

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 5, 1999

Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**VIA CERTIFIED MAIL z 283 051 845**  
**Return Receipt Requested**

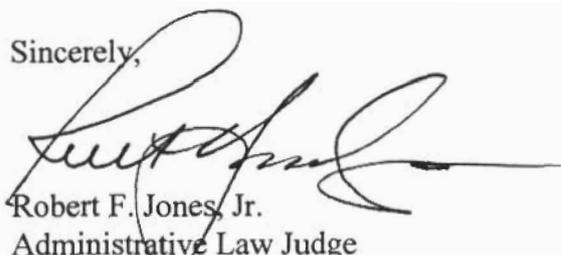
**RE: Docket No. 458-98-1566; Texas Alcoholic Beverage Commission vs. Irma Hernandez d/b/a Las Tres Palmas (TABC Case No. 585135)**

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Irma Hernandez, Respondent, d/b/a Las Tres Palmas. For reasons discussed in the proposal, I recommend Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996, in the amount of \$5,000.00 should be forfeited. Tex. Alco. Bev. Code § 11.11(b)(2).

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,



Robert F. Jones, Jr.  
Administrative Law Judge

RJ:ds

Enclosure

xc: **Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - Regular Mail**  
**Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - Regular Mail; Irma Hernandez,**  
**Respondent, d/b/a Las Tres Palmas, 2001 S. Harwood, Dallas, Tx. 75215 - CERTIFIED MAIL NO. Z 383 051**  
**847, RETURN RECEIPT REQUESTED**

The Vinnedge Building  
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106  
(817) 626-0003 Fax (817) 626-7448

DOCKET NO. 458-99-1566

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	
VS.	§	OF
	§	
IRMA HERNANDEZ D/B/A	§	
LAS TRES PALMAS	§	
PERMIT NO. BG-315388	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 585135)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Irma Hernandez d/b/a Las Tres Palmas (Respondent). Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permit had been canceled for cause. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the full amount of the bond.

**PROCEDURAL HISTORY**

On October 5, 1999, a public hearing was convened before Robert F. Jones Jr., Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for judgment, and the motion was granted.

**REASONS FOR DECISION**

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

**LEGAL STANDARDS AND APPLICABLE LAW**

Texas Alcoholic Beverage Commission (TABC) is authorized under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999)(the Code), to forfeit the amount of a conduct surety bond if Respondent's permit was revoked or on a final adjudication that the permittee had violated a provision of the Code. Under TABC's rule,

(1) When a license or permit is canceled, . . . , the commission shall

notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13, and this rule have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act.

16 TEX. ADMIN. CODE § 33.24

#### FINDINGS OF FACT

1. Irma Hernandez d/b/a Las Tres Palmas (Respondent) was issued Wine and Beer Retailer's Permit BG-315388 on April 26, 1996.
2. Respondent's licensed premises were located at 2001 South Harwood, Dallas, Dallas County, Texas.
3. Respondent has Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996. The bond was executed by Irma Hernandez d/b/a Las Tres Palmas, as Principal, and Gramercy Insurance Company, 7616 L.B.J. Freeway, Dallas, Texas, as Surety. The bond is in the amount of \$ 5,000.00, and is payable to the State of Texas.
4. Defendant executed an Agreement and Waiver of Hearing in TABC Docket Number 569090, styled *Texas Alcoholic Beverage Commission versus Irma Hernandez d/b/a Las Tres Palmas*, on March 5, 1999. In the Agreement and Waiver of Hearing, Respondent agreed that Wine and Beer Retailer's Permit BG-315388 would be canceled for cause at 12:01 A.M. on April 15, 1999. The Waiver Order in that case, executed by Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, on March 16, 1999, ordered Beer Retailer's Permit BG-315388 canceled for cause at 12:01 A.M. on April 15, 1999.
5. Respondent's Wine and Beer Retailer's Permit BG-315388 was canceled for cause at 12:01 A.M. on April 15, 1999.
6. The Staff of the Texas Alcoholic Beverage Commission (Staff) sent Respondent written notice of Staff's intent to forfeit the bond by a letter dated July 7, 1999, addressed to Irma Hernandez d/b/a Las Tres Palmas at 2001 South Harwood, Dallas, Dallas County, Texas. Respondent's receipt of the letter was evidenced by Respondent's signature on page

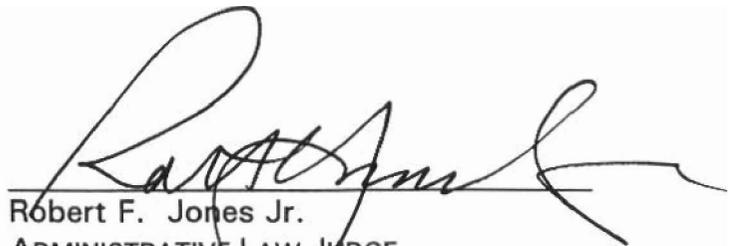
two of the letter.

7. On August 17, 1999, Staff issued its Notice of Hearing. The notice was directed to Irma Hernandez d/b/a Las Tres Palmas at her licensed premises located at 2001 South Harwood, Dallas, Dallas County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. The certified mail return receipt was signed on August 26, 1999.
8. On October 5, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear.

#### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999).
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 TEX. GOV'T CODE ANN. §2003.021 (Vernon 1999).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE. § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 6, Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996, in the amount of \$ 5,000.00 should be forfeited. TEX. ALCO. BEV. CODE § 11.11(b)(2).

SIGNED this 5<sup>th</sup> day of November, 1999.

  
Robert F. Jones Jr.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS