

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 28, 2015

VIA REGULAR MAIL

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

**RE: SOAH Docket No. 458-15-3515; Texas Alcoholic Beverage Commission vs. El Reventon Sports Bar and Night Club Inc. d/b/a El Reventon Sports Bar and Night Club**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Lindy Hendricks".

Lindy Hendricks  
Administrative Law Judge

LH/mr

Enclosure

xc Sandra Patton Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008 -  
**VIA REGULAR MAIL**  
Martin Wilson, 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**  
Al Van Huff, Attorney at Law, 1225 North Loop West, Suite 640, Houston, TX 77008 -**VIA REGULAR MAIL**

**SOAH DOCKET NO. 458-15-3515  
(TABC CASE NOS. 630608 and 630609)**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION,     Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>EL REVENTON SPORTS BAR AND NIGHT CLUB INC. D/B/A EL REVENTON SPORTS BAR &amp; NIGHT CLUB, Permit Nos. BG769225, BL,     Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against El Reventon Sports Bar and Night Club Inc. d/b/a El Reventon Sports Bar & Night Club (Respondent or El Reventon), alleging that Respondent sold beer during prohibited hours in violation of Texas Alcoholic Beverage Code (Code) § 61.71, and requested its license be cancelled. The Administrative Law Judge (ALJ) finds Petitioner proved its allegations by a preponderance of the evidence and recommends that Respondent’s license be cancelled.

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

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing on the merits convened on July 17, 2015, at 2020 North Loop West, Suite 111, Houston, Texas, before ALJ Lindy Hendricks. Staff was represented by attorney Sandra K. Patton. Respondent was represented by attorney Al Van Huff. The record closed at the conclusion of the hearing.

## II. DISCUSSION

### A. Background

El Reventon is located at 7398 Irvington Boulevard in Houston, Texas, and holds a wine and beer retailer's on-premise permit and retail dealer's on-premise late hours license number BG769225 and BL.

### B. Allegations and Legal Standards

In its Amended Notice of Hearing, Staff alleged that, on December 7 and 13, 2014, Respondent or its agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours, in violation of Code §§ 61.71(a)(1), (7), and 105.04. The Code prohibits the sale of alcoholic beverages after 2:00 a.m.<sup>1</sup>

### C. Evidence

Staff presented the testimony of TABC Agents Peter Gonzales, Tim Sulak, and Andrew Costanza. Respondent presented the testimony of George Sayon, a security officer for El Reventon.

#### 1. December 7, 2014 Undercover Investigation

Agent Gonzales testified he entered El Reventon with Agent Pereira<sup>2</sup> on December 7, 2014, at 2:13 a.m., in an undercover capacity. He observed two security guards at the door, four bartenders behind the bar, and approximately fifty patrons inside. He testified that Agent Pereira purchased two Bud Light beers from a bartender. The empty bottles were thrown into a trash can. At 2:35 a.m., Agent Pereira purchased two more Bud Light beers. The bartender poured the beers from their labeled bottles into red cups before serving them to the agents.

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<sup>1</sup> Code § 105.04.

<sup>2</sup> Agent Pereira did not testify at the hearing and his first name was not provided.

The agents remained at the bar for approximately 45 minutes to an hour. During that time, Agent Gonzales observed bartenders serving patrons beer. The bartenders pulled Corona and Bud Light beer bottles from the cooler, poured the beers into red plastic cups, and handed the cups to patrons.

When the open team entered the bar at 2:40 a.m., Agent Gonzales observed bartenders frantically closing and locking the beer coolers.<sup>3</sup> He observed a bartender grab the trash can of empty beer bottles and exit the side door. Only two female bartenders remained behind the bar when the open team arrived. No samples of alcohol or beer bottles were taken for testing or evidence.

## **2. December 13, 2014 Undercover Investigation**

Agent Sulak testified he entered El Reventon on December 13, 2014, at 1:48 a.m., in an undercover capacity with Agent Pereira. Agent Sulak observed a full parking lot and approximately 50 patrons inside. Agent Pereira purchased two Bud Light beers. At 2:00 a.m., without being asked, a waitress poured their beers into red plastic cups. At 2:35 a.m., Agent Pereira purchased a Bud Light beer. The bartender poured the beer into a red plastic cup before serving it. At 2:40 a.m., Agent Sulak ordered a Corona beer and observed the bartender pour the beer into a red plastic cup before serving it to him. The bartenders were later identified as Guadalupe Gonzales and Christian Torres. The empty beer bottles were thrown into a trash can. Agent Pereira saw employees taking the trash can outside.

The agents remained at the bar for approximately an hour. Agent Sulak testified that El Reventon employees did not stop selling alcohol until the open team arrived after 2:40 a.m. He did not observe anyone attempt to stop the patrons from consuming alcohol. While they were undercover, Agents Pereira and Sulak observed Juan Castro, the owner of El Reventon, present at the bar. Agent Sulak testified that no samples of alcohol or beer bottles were obtained for testing or evidence. The beers were identified by the manufacturer labels on the Bud Light and Corona bottles.

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<sup>3</sup> Agents on the open team are not undercover and identify themselves as TABC agents when entering the premises.

### **3. Open Team Investigation**

On December 7, 2014, Agent Costanza entered El Reventon at 2:40 a.m. as part of the open team. He observed loud music, strobe lights, approximately 50 to 75 patrons, and two female bartenders. It appeared to Agent Costanza that all empty beer bottles had been removed from the location, and the trash can was empty. Agent Costanza identified the two bartenders who sold beer to the undercover agents as Christian Torres and Francisco Salazar. An administrative citation for selling beer during prohibited hours was issued to the owner's son and manager, Juan Castro, Jr. Mr. Castro told Agent Costanza that his father was present that night but could not be found at the moment.

On December 13, 2014, Agent Costanza entered El Reventon at 2:40 a.m. as part of the open team. He said El Reventon was open with loud music playing and approximately 50 to 75 patrons inside. He observed patrons drinking from red cups. He identified the two bartenders who sold beer to the undercover agents as Christian Torres and Guadalupe Gonzales. Mr. Castro was present and issued an administrative citation for selling beer during prohibited hours. Mr. Castro indicated that his father was present that night as well. Agent Costanza testified that the trash cans were empty and no empty beer bottles were found.

### **4. Mr. Sayon**

Mr. Sayon testified that he worked on December 7 and 13, 2014, providing security for El Reventon. His job was to oversee security and ensure that no one brought a weapon into the bar. He testified that he patrolled both inside and outside El Reventon but did not see what was being served at the bar. He was not aware that bartenders were selling or serving alcohol. He testified that only water or non-alcoholic O'Doul's beer was served or sold after 2:00 a.m. He testified that a lot of people left the bar when TABC agents arrived and could not explain why they did not find any empty Bud Light, Corona, or O'Doul's bottles.

**D. Analysis and Appropriate Penalty**

As provided in Code §§ 105.04 and 61.71 (a)(7), a holder of a retail dealer's on-premise late hours license may not sell, offer for sale, or deliver beer after 2:00 a.m., and doing so may result in cancellation of the license.

The ALJ finds that the evidence establishes that Respondent violated the Code by selling alcohol after 2:00 a.m. On December 7, 2014, Respondent's employees sold two Bud Light beers at 2:13 a.m. and 2:35 a.m. to undercover TABC agents. On December 13, 2014, Respondent's employees sold a Bud Light beer at 2:35 a.m. and a Corona beer at 2:40 a.m. to undercover TABC agents.

Respondent argued that the evidence is insufficient to show that beer was sold during prohibited hours because no testing was conducted to determine the alcohol content of the beer or empty beer bottles. Additionally, Respondent argues that only non-alcoholic O'Douls beer was sold after 2 a.m. However, the evidence shows that the agents specifically ordered Bud Light or Corona beer. The agents observed the bartenders open and pour beer from bottles clearly labeled as Bud Light or Corona beer. The ALJ finds that it is more likely than not that the contents of the clearly labeled beer bottles were what they purported to be, namely Bud Light and Corona beer.

Moreover, the actions of the employees tend to show that they were aware they were selling alcohol during prohibited hours. The bartenders poured the beers into plastic cups, threw away the empty bottles, and removed the trash cans in an attempt to avoid detection. No empty bottles of beer were found, not even an O'Douls.

The ALJ finds that Respondent has had prior violations related to the sale and consumption of alcohol during prohibited hours in the last 13 months. Specifically, the evidence shows Respondent sold and permitted the consumption of alcohol during prohibited hours on

November 16, 2013. Respondent also has a pending administrative case for an alleged sale of alcohol during prohibited hours on October 26, 2014.<sup>4</sup>

The ALJ finds that Respondent's owner was present on December 7 and 13, 2014 when the beers were sold during prohibited hours, and an administrative citation was issued to his son. Respondent clearly had notice that his employees were allegedly selling alcohol during prohibited hours. Nevertheless, on December 13, less than a week later, TABC agents observed Respondent's employees selling alcohol after 2:00 a.m. The bar was open with a large crowd of 50 to 75 patrons inside. Despite the prior citations, the business continued to sell alcohol during prohibited hours. Moreover, the evidence shows Respondent's employees attempted to avoid detection by hiding the beers in plastic cups, throwing away the bottles, and emptying the trash cans.

The ALJ finds that Respondent is either unwilling or unable to comply with the law to prevent the sale of alcohol during prohibited hours. For these reasons, the ALJ recommends that Respondent's license be cancelled.

### III. FINDINGS OF FACT

1. El Reventon Sports Bar and Night Club Inc. d/b/a El Reventon Sports Bar & Night Club (El Reventon or Respondent) is located at 7398 Irvington Boulevard, in Houston, Texas, and holds wine and beer retailer's on-premise permit and retailer's on-premise late hours license BG769225, BL.
2. Staff of the Texas Commission on Alcoholic Beverages (Commission) issued a notice of hearing, alleging multiple violations of the Texas Alcoholic Beverage Code (Code). The notice was sent to Respondent on June 30, 2015.
3. The notice stated the time, place, and nature of the hearing; legal authority and jurisdiction under which the hearing was to be held; statutes and rules involved; and matters asserted.
4. The hearing on the merits convened on July 17, 2015, at 2020 North Loop West, Suite 111, in Houston, Texas. Staff attorney Sandra K. Patton represented Staff, and

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<sup>4</sup> TABC Ex. 1. The November 2013 violations have been adjudicated, and Respondent settled with a civil penalty or suspension.

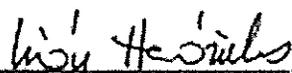
attorney Al Van Huff represented Respondent. The record closed at the conclusion of the hearing.

5. On December 7, 2014, at 2:13 and 2:35 a.m., Respondent's employees, Christian Torres and Francisco Salazar, sold Bud Light beers during prohibited hours.
6. On December 13, 2014, at 2:35 and 2:40 a.m., Respondent's employees, Christian Torres and Guadalupe Gonzales, sold Bud Light and Corona beers during prohibited hours.
7. Respondent's owner was present on December 7 and 13, 2014 when the beers were sold during prohibited hours.
8. Respondent's employees attempted to evade detection by hiding the beers in plastic cups, throwing away the bottles, and emptying the wash cans.
9. Respondent has had prior violations related to the sale and consumption of alcohol during prohibited hours in the last 13 months.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 61.71.
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 findings of fact and conclusions of law, pursuant to Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Tex. Gov't Code §§ 2001.051-.052.
4. Respondent sold a beer during prohibited hours and thus violated Code §§ 61.71(a)(1), (7), and 105.04.
5. Respondent's license should be cancelled. Code § 61.71.

**SIGNED August 28, 2015.**

  
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**LINDY HENDRICKS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DOCKET NOS. 630608, 630609**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>EL REVENTON SPORTS BAR AND NIGHT CLUB INC. D/B/A EL REVENTON SPORTS BAR AND NIGHT CLUB, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT BG769225, BL</b>	§	
	§	
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-15-3515)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 15th day of October, 2015, 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 Lindy Hendricks presiding. The hearing convened on July 17, 2015 and the SOAH record closed the same day. The Administrative Law Judge filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 28, 2015. 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. Exceptions were filed by Respondent on September 16, 2015 and Petitioner replied on September 18, 2015. The Administrative Law Judge filed a letter on September 22, 2015 recommending that no changes be made to the Proposal for Decision.

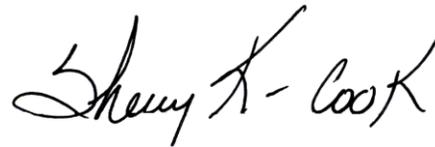
After review and due consideration of the Proposal for Decision, the exceptions and reply thereto, and the Administrative Law Judge's September 22, 2015 letter, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision and incorporate 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 Fact 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 Wine and Beer Retailer's On-Premise Permit BG 769225, and the associated Retail Dealer's On-Premise Late Hours License, are hereby **CANCELLED**.

**This Order will become final and enforceable on the 10th day of November, 2015, unless a Motion for Rehearing is filed by the 9th day of November, 2015.**

**SIGNED** this the 15th day of October, 2015, at Austin, Texas.



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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 15th day of October, 2015.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Lindy Hendricks  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, TX 77018  
**VIA FACSIMILE: 512-322-0474**

El Reventon Sports Bar and Night Club Inc.  
d/b/a El Reventon Sports Bar and Night Club

**RESPONDENT**

7398 Irvington Blvd.

Houston, TX 77022

***VIA FIRST CLASS MAIL, CMRRR # 7007 0710 0005 4744 6424***

Albert T. Van Huff

**ATTORNEY FOR RESPONDENT**

1225 North Loop West, Suite 640

Houston, TX 77008

***VIA FIRST CLASS MAIL, CMRRR# 7007 0710 0005 4744 6431***

***VIA FACSIMILE: (713) 880-5297***

Sandra Patton

**ATTORNEY FOR PETITIONER**

TABC Legal Division

***VIA E-MAIL:[sandra.patton@tabc.texas.gov](mailto:sandra.patton@tabc.texas.gov)***