

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 2, 1999

DOYNE BAILEY
ADMINISTRATOR
TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 MESA DRIVE, SUITE 160
AUSTIN, TEXAS 78731

VIA CERTIFIED MAIL P.332.127.520
RETURNED RECEIPT REQUESTED

RE: Docket No. 458-99-0425; Texas Alcoholic Beverage Commission vs. Eduardo Chinchilla d/b/a Domo's Cerveceros Bar (License No. BL-430906 & Permit No. BG-430905) (TABC Case No. 581602)

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 Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Eduardo Chinchilla, for Domo's Cerveceros Bar. For reasons discussed in the proposal, based on the foregoing Findings of Fact and Conclusions of Law, Wine and Beer Retailer's Permit, BG-430905, and Retail Dealer's On Premise Late Hours License, BL-430906 held by Eduardo Chinchilla, doing business as Domo's Cerveceros Bar, 8501 Jensen, Houston, Harris County, Texas should be suspended for a period of 15 days.

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.

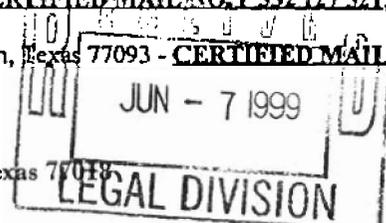
Sincerely,


Rex A. Shaver
Administrative Law Judge

RAS:cj
Enclosure: 1

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - REGULAR U.S. MAIL
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. P.332.127.521.
RETURN RECEIPT REQUESTED
Eduardo Chinchilla, d/b/a Domo's Cerveceros Bar, 7819½ Duncan, Houston, Texas 77019 - CERTIFIED MAIL
NO. P.332.127.522, RETURN RECEIPT REQUESTED

North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77019
(713) 957-0010 Fax (713) 812-1001



III. Recommendation

Because the Licensee sold, served or delivered an alcoholic beverage at a time when its sale is prohibited and permitted an alcoholic beverage to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited the license should be suspended for a period of fifteen days.

IV. PROPOSED FINDINGS OF FACT

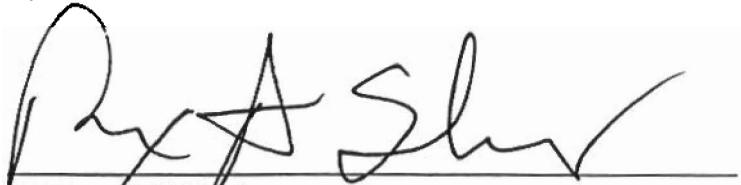
1. Eduardo Chinchilla, doing business as Domo's Cerveceros Bar, 8501 Jensen, Houston. Harris County, Texas was issued Wine and Beer Retailer's Permit, BG-430905, and Retail Dealer's On Premise Late Hours License, BL-430906 by the Texas Alcoholic Beverage Commission.
2. On March 9, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing regarding alleged violations of the Texas Alcoholic Beverage Code to the Licensee at 7819½ Duncan, Houston, Texas 77093, his address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Licensee was shown by proof that the notice was sent to the Licensee's last known address as shown on the referring agency's record with no showing of actual receipt.
4. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
5. There was credible evidence by way of Exhibit TABC-2 (Notice of Hearing) that the notice of hearing was sent by certified mail, return receipt requested, to the Licensee's last known address on the agency's records.
6. The hearing on the merits was held on March 29, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Clyde Burleson. The Licensee did not appear and was not represented at the hearing.
7. There was credible evidence that the Licensee sold, served or delivered an alcoholic beverage at a time when its sale is prohibited.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71 (Vernon 1997).
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. GOV'T CODE ANN. Ch. 2003 (Vernon 1997).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1997).

4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. The Licensee has violated TEX. ALCO. BEV. CODE ANN. §61.71(a)(7) (Vernon 1997) in that the Licensee sold, served or delivered an alcoholic beverage at a time when its sale is prohibited.
6. The Licensee has violated TEX. ALCO. BEV. CODE ANN. §§61.71(a)(18) and 105.06 (Vernon 1997) in that the Licensee permitted an alcoholic beverage to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited.
7. Based on the foregoing Findings of Fact and Conclusions of Law, Wine and Beer Retailer's Permit, BG-430905, and Retail Dealer's On Premise Late Hours License, BL-430906 held by Eduardo Chinchilla, doing business as Domo's Cervecero Bar, 8501 Jensen, Houston, Harris County, Texas should be suspended for a period of 15 days.

SIGNED this 2nd day of June, 1999.

A handwritten signature in black ink, appearing to read "Rex A. Shaver", written over a horizontal line.

REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS