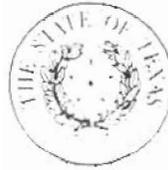


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 10, 1999

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-99-0126; Jesus Ledesma Cruz; TABC No. 581584

Dear Mr. Bailey:

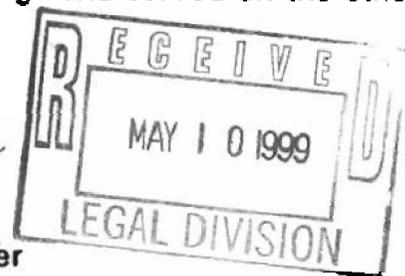
Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, counsel representing the Texas Alcoholic Beverage Commission, and to Jesus Ledesma Cruz. For reasons discussed in the Proposal for Decision, I have recommended Permittee's permits and license be suspended for five days or pay a fine of \$750.00 in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler
Administrative Law Judge



JHB/es
Enclosures

cc: Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**
Jesus L. Cruz, Panchita's Mexican Cafe, 11600 Jones, Road, '109', Houston, TX 77070 - **VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. Z 383 248 485**
Sarah Hudson, Docketing, State Office of Administrative Hearings

DOCKET NO. 458-99-0126

TEXAS ALCOHOLIC § BEFORE THE STATE OFFICE
BEVERAGE COMMISSION §
§
V. §
§
JESUS LEDESMA CRUZ § OF
D/B/A PANCHITA'S MEXICAN CAFE §
PERMIT NO. BG-257918 §
HARRIS COUNTY, TEXAS §
(TABC CASE NO. 581584) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this enforcement action against Jesus Ledesma Cruz d/b/a Panchita's Mexican Cafe (the Permittee) for paying for beer with a check for which funds were insufficient. The Permittee did not appear at the hearing. The Staff recommended that Permittee's permit be suspended for five days or pay a fine of \$750 in lieu of suspension. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation.

I. Procedural History, Notice, and Jurisdiction

The hearing in this matter convened on March 10, 1999, before ALJ John H. Beeler, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Permittee did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. The Allegations and Applicable Statutory Provisions

There was one allegation in this proceeding, asserting the Permittee its agent or employee paid beer distributors for beer with checks that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) for a permittee to give a beer distributor a check for payment of beer which is dishonored when presented for payment. Such a violation may be punished by cancellation or a maximum 60-day suspension of a permit.

III. Checks for Insufficient Funds

As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. § 61.73(b) by writing a check for beer that was subsequently returned for insufficient funds. The Permittee, its agent, servant, or employee wrote the check. The Permittee is responsible for its own acts and the acts of its agents.

IV. Recommendation

Penalties for the violations of TEX. ALCO. BEV. CODE ANN. § 61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE § 37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

In this case, Staff recommended a five-day suspension; the Administrative Law Judge agrees with the recommendation. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150 nor more than \$25,000 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty. The ALJ agrees with Staff's recommendation.

V. FINDINGS OF FACT

1. Jesus Ledesma Cruz d/b/a Panchita's Mexican Cafe (the Permittee), located at 11600 Jones Rd., #109, Houston, Harris County, Texas 77070, holds Permit No. BG-257918.
2. Permittee received proper and timely notice of the hearing from the Staff for the Commission (the Staff) in a notice of hearing, dated February 3, 1999. The notice was properly sent to Permittee at the address provided in findings of fact No. 1. The notice of hearing was received by Permittee as shown by the signed return 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 10-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. The hearing was convened on March 10, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Permittee did not appear and was not represented at the hearing. Gayle Gordon, Assistant Attorney General, represented the Staff.
6. On or about June 24, 1998, Permittee, its agent, servant, or employee gave a check written in the amount of \$63.80 to Houston Distributing Ltd., of Houston, Texas. On or about June 30, 1998, the check was returned by Drawee, Wells Fargo Bank, of Houston, Texas for insufficient funds.

7. On or about September 11, 1998, Permittee, its agent, servant, or employee gave a check written in the amount of \$45.15 to Houston Distributing Ltd., of Houston, Texas. On or about September 15, 1999, the check was returned by Drawee, Wells Fargo Bank, of Houston, Texas for insufficient funds.

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 61.71, and 61.73 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE § 155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. The Permittee, its agent, servant, or employee gave a check in payment for beer, which was dishonored for insufficient funds when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b) (Vernon 1995).
5. Based on the foregoing Findings and Conclusions, a five-day suspension of the permit and license is warranted. 16 TEX. ADMIN. CODE § 37.60 (1998).
6. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64 (Vernon 1995 & Supp. 1999), the Permittee should be allowed to pay a \$750 civil penalty in lieu of suspension of its permit and license.

SIGNED this 10th day of May 1999.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS