

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
G.H.A. INC. D/B/A G.H.A. INC., Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT MB695085, LB	§	
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-0897)	§	BEVERAGE COMMISSION

ORDER DENYING MOTION FOR REHEARING

CAME ON FOR CONSIDERATION this 21st day of October, 2014, 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 Rex A. Shaver presiding. The hearing convened on February 7, 2014 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 April 3, 2014. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, I issued an Order on September 12, 2014 adopting the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision and incorporating those Findings of Fact and Conclusions of Law into that Order, as if such were fully set out and separately stated therein. The Order required suspension of Respondent's permits for 22 days, but Respondent was given the option of paying a civil penalty in the amount of \$6,600.00.

A timely Motion for Rehearing was filed by respondent on October 5, 2014. Petitioner responded on October 13, 2014.

Having considered Respondent's Motion for Rehearing and Petitioner's response thereto, the Motion for Rehearing is **DENIED**.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and the activities authorized under the above permit by the Code will be **SUSPENDED beginning at 12:01 a.m. on November 11, 2014** and shall remain suspended for **TWENTY-TWO (22) CONSECUTIVE DAYS, UNLESS a civil penalty in the amount of \$6,600.00 is paid ON OR BEFORE November 5, 2014.**

If this Order is appealed and judgment is issued affirming the Order, the privileges granted by the Commission and the activities authorized under the above permit 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 twenty-two (22) consecutive days, unless a civil penalty in the amount of \$6,600.00 is paid on or before the **tenth (10th)** day following the date the judgment is signed.

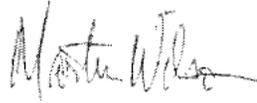
SIGNED this the 21st day of October, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 21st day of October, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (512) 322-2061

G.H.A. Inc.
d/b/a G.H.A. Inc.
RESPONDENT
2732 W TC Jester Blvd
Houston, TX 77018
VIA FIRST CLASS MAIL, CMRRR # 70050390000575497070

Paul Decuir Jr.
ATTORNEY FOR RESPONDENT
P.O. Box 9687
Houston, Texas 77213-0687
VIA FIRST CLASS MAIL, CMRRR#70050390000575497063
AND
VIA FACSIMILE: (713) 450-2773

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.texas.gov

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 619421, 619274, 620552, and 619284 REGISTER NUMBER:

NAME: G.H.A. Inc.

TRADENAME: G.H.A. Inc.

ADDRESS: 2732 W TC Jester Blvd., Houston, Texas

DUE DATE: November 5, 2014

PERMITS OR LICENSES: MB695085, LB

AMOUNT OF PENALTY: \$6,600.00

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

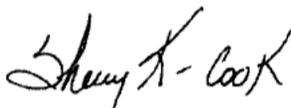
Area Code/Telephone No.

IT IS THEREFORE ORDERED that the privileges granted by the Commission and the activities authorized under the above permit by the Code will be **SUSPENDED beginning at 12:01 a.m. on October 22, 2014** and shall remain suspended **for TWENTY-TWO (22) CONSECUTIVE DAYS, UNLESS** a civil penalty in the amount of **\$6,600.00 is paid ON OR BEFORE October 15, 2014.**

If this Order is appealed and judgment is issued affirming the Order, the privileges granted by the Commission and the activities authorized under the above permit by the Code will be **suspended** beginning at 12:01 a.m. on the **fourteenth (14th)** day following the date the judgment is signed and shall remain suspended for twenty-two (22) consecutive days, unless a civil penalty in the amount of \$6,600.00 is paid on or before the **seventh (7th)** day following the date the judgment is signed.

This Order will become final and enforceable on the 7th day of October, 2014, unless a Motion for Rehearing is filed by the 6th day of October, 2014.

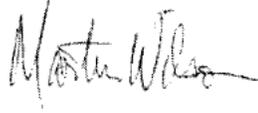
SIGNED this the 12th day of September, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 12th day of September, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (512) 322-2061

G.H.A. Inc.
d/b/a G.H.A. Inc.
RESPONDENT
2732 W TC Jester Blvd
Houston, TX 77018
VIA FIRST CLASS MAIL, CMRRR # 70120470000133008583

Paul Decuir Jr.
ATTORNEY FOR RESPONDENT
P.O. Box 9687
Houston, Texas 77213-0687
VIA FIRST CLASS MAIL, CMRRR# 70120470000133008576
AND
VIA FACSIMILE: (713) 450-2773

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.texas.gov

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 619421, 619274, 620552, 619284

REGISTER NUMBER:

NAME: G.H.A. Inc.

TRADENAME: G.H.A. Inc.

ADDRESS: 2732 W TC Jester Blvd., Houston, TX 77018

DUE DATE: October 15, 2014

PERMITS OR LICENSES: MB695085, LB

AMOUNT OF PENALTY: \$6,600.00

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:
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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.

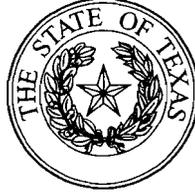
Signature of Responsible Party

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

April 3, 2014

RECEIVED

APR 21 2014

HOUSTON
TX

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-14-0897; Texas Alcoholic Beverage Commission vs. G.H.A. Inc. d/b/a G.H.A. Inc.

Dear Ms. Cook:

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(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mr
Enclosure

xc Sandra Patton Texas Alcoholic Beverage Commission, 427 W. 20th 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**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**
Paul Decuir, Jr., Attorney at Law, P.O. Box 9687, Houston, TX 77213-0687 - **VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

SOAH DOCKET NO. 458-14-0897

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
v.	§	
	§	OF
G.H.A. INC.	§	
D/B/A G.H.A. INC.	§	
PERMIT NO. MB695085, LB	§	
Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
TABC CASE NO. 619421, 619274, 620552,	§	ADMINISTRATIVE HEARINGS
619284		

PROPOSAL FOR DECISION

G.H.A. Inc. d/b/a G.H.A. (Respondent) holds a mixed beverage permit which includes a mixed beverage late hours permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2732 W. T.C. Jester Boulevard, Houston, Harris County, Texas. TABC staff seeks suspension of Respondent’s permit alleging that Respondent had violated the Texas Alcoholic Beverage Code (Code) by permitting an agent, servant, or employee to solicit a person to buy drinks for consumption by Respondent or any of its employees, and by permitted an agent, servant, or employee to solicit a person for immoral or sexual purposes. Staff seeks suspension of Respondent’s permit for a period of 22 days or in lieu of suspension staff asked that respondent be ordered to pay \$300 for each day of suspension

I. PROCEDURAL HISTORY

Notice and jurisdiction were otherwise not contested and are discussed only in the Findings of Facts and Conclusions of Law. On February 7, 2014, the hearing was convened at the State Office of Administrative Hearings (SOAH) by ALJ Rex Shaver at the SOAH offices, 2020 North Loop West, Suite 111, Houston, Texas. Attorney Sandra Patton represented Staff. Respondent was represented by Paul Decuir, attorney. The record closed at the conclusion of the hearing that day.

II. DISCUSSION

A. Applicable Law

TABC issues licenses and permits and supervises and regulates persons issued a license or permit under the Code and their places of business. The Code provides the authority to take an action on a license or permit, including the suspension or cancellation of the privilege to operate a licensed business if it is found that a violation of the Code occurred.

Section 104.01(4) of the Code prohibits a permit holder or his agent, servant, or employee from soliciting or permitting solicitation of a person to buy drinks for consumption by the permit holder or any of its employees.

Section 104.01(7) of the Code prohibits Respondent or Respondent's agent, servant, or employee from soliciting or permitting the solicitation of persons for immoral or sexual purposes.

Staff has the burden of proof to show Respondent violated those sections of the Code by the preponderance of the evidence. Following is a summary of the relevant evidence.

B. Evidence

Lavon Laugermann, an officer with the Houston Police Department (HPD), testified that on March 1, 2013, she entered Respondent's premises in an undercover capacity, along with other HPD officers, to conduct an investigation. Officer Laugermann related that the officers entered the premises at 9:30 p.m. and were escorted to a seat in a common area. The officers ordered alcoholic beverages from a waitress. A dancer approached the witness, and sat down at the officer's table. There was some conversation and then the dancer asked if Officer Laugermann would buy her a drink.

When Officer Laugermann agreed to the request the dancer ordered a Corona beer from the waitress. Officer Laugermann paid \$6.75 for the beer. Officer Laugermann observed a manager and

bartender behind the bar. The manager and bartender were in a position from which they could see the dancer and the beer she had ordered. The witness later determined that the dancer's name was Blanca Rugellato. Ms Rugellato made no attempt to hide the beer from anyone. On cross examination Officer Laugermann agreed that the manager and bartender would not have been able to hear whether Officer Laugermann or the dancer had ordered the beer.

Olivier Bossert, an officer with the HPD, testified that on January 6, 2013, he and three other HPD officers entered the Respondent's premises at 10:00 p.m. in an undercover capacity to conduct an investigation. Officer Bossert and the other officers were escorted to a table by a waitress. The waitress took a drink order from Officer Bossert. A dancer who said her name was "Cheryl" approached the table and asked Officer Bossert if he wanted company. When the waitress returned with Officer Bossert's drink "Cheryl" asked for a beer. Officer Bossert agreed to purchase the beer and placed the order with the waitress. The dancer was later identified as Cheryl Jones. On cross examination Officer Bossert agreed that there was a very high noise level in the common area and the manager might not have been able to hear Ms. Jones order the drink.

Jose Villa, an officer with the HPD, testified that on the evening of May 9, 2013, he and another officer went to Respondent's premises to conduct an undercover investigation of possible prostitution. He and another officer, posing as customers, paid the entry fee and were seated inside. A waitress took Officer Villa's order for an alcoholic beverage. A dancer using the name "Nadia" was dancing on stage in a bikini when Officer Villa was being seated. When she finished her performance she approached Officer Villa and asked if he wanted a dance in one of the private areas. The witness agreed to purchase a dance and went with Nadia to a private alcove. Officer Villa asked for oral sex and Nadia agreed to perform oral sex on the witness in exchange for \$250. The dancer was later identified as Marisol Alvarado. On cross examination Officer Villa stated that he saw a manager but did not know what the manager may have heard.

Mohammed Amjadi also testified. He did not give his job title, but from his description of his duties he had a managerial role at Respondent's premises. Mr. Amjadi testified that he is at Respondent's premises almost every night and roams around to keep order. Mr. Amjadi testified that

the music is very loud and he is unable to hear conversations. He has no way of telling if a dancer asks a customer for a drink. Customers come in and sit at tables, order drinks, and watch the dancers on stage. When not on stage a dancer can sit with customers and have conversations. If the customer offers to buy a dancer a drink she will accept it. If the customer does not offer to buy a drink the dancer will move on to another table. The dancer receives no commission from the price of a drink. When he came to the club he removed the door to the Champagne Room to discourage illegal activity. In addition, Mr. Amjadi said that when the dancers apply for work he takes an application and interviews the applicant. If they are hired, they are told that they should not ask customers for drinks or engage in prostitution. The dancers are assigned to work shifts. If a dancer leaves during her shift she is fired.

III. ANALYSIS

Respondent argues that Ms. Jones, Ms. Rugellato and Ms. Alvarado were independent contractors and not agents, servants, or employees of Respondent. After considering the evidence, the ALJ finds that all three of the women are agents, servants, or employees of Respondent for purposes of the Code. The testimony indicates that Respondent's business is a bikini bar where customers come to drink and pay for individual dances. The Respondent relies on the services and entertainment provided by the dancers. Dancers are monitored by managers and are terminated if they violate the law. Mr. Amjadi explained that dancers filled out an application and then would be hired. The dancers were instructed to avoid illegal activity. If a dancer left during her shift she would be fired. Dancers are the very center of Respondent's business and make money by dancing and Respondent's customers. In return, Respondent profits from customers who come to see the dancers, buy drinks, and pay for private dances. For these reasons, the ALJ finds that Ms. Jones, Ms. Rugellato and Ms. Alvarado are all agents, servants, or employees of Respondent for purposes of the Code.

As to the allegation that Respondent's agent, servant, or employee solicited or permitted solicitation of a person to buy drinks for consumption by respondent or any of its employees. It was the uncontroverted testimony of the HPD officers that the solicitation took place. Respondent's only

witness testified that because of the loud music he could not hear any solicitation. The waitresses and Mr. Amjadi were Respondent's agents, servants, or employees who permitted solicitation of a person to buy drinks for consumption by Respondent or any of its employees (i.e. the dancer).

As to the allegation that Respondent's agent, servant, or employee solicited or permitted solicitation of a person for immoral or sexual purposes the evidence was undisputed. While it appears that the opening solicitation came from the HPD officer the dancer, Ms. Alvarado, stated the price she wanted to be paid for the sex act and when the officer complained the two of them negotiated an agreed price to be paid to Ms. Alvarado.

Based on the totality of the evidence, the ALJ find sufficient evidence to show that in January and March of 2013, Respondent's agent, servant, or employee solicited or permitted solicitation of a person to buy drinks to be consumed by Respondent's employees. Further, the ALJ finds sufficient evidence to show that in May of 2013, Respondent's agent, servant, or employee solicited or permitted solicitation of a person for immoral or sexual purposes.

IV. FINDINGS OF FACT

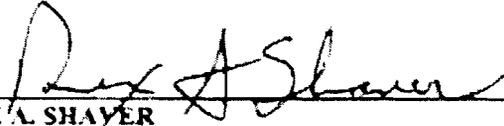
1. G.H.A. Inc. d/b/a G.H.A. Inc (Respondent) is the holder of Mixed Beverage Permit MB-695085, which includes the Mixed Beverage Late Hours Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2732 W. T.C. Jester Boulevard, Houston, Harris County, Texas. This permit was originally issued on June 9, 2008.
2. An Amended Notice of Hearing dated January 23, 2014 was issued by TABC Staff notifying the parties of the date, time, place, and nature of the hearing. The notice included the legal authority and jurisdiction under which the hearing was to be held, the particular sections of the statutes and rules involved, and matters asserted.
3. On February 7, 2014, a hearing was convened by ALJ Rex Shaver at the State Office of Administrative Hearings in Houston, Texas. Staff was represented by attorney Sandra Patton. Respondent was represented by attorney Paul Decuir, Jr. The record closed on February 7, 2014, at the adjournment of the hearing.
4. On January 6, 2013, Respondent's agent, servant, or employee while on duty, asked an undercover police officer to buy her a drink.

5. On March 1, 2013, Respondent's agent, servant, or employee while on duty asked an undercover police officer to buy her a drink.
6. On May 9, 2013, Respondent's agent, servant, or employee took an undercover police officer to a private room and agreed to perform oral sex on him in exchange for \$250

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code (Code) ch. 5, and § 11.61.
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 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 ch. 2001, and 1 Tex. Admin. Code § 155.401 and Code § 11.63.
4. Based on Finding of Fact No. 4, on or about January 6, 2013, Respondent or Respondent's agent, servant, or employee solicited or permitted solicitation of a person to buy drinks to be consumed by Respondents employees in violation of Tex. Alco. Bev. Code (Code) §§ 104.01(4) and 11.61(b)(2).
5. Based on Finding of Fact No. 5, on or about March 1, 2013, Respondent or Respondent's agent, servant, or employee solicited or permitted solicitation of a person to buy drinks to be consumed by Respondents employees in violation of Tex. Alco. Bev. Code (Code) §§ 104.01(4) and 11.61(b)(2).
6. Based on Finding of Fact No. 6, on or about May 9, 2013, Respondent or Respondent's agent, servant, or employee solicited or permitted solicitation of a person immoral or sexual purposes in violation of Tex. Alco. Bev. Code (Code) §§ 104.01(7) and 11.61(b)(2).
7. Based on the findings of fact and conclusions of law, Respondent's permit should be suspended for a period of 22 days, or in lieu of any suspension, Respondent should be ordered to pay a civil penalty in the amount of \$300 per day.

SIGNED April 3, 2014.



REX A. SHAYER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS