

DOCKET NO. 458-04-2013

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

V.

OF

THREE COMPADRES INC.
D/B/A EL TIEMPO TRES CABALLOS
HARRIS COUNTY, TEXAS

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Three Compadres Inc. d/b/a El Tiempo Tres Caballos (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, 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 \$1,500. 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, §§ 11.61(b)(2), 24.06, and 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 13, 2004, Petitioner issued its notice of hearing, directed to Three Compadres Inc. d/b/a El Tiempo Tres Caballos, P.O. Box 570366, Houston, Texas, 77257, via certified mail, return receipt requested. The letter was unclaimed as evidenced by the certified mail receipt. On February 27, 2004, 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 March 5, 2004.

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. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

FINDINGS OF FACT

1. Respondent, Three Compadres Inc. d/b/a El Tiempo Tres Caballos, holds a Mixed Beverage Permit # MB-473157, Mixed Beverage Late Hours Permit # LB-473158, and Food and Beverage Certificate # FB-473159, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 502 Main St., Houston, Harris County, Texas.

2. On January 13, 2004, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on February 27, 2004. The notice of hearing was sent via certified mail to Respondent's last known address and was unclaimed by Respondent as evidenced by the certified mail receipt.

3. The notice of hearing 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.

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 27, 2004. Respondent did not appear and was not represented at the hearing. The record was closed on March 5, 2004.

6. On or about July 19, 2002, January 29, 2003, and January 30, 2003, Respondent issued a check or draft for the purchase of beer which were dishonored when presented for payment of beer.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).

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. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit/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 \$1,500.00 in lieu of suspension of the permit/license.

SIGNED April 29, 2004.



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

DOCKET NO. 602142

IN RE THREE COMPADRES INC.	§	BEFORE THE
D/B/A EL TIEMPO TRES CABALLOS	§	
PERMIT NOS. MB473157, LB473158,	§	
PE494426 & CB494427	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2013)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of May, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on February 27, 2004, and adjourned on March 5, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 29, 2004. 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. 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 Nos. MB473157, LB473158, FB473159, PE494426 & CB494427 are hereby **SUSPENDED**.

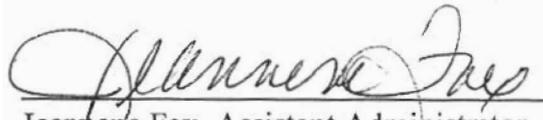
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$1,500 on or before the 21st day of July, 2004, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 28th day of July, 2004.**

This Order will become final and enforceable on June 9, 2004, 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 19th day of May, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LBT/tr

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

Three Compadres Inc.
D/B/A El Tiempo Tres Caballos
RESPONDENT
PO Box 570366
Houston, Texas 77257
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1903 3142

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER:602142

REGISTER NUMBER:

NAME: Three Compadres Inc.

TRADENAME: El Tiempo Tres Caballos

ADDRESS: PO Box 570366

DATE DUE: July 21,2004

PERMITS: MB473157, LB473158, PE494426 & CB494427

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 21ST DAY OF JULY, 2004, 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.