

DOCKET NO. 586653

|                               |   |                     |
|-------------------------------|---|---------------------|
| IN RE EDUARDO DELFIERRO       | § | BEFORE THE          |
| D/B/A DOS AMIGOS              | § |                     |
| PERMIT NO. BG-431644          | § |                     |
| LICENSE NO. BL431645          | § |                     |
|                               | § | TEXAS ALCOHOLIC     |
|                               | § |                     |
| MEDINA COUNTY, TEXAS          | § |                     |
| (SOAH DOCKET NO. 458-00-0353) | § | BEVERAGE COMMISSION |

**ORDER**

**CAME ON FOR CONSIDERATION** this 13th day of June 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on February 24, 2000 and adjourned February 24, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 9, 2000. 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, 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.

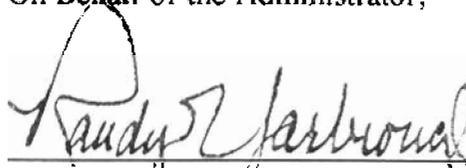
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on July 4, 2000**, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 13th day of June, 2000.

On Behalf of the Administrator,

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

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB\bc

The Honorable Leah Davis Bates  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (210) 308-6854**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Eduardo Delfierro  
d/b/a Dos Amigos  
**RESPONDENT**  
P.O. Box 631  
Lytle, Texas 78052  
**Certified Mail/RRR No. Z 473 040 298**

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

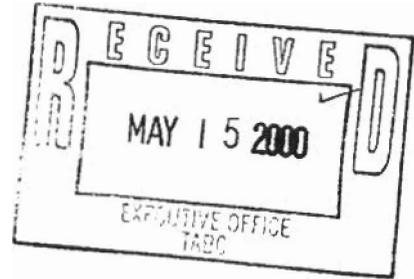
Licensing Division  
San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 12, 2000



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

**VIA CERTIFIED MAIL**  
RRR No. Z 329 909 759

RE: Docket No. 458-00-0353; Texas Alcoholic Beverage Commission vs.  
Eduardo Del Fierro, d/b/a Dos Amigos (TABC Case No. 586653)

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 Andrew del Cueto, attorney for Texas Alcoholic Beverage Commission, and to Eduardo Del Fierro, d/b/a Dos Amigos. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond be forfeited to the State.

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,

  
Leah Davis Bates  
Administrative Law Judge

LDB:msw  
Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing - **FACSIMILE**,  
512-475-4994  
Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission -  
**CERTIFIED MAIL NO. Z 329 909 760, RETURN RECEIPT REQUESTED**  
Eduardo Del Fierro, d/b/a Dos Amigos - **CERTIFIED MAIL NO. Z 329 909 761,**  
**RETURN RECEIPT REQUESTED**

MAY 15 2000

Castle Hills Executive Center  
1015 Jackson Keller, Suite 102B ♦ San Antonio, Texas 78213  
(210) 308-6681 Fax (210) 308-6854

**DOCKET NO. 458-00-0353  
(TABC CASE NO. 586653)**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

vs.

**EDUARDO DEL FIERRO  
D/B/A DOS AMIGOS  
PERMIT NO. BG-431644 AND BL-431645  
MEDINA COUNTY, TEXAS**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff and Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Eduardo Del Fierro (Respondent) d/b/a Dos Amigos. Respondent renewed a conduct surety bond<sup>1</sup> on April 16, 1998, in compliance with the TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 and Supp. 2000). The Staff recommended that the bond be forfeited because the Respondent had committed three violations of the Commission's rules and regulations since September 1, 1995. The Respondent attended the hearing. The undersigned Administrative Law Judge (ALJ) who reviewed the evidence in the case agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

**I. Jurisdiction, Notice, and Procedural History**

The hearing in this matter convened on February 24, 2000, before State Office of Administrative Hearings (SOAH) ALJ Leah Bates, at the SOAH's offices in San Antonio, Bexar County, Texas. The Staff was represented by Staff Attorney, Christopher Burnett. The Respondent attended the hearing, and represented himself with the assistance of an interpreter. The ALJ closed the record that same day.

The Commission and SOAH have jurisdiction over this matter as reflected in the Conclusions of Law. The notice of intention to institute enforcement action and the notice 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.

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<sup>1</sup> Respondent provided a conduct surety bond, Bond Number XTL01875, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewals of the permit or license have expired." Exhibit 1.

## II. Background

On May 11, 1998, the Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit No. BG-431644 and a Retail Dealer's On-Premise Late Hours License No. BL-431645, to Respondent for the premises known as Dos Amigos at 3906 Hwy. 132, Lytle, Medina County, Texas. On April 16, 1998, Respondent, as applicant for a wine and beer retailer's permit, posted a conduct surety bond for Dos Amigos for \$5,000.00 as required by the TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

The Respondent committed three violations of the Commission's rules and regulations since September 1, 1995. The violations occurred on December 6, 1998 (one violation) and July 14, 1999 (two violations). The Respondent signed an "Agreement and Waiver of Hearing" regarding these violations on December 12, 1998, and August 14, 1999, respectively. Each agreement contained the following language:

My name is Eduardo Del Fierro. I am the permittee. I neither admit or deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1050.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. *The signing of this waiver may result in the forfeiture of any related conduct surety bond.*

(emphasis added in italics).

In lieu of the cash civil penalties noted above, the Respondent was offered five days suspension for the violation which occurred on December 6, 1998, and ten days suspension for the violations which occurred on July 14, 1999.

As a result of these waiver agreements, the Commission Administrator entered Orders on January 6, 1999, and August 24, 1999, respectively. The Orders adjudicated that the violations acknowledged by Respondent in the waiver agreements had occurred. The Orders further provided that Respondent's permit(s) would be suspended unless Respondent paid a civil penalty in the amount indicated above for each occurrence.

## III. Applicable Law

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the rules or regulations of the Commission, in accordance with TEX. ALCO. BEV. CODE ANN. §§ 6.01 (Vernon 1995) and 61.71 (Vernon 1995 and Supp. 2000). Additionally, the Commission may seek forfeiture of a conduct surety bond when a license or permit has been cancelled, or where there has been a final adjudication that the licensee or permittee has

committed three violations of the TEX. ALCO. BEV. CODE ANN. since September 1, 1995, in accordance with 16 TEX. ADMIN. CODE § 33.24(j) (1999).

When posting a conduct surety bond, the bond specifies on its face that the permit or license holder must agree to “conform with the Texas Alcoholic Beverage Code and rules of the Commission.” In signing the bond, the permittee is also put on notice that if he “violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state,” subject to certain conditions. *See* TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

#### **IV. Proposed Findings of Fact**

1. On April 16, 1998, Eduardo Del Fierro (Respondent) posted a conduct surety bond for Dos Amigos located at 3906 Hwy. 132, Lytle, Medina County, Texas, for \$5,000.00. The Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer’s Permit No. BG-314610 and a Retail Dealer’s On-Premise Late Hours License No. BL-431645 to Respondent on May 11, 1998.
2. On May 11, 1999, the Commission renewed both of the Respondent’s permit.
3. On February 4, 2000, the staff for the Commission (Staff) mailed notice of hearing to the Respondent via certified mail, return receipt requested, to Respondent’s mailing address at P.O. Box 631, Lytle, Texas 78052. The Respondent received the notice.
4. The notice of hearing contained a statement of the date, 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 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.”
6. The hearing was convened on February 24, 2000, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. The Respondent attended the hearing. Christopher Burnett, Assistant Attorney General, represented the Staff. The ALJ closed the record that same day.
7. On December 12, 1998, and August 14, 1999, the Respondent signed an “Agreement and Waiver of Hearing” regarding the above referenced violations of the TEX. ALCO. BEV. CODE ANN. By signing each waiver agreement, Respondent declared and acknowledged that certain violations had been committed on December 6, 1998 (one violation) and July 14, 1999 (two violations), respectively, and that his permit would be suspended or cancelled by the Commission unless he paid a specified civil penalty for each occurrence.

The Commission Administrator entered two separate orders on January 6, 1999, and August 24, 1999, finding Respondent had committed three violations of the Commission's rules and regulations.

9. Respondent committed three violations of the Commission's rules and regulations which resulted in two final adjudications of these violations since September 1, 1995.

#### V. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, 11.11, and 61.71 (Vernon 1995 and Supp. 2000) and 16 TEX. ADMIN. CODE (TAC) § 33.24 (1999).
2. The State Office of Administrative Hearings 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. ALCO. BEV. CODE ANN. § 5.43 (Vernon 1995 and Supp. 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TAC ch. 155 (1999).
4. Respondent holds Permit No. BG-431644 and License No. BL-431645, and posted a conduct surety bond in accordance with the requirements set forth in 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 2000).
5. Respondent committed three violations of the Commission's rules and regulations, in accordance with 16 TAC § 33.24(j).
6. Respondent violated 16 TAC § 33.24 (1999) and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a Commission rule and a law of the State of Texas relating to alcoholic beverages while holding Wine and Beer Retailer's Permit No. BG-431644 and Retail Dealer's On-Premise Late Hours License No. BL-431645, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED and entered this 9<sup>th</sup> day of May, 2000.

  
LEAH BATES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS