

DOCKET NO. 593745

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
SPORTS BAR LA BOLA 8 INC. D/B/A SPORTS BAR LA BOLA 8, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB720905, LB & PE	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-0255)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this **10th** day of August, 2011, 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 Timothy Horan presiding. The hearing convened on December 10, 2010 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 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. 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, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 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.

IT IS THEREFORE ORDERED that Respondent pay a civil penalty in the amount of **\$18,000.00** on or before **SEPTEMBER 6, 2011**. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above permits by the

Code will be **SUSPENDED** beginning at 12:01 A.M. on **SEPTEMBER 14**, 2011, and shall remain suspended for **SIXTY (60)** consecutive days.

If this Order is appealed and judgment is issued affirming the Order, Respondent shall pay the civil penalty in the amount of **\$18,000.00** on or before the **TENTH (10th)** day following the date the judgment is signed. If not paid by that date, the privileges granted by the Commission and activities authorized under the above permits by the Code will be **SUSPENDED** beginning at 12:01 A.M. on the **EIGHTEENTH (18th)** day following the date the judgment is signed and shall remain suspended for **SIXTY (60)** consecutive days.

This Order will become final and enforceable on the **5TH** day of **SEPTEMBER**, 2011, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 10th day of August, 2011, at Austin, Texas.



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 10th day of August , 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 100
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Sports Bar La Bola 8 Inc.
d/b/a Sports Bar La Bola 8
RESPONDENT
2423 N Freeway
Houston, Texas 77009-5105
VIA REGULAR MAIL

Michael Craig
ATTORNEY FOR RESPONDENT

1533 W. Alabama, Suite 100
Houston, Texas 77006
VIA REGULAR MAIL
AND VIA FACSIMILE: (713) 521-7365

Shelia Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA EMAIL: shelia.lindsey@tabc.state.tx.us

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 593745

REGISTER NUMBER:

NAME: SPORTS BAR LA BOLA 8 INC.

TRADENAME: SPORTS BAR LA BOLA 8

ADDRESS: 2423 N FREEWAY, HOUSTON, TEXAS 77009-5105

DUE DATE: SEPTEMBER 6, 2011

PERMITS OR LICENSES: MB720905, LB & PE

AMOUNT OF PENALTY: \$18,000

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.

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 2, 2011

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

VIA REGULAR MAIL

RE: Docket No. 458-11-0255; Texas Alcoholic Beverage Commission v. Sports Bar La Bola 8 Inc., d/b/a Sports Bar La Bola 8

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 § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/rlm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and audio cd)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Michael Craig, Burleson & Craig, 1533 W. Alabama, Suite 100, Houston, TX 77006 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-11-0255

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
	§	
V.	§	OF
	§	
SPORTS BAR LA BOLA 8 INC.,	§	
D/B/A SPORTS BAR LA BOLA 8	§	
 Respondent	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 593745)	§	ADMINISTRATIVE HEARINGS
		SSOAH

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Sports Bar La Bola 8, Inc., d/b/a Sports Bar La Bola 8 (Respondent), alleging that Respondent knowingly possessed alcoholic beverages on the licensed premises which were not covered by invoice. Petitioner requested cancellation of Respondent’s permit. The Administrative Law Judge (ALJ) recommends that Respondent’s permit be suspended for 60 days and that Respondent be allowed to pay a civil penalty in the amount of \$18,000 in lieu of a suspension.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction in this case under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 28.06 (c). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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 TEX. GOV’T CODE ANN. ch. 2003.

On October 18, 2010, Petitioner issued its notice of hearing, directed to Respondent at his address of record. The notice 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, as required by TEX. GOV'T CODE ANN. § 2001.052.

On December 10, 2010, a hearing convened before SOAH ALJ Timothy Horan at the SOAH field office located at 2020 North Loop West, Suite 111, Houston, Texas. Petitioner was represented at the hearing by Shelia A. Lindsey, TABC Staff Attorney. Respondent was represented by Michael Craig, attorney. Following presentation of evidence, the record closed on December 10, 2010.

II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61(b) (2), TABC may suspend for not more than 60 days or cancel a permit if the permit holder violates a provision of the code. Further, TEX. ALCO. BEV. CODE ANN. § 28.06 (c) prohibits the knowing possession of alcoholic beverages on the licensed premises which are not covered by an invoice from the supplier from which the alcoholic beverages were purchased.

III. EVIDENCE

A. Respondent's Permit

Respondent holds a Mixed Beverage Permit, MB-720905, with accompanying Mixed Beverage Late Hours Permit and Beverage Cartage Permit, issued by TABC, for the premises located at 11939 Eastex Freeway, Suite F, Houston, Harris County, Texas. This permit was originally issued on May 1, 2009.

B. Possession of Alcoholic Beverages on the Licensed Premises Not Covered by Invoice

The parties stipulated that on or about February 19, 2010, Respondent or Respondent's agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages not covered by invoice. By knowingly possessing or permitting the possession of an alcoholic beverages not covered by invoice, Respondent violated TEX. ALCO. BEV. CODE ANN. § 28.06 (c).

The parties further stipulated that Respondent had up to 44 separate purchases of liquor and beer which consisted of 60 bottles of liquor and 80 cases of beer. These alcoholic beverages were not covered by invoice.

IV. ARGUMENT

TABC seeks cancellation of Respondent's permit. TABC argued that Respondent, on forty-four separate occasions, purchased alcoholic beverages from an unauthorized source and that on February 19, 2010, TABC seized 60 bottles of liquor and 80 cases of beer. Almost the entire inventory of Respondent's alcoholic beverages was not covered by an invoice.

Respondent's attorney argued against cancellation and seeks mitigation in the penalty to be assessed. Respondent's attorney asserted that this was his client's first TABC violation since he acquired the permit in May 2009, and that he has operated the establishment according to the TABC Rules and Code since the incident date of February 19, 2010. Respondent further argued that TABC agents inspected Respondent's premises after February 19, 2010, and found no Code violations. Respondent is purchasing alcoholic beverages from an authorized supplier and all alcoholic beverages are invoiced. Further, Augustin Negrete, the owner of the club, has recently received the TABC seller server training certificate.

V. RECOMMENDATION

The stipulation of evidence clearly establishes that Respondent knowingly possessed alcoholic beverages on the licensed premises which were not covered by invoice. The ALJ fully appreciates TABC Staff argument about the quantity of alcoholic beverages purchased by Respondent not covered by invoice. It was a blatant disregard of the Code. But because this was Respondent's first Code violation and he has operated his establishment with no further TABC violations, has since purchased alcoholic beverages from an authorized supplier covered by invoice, and has received additional TABC training; the ALJ recommends Respondent's permit be suspended for 60 days and that Respondent be allowed to pay a civil penalty in the amount of \$18,000 in lieu of a suspension.

VI. FINDINGS OF FACT

1. Sports Bar La Bola 8 Inc. d/b/a Sports Bar La Bola 8 (Respondent) holds a Mixed Beverage Permit, MB-720905, with accompanying Mixed Beverage Late Hours Permit and Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 11939 Eastex Freeway, Suite F, Houston, Harris County, Texas.
2. Respondent's permit was originally issued on May 1, 2009.
3. On February 19, 2010, Respondent or Respondent's agent, servant, or employee, knowingly possessed or permitted the possession of alcoholic beverages, specifically, 60 bottles of liquor and 80 cases of beer not covered by invoice.
4. On October 18, 2010, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent at his address of record.
5. The notice 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.
6. On December 10, 2010, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan at the SOAH field office located at 2020 North Loop West, Suite 111, Houston, Texas.

7. Petitioner was represented at the hearing by Shelia A. Lindsey, TABC Staff Attorney. Respondent was represented by Michael Craig, attorney.
8. Following presentation of evidence, the record closed on December 10, 2010.

VII. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this case. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61 and 28.06 (c)
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent knowingly possessed alcoholic beverages on the licensed premises which were not covered by invoice. TEX. ALCO. BEV. CODE ANN. § 28.06 (c).
5. Based on the foregoing, the Respondent permits should be suspended for a period of 60 days, or in lieu of suspension, Respondent shall pay a civil penalty in the amount of \$18,000

SIGNED February 2, 2011.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS