

**DOCKET NO. 508941**

IN RE CESAR DELEON  
D/B/A CESAR'S BEVERAGE BARN  
PERMIT/LICENSE NOS. BQ601397

KINNEY COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-1206)

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 11th day of May, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert M. Brown, II. The hearing convened on April 5, 2006, 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 April 7, 2006. 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 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.

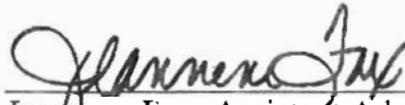
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits and licenses will be **CANCELED FOR CAUSE**.

**This Order will become final and enforceable on June 1, 2006**, 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.

SIGNED on this 11th day of May, 2006.

On Behalf of the Administrator,



Jeanlene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

WMC\bc

Robert M. Brown II  
Administrative Law Judge  
State Office of Administrative Hearings  
*VIA FACSIMILE: (210) 308-6854*

Cesar Deleon  
D/b/a Cesar's Beverage Barn  
**RESPONDENT**  
PO Box 531  
Bracketville, TX 78832  
*CERTIFIED MAIL/RRR NO. 7001 2510 0000 7274 1669*

W. Michael Cady  
**ATTORNEY FOR PETITIONER**  
TABC Legal Services Division

Licensing Division

SOAH DOCKET NO. 458-06-1206

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

CESAR DELEON  
D/B/A CESAR'S BEVERAGE BARN  
PERMIT/LICENSE NO. BQ601397  
KINNEY COUNTY, TEXAS  
(TABC CASE NO. 508941)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

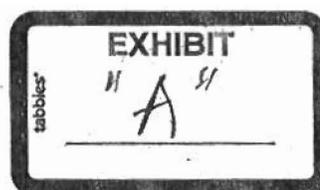
**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC or Petitioner) staff (Staff) brought this action against Cesar Deleon d/b/a Cesar's Beverage Barn (Respondent), alleging that Respondent failed to provide records data, reports, documents, or other information to Petitioner, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permit be cancelled. The Administrative Law Judge (ALJ) recommend cancellation of Respondent's permit.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 44.03, and 31.03. 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 February 13, 2006, Petitioner issued its notice of hearing to Respondent at Respondent's last known designated mailing address: Post Office Box 531, Bracketville, Texas, 78832, via



certified mail, return receipt requested.<sup>1</sup> 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, as required by TEX. GOV'T CODE ANN. § 2001.052. 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."

On April 5, 2006, a hearing convened before the undersigned ALJ, at 10300 Heritage Boulevard, Suite 250, San Antonio, Bexar County, Texas. Petitioner was represented at the hearing by W. Michael Cady, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice, jurisdiction and Respondent's administrative record. The record closed on April 5, 2006.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Petitioner's Notice of Hearing complies with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.55, the two allegations detailed in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. Based on the deemed factual findings in this case, the ALJ recommends that Respondent's permit be canceled.

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<sup>1</sup> Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

### III. FINDINGS OF FACT

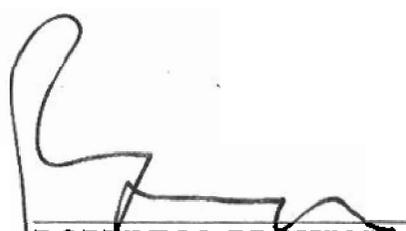
1. Cesar Deleon d/b/a Cesar's Beverage Barn (Respondent) holds a Wine & Beer Retailer's Off-Premise Permit, BQ601397, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 296 E. Military Drive, Brackettville, Kinney County, Texas.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is Post Office Box 531, Brackettville, Texas 78832.
3. On February 13, 2006, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for April 5, 2006.
4. 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.
5. 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."
6. On April 5, 2006, the undersigned Administrative Law Judge convened the hearing in which Petitioner appeared through its Staff Attorney, W. Michael Cady. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. Respondent failed to provide records data, reports, documents, or other information to Petitioner as requested by Petitioner on August 19, 2005.
8. Respondent failed to provide records data, reports, documents, or other information to Petitioner as requested by Petitioner on September 13, 2005.

### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 44.03, and 31.03.

2. SOAH has jurisdiction to conduct the 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.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 5.32, 11.61(b)(2), and/or 61.71(a)(1).
6. Respondent's permit should be canceled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

SIGNED April 7, 2006.



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**ROBERT M. BROWN II**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

April 7, 2006



Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

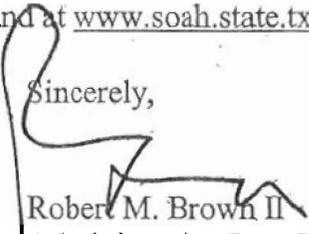
**RE: Docket No. 458-06-1206 Cesar de Leon d/b/a Cesar's Beverage Barn**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

  
Robert M. Brown II  
Administrative Law Judge

RB/ilap  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**  
Michael Cady, Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-**VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**  
Cesar de Leon, P O Box 531, Bracketville, Tx 78832-**VIA REGULAR MAIL**