23, 2009, the bartender Ms. Harvey called the bartender at Sandy's Lounge to arrange a drug purchase.
19. When agent Swenson and agent Prieto arrived at Sandy's Lounge, the bartender Amber Roghair said, "You must be the guys from Goodtime Lounge" and asked them what they wanted to purchase. They told her a "couple of 50's."
20. On October 23, 2009, the bartender at Sandy's Lounge made two calls and sent multiple texts attempting to arrange a drug purchase.
21. The bartender was not able to arrange a drug purchase on October 23, 2009, but gave the TABC agents her telephone number and told the agents to give her more notice next time.
22. The bartender was the only employee at Sandy's Lounge on October 23, 2009.
23. Agent Swenson sent bartender Ms. Roghair a text message on October 29<sup>th</sup> requesting a purchase of one-half ounce of cocaine.

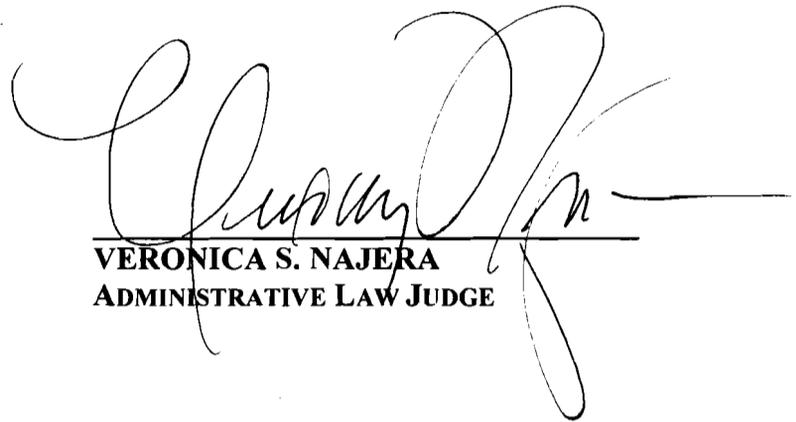
24. On October 30, 2009, Ms. Roghair was the only employee at the establishment when the agents arrived. Agent Swenson asked her if she “had the stuff,” and she replied, “I’m working on it.”
25. Paul Carrasco, the manager of Sandy’s Lounge, arrived and remained seated at the bar throughout the verbal exchange between the bartender and the agents.
26. A man arrived and made contact with Ms. Roghair. The man followed agent Swenson into the restroom, they exchanged 2 baggies for \$400.00.
27. Agent Swenson gave Ms. Roghair a thumbs-up when he exited the restroom and tipped her \$50.00. He slid the money across the bar and said to her, “Thanks for the hook up.” She replied, “Was it good?”
28. The agent purchased 5.45 grams of cocaine on October 30, 2009, inside the licensed premises.
29. Permittee was observed only once at Sandy’s Lounge during the span of the one year investigation.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Code § 5.43 and TEX. GOV’T CODE ANN. §§ 2003.021(b) and 2003.042.
3. Notice of hearing was provided pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.401 and Code § 11.63.
4. Based upon the Findings of Fact, Respondent engaged in lewd, immoral, or conduct which is offensive to the public decency by permitting a person on the licensed premises to possess narcotics, in violation of Code § 104.01(9).
5. Based upon the Findings of Fact, Respondent conducted his business in a place or manner which warrants the cancellation of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people, in violation of Code § 61.71(a)(1) and § 61.71(a)(17).

6. Respondent's permit should be cancelled.

**SIGNED December 2, 2011.**



**VERONICA S. NAJERA**  
**ADMINISTRATIVE LAW JUDGE**

**TABC DOCKET NO(s). 598575, 598576, 598577 & 598822**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>THOMAS NUNLEY WARREN SR. D/B/A SANDY LOUNGE, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT/LICENSE NO. BG650053, BL</b>	§	
	§	
<b>PECOS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-6857)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 30<sup>th</sup> day of April, 2012, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Veronica S. Najera presiding. The hearing convened on October 4, 2011 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on December 2, 2011. 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. On January 13, 2012, Respondent filed a Request for Additional and Amended Findings of Fact and Conclusions of Law. Petitioner responded on January 17, 2012. On January 25, 2012, the Administrative Law Judge issued a letter indicating that Respondent's January 13, 2012 filing failed to state a proper exception. The Administrative Law Judge did not make any changes to the Proposal for Decision.

After review and due consideration of the record, including the Proposal for Decision and the post-Proposal filings, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**THEREFORE, IT IS ORDERED** that Wine and Beer Retailer's On Premise Permit No. BG650053 and the associated Retailer's On Premise Late Hours License held by Thomas Nunley Warren Sr. d/b/a Sandy Lounge are hereby **CANCELLED**.

This Order will become **final and enforceable** on the 25<sup>th</sup> day of May, 2012, **unless a Motion for Rehearing is filed by the 24<sup>th</sup> day of May, 2012.**

**SIGNED** this the 30<sup>th</sup> day of April, 2012, at Austin, Texas.



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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

#### **CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 30<sup>th</sup> day of April, 2012.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Hon. Veronica Najera  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
401 E. Franklin Ave. Ste. 580  
El Paso, TX 79901  
**VIA FACSIMILE: (512) 322-0472**

Thomas Nunley Warren Sr.  
d/b/a Sandy Lounge

**RESPONDENT**

P.O. Box 609

Ft. Stockton, TX 79735

***VIA REGULAR & CERTIFIED MAIL: 7006 2760 0004 7904 2282***

James D. Jepson

**ATTORNEY FOR RESPONDENT**

P.O. Box 1052

Mc Camey, TX 79752

***VIA REGULAR MAIL***

***AND VIA FACSIMILE: (432) 652-3402***

Sandra K. Patton

**ATTORNEY FOR PETITIONER**

TABC Legal Division