

DOCKET NO. 458-03-2965

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

AMANDO GORSTIETA JAIMES ET AL
D/B/A LA COSTA MEXICAN
RESTAURANT, PERMIT NO. MB-463394
(TABC CASE NO. 604473)
TRAVIS COUNTY

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this action seeking cancellation of the Mixed Beverage Permit, for the premises know as La Costa Mexican Restaurant located at 9120 IH 35 North, Austin, Travis County, Texas. Staff alleged that Respondent possessed or permitted others to possess a narcotic on the licensed premises. Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) recommends that the permits be canceled.

I. PROCEDURAL HISTORY

The hearing on the complaint convened before ALJ Bill Zukauckas on June 23, 2003, in the State Office of Administrative Hearings, Williams P. Clements Bldg., 300 W. 15th Street, 4th Floor, Austin, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. After establishing jurisdiction and notice, Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

1. Amando Gorstieta Jaimes et al D/B/A La Costa Mexican Restaurant (Respondent) holds Mixed Beverage Permit No. MB-463394, issued by the Commission on December 23, 2002, for the business known as La Costa Mexican Restaurant, located at 9120 IH 35 North, Austin, Travis County, Texas.
2. On May 6, 2003, the Commission sent a notice to Respondent by certified mail at the address listed in the Commission's records, alleging that Respondent, his agent, servant or employee, on January 29, 2003, possessed or permitted others to possess a narcotic on the licensed premises.
3. Notice of the hearing in this matter, dated May 6, 2003, was properly addressed and sent by certified mail to Respondent's Austin, Texas, mailing address as listed in the Commission's records.
4. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.

5. The notice also contained language in 12-point bold type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. Respondent did not attend and was not represented at the hearing in this matter held June 24, 2003.
7. On January 29, 2003, Respondent, his agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises.

III. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §11.61(b) of the TEX. ALCO. BEV. CODE ANN. (the Code).

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Pursuant to the Code §§ 11.61(b)(2) and (7), the Commission or administrator may cancel an original or renewal permit or license if it finds that the permittee violated a provision of the Code or that the manner in which the permittee conducts his business warrants the cancellation of the permit based on the general health, welfare, and safety of the people.
5. Based upon Finding of Fact No. 7, Respondent is in violation of the Code §§ 1.01 and TAC § 31.1 *et seq* (West 2001).
6. Based on Findings of Fact Nos. 3-7 and Conclusions of Law Nos. 3-5, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based upon the foregoing, Respondent's Mixed Beverage Permit MB-463394, should be canceled pursuant to the Code §§11.61(b)(2) and 11.61(b)(7).

SIGNED this 25th day of June 2003.



BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 604473

IN RE AMANDO GORSTIETA JAIMES	§	BEFORE THE
D/B/A LA COSTA MEXICAN	§	
RESTAURANT	§	
PERMIT NO. MB-463394	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2965)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of October, 2003 , the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Bill Zukauckas. The hearing convened on June 23, 2003, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 25, 2003. This 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, 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.

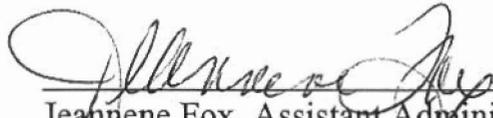
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Mixed Beverage Permit No. MB-463394 is hereby **CANCELLED**.

This Order will become final and enforceable on October 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 7th October, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Amando Gorstieta Jaimes et al
d/b/a La Costa Mexican Restaurant

RESPONDENT

9120 IH 35 North

Austin, Texas 78753

CERTIFIED MAIL NO. 7001 2510 0003 8687 1991

RETURN RECEIPT REQUESTED AND REGULAR MAIL

Administrative Law Judge Bill Zukauckas

State Office of Administrative Hearings

Austin, Texas

VIA FACSIMILE: (512) 475-4994

Dewey A. Brackin

ATTORNEY FOR PETITIONER

Texas Alcoholic Beverage Commission

Legal Division

Austin District Office

Licensing Division