

DOCKET NO. 458-03-1516

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
WALTER EDUARDO ZELIDON D/B/A EL PALOMAR HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Walter Eduardo Zelidon d/b/a El Palomar (Respondent), alleging that Respondent sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit and license be suspended for 10 days, or in lieu of suspension, that Respondent pay a civil penalty of \$1500.00. The Administrative Law Judge (ALJ) agrees with this recommendation.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 61.71(a)(1). The State Office of Administrative Hearings (SOAH) 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 TEX. GOV'T CODE ANN. ch. 2003.

On January 9, 2003, Petitioner issued its notice of hearing, directed to Walter Eduardo Zelidon d/b/a El Palomar, 10535 Hammerly Blvd. #110, Houston, Texas 77043, via certified mail, return receipt requested and was received and signed on January 11, 2003, as evidenced by the return receipt. On February 7, 2003, a hearing convened before SOAH ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on February 17, 2003.

DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV.



CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

FINDINGS OF FACT

1. Respondent, Walter Eduardo Zelidon d/b/a El Palomar, holds a Wine and Beer Retailer's Premises Permit, BG-489102 and a Retail Dealer's On Premises Late Hours License, BL-489103 issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 14425 Tomball Parkway, Houston, Harris County, Texas.

2. On January 9, 2003, Petitioner sent its notice of hearing to Respondent at his address of record with TABC, for a hearing that was held on February 7, 2003. The notice of hearing was received and signed by Respondent on January 11, 2003 as evidenced by the return receipt.

3. The notice of hearing contained a statement of the date, 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.

4. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

5. A hearing convened before Timothy J. Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on February 7, 2003. Respondent did not appear and was not represented at the hearing.

6. On or about July 6, 2002, Respondent sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 61.71(a)(1).

2. SOAH 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 TEX. GOV'T CODE ANN. ch. 2003.

3. Based upon Findings of Fact Nos. 2-4, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.

4. Based upon Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.

5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(1) and 105.04.

6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, 61.71(a)(1), and 105.04, Respondent's permit and license should be suspended for a period of 10 days.

7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1500.00 in lieu of suspension of the permit and license.

SIGNED this 15th day of April, 2003.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601096

IN RE WALTER EDUARDO ZELIDON	§	BEFORE THE
D/B/A EL PALOMAR	§	
PERMIT NO. BG489102	§	
LICENSE NO. BL489103	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1516)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tim Horan. The hearing convened on February 7, 2003, and adjourned on February 7, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 15, 2003. This Proposal For Decision (attached hereto as Exhibit "A"), 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, Transcripts, 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 Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit No. BG489102 and License No.BL489103 shall be **SUSPENDED for ten (10) days**.

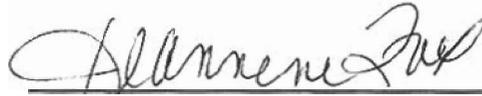
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **25th day of June, 2003**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 2nd day of July, 2003**.

This Order will become final and enforceable on May 28, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 8th day of May, 2003.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Tim Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

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WALTER EDUARDO ZELIDON
D/B/A EL PALOMAR
RESPONDENT
10535 Hammerly Blvd #110
Houston, TX 77043
CERTIFIED MAIL NO. 7001 2510 0003 8687 0468

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 601096

REGISTER NUMBER:

NAME: WALTER EDUARDO ZELIDON

TRADENAME: EL PALOMAR

ADDRESS: 14425 Tomball Parkway, Houston, Harris County, Texas 77086

DATE DUE: June 25, 2003

PERMITS OR LICENSES: BG489102, BL489103

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 25TH DAY OF JUNE 2003, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.