

**DOCKET NO. 594643**

IN RE EL TACO CLUB, INC.	§	BEFORE THE
D/B/A EL TACO CLUB	§	
ORIGINAL APPLICATION N, PE, FB	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3729)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 9th day of January 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened and adjourned on October 17, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 28, 2001. 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.

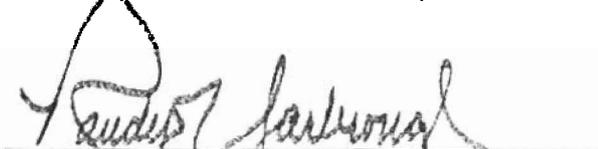
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Permits be **DENIED**.

**This Order will become final and enforceable on January 30, 2002**, 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 9th day of January 2002.

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

TEG/bc

The Honorable Jerry Van Hamme  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (214) 956-8611

Stephen F. Shaw  
ATTORNEY FOR RESPONDENT  
8700 N. Stemmons Freeway, Ste. 470  
Dallas, TX 75247  
VIA FACSIMILE (214) 920-2498 AND  
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 1641

El Taco Club Inc.  
d/b/a El Taco Club  
RESPONDENT  
5135 Urban Crest Rd.  
Dallas, TX 75227-1568  
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1929 1658

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Dallas District Office



On August 13, 2001, Staff sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records informing Respondent that the Commission and the City of Dallas were protesting the issuance of the requested permits and certificate to Respondent. The notice also informed Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.

3. The Notice of Hearing contained language in 10-point type stating that if Respondent failed to appear at the hearing Protestant's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
4. The hearing on the merits convened on October 17, 2001, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. Timothy E. Griffith, Staff attorney, appeared on behalf of Protestants. Respondent did not appear and was not represented at the hearing. The record was closed on the same day.
5. Respondent made a false or misleading statement in connection with its original application, either in the formal application or in a written instrument relating to and submitted with the original application.
6. Respondent failed to answer, or falsely or incorrectly answered, a question in its original application.
7. If granted the requested certificate and permits, Respondent would have engaged in a device, scheme or plan which would have surrendered control of Respondent's business, premises, and/or employees to persons or entities other than Respondent.
8. If granted the requested certificate and permits, Respondent would have sold liquor in a dry area or in a manner contrary to law.
9. If granted the requested certificate and permits, the place or manner in which Respondent would have conducted its business would not have been in accordance with the general welfare, health, peace, morals, safety, and/or sense of public decency.

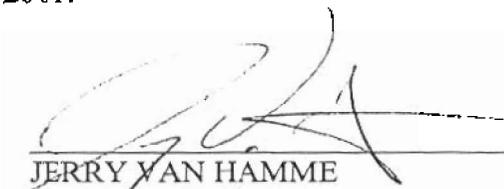
### **CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11.
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 facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021.
3. Based on Findings of Fact Nos. 2 - 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 and 1 TEX. ADMIN. CODE § 155.55(d), which provide 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. Based on Findings of Fact Nos. 2 - 4 and 1 TEX. ADMIN. CODE § 155.55, the allegations against Respondent are deemed admitted as true.
5. Based on Finding of Fact No. 5, granting Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate would violate TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(4).
6. Based on Finding of Fact No. 6, granting Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate would violate TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(4).
7. Based on Finding of Fact No. 7, granting Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate would violate TEX. ALCO. BEV. CODE ANN. §§ 109.53.
8. Based on Finding of Fact No. 8, granting Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate would violate TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(10).
9. Based on Finding of Fact No. 9, granting Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate would violate TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(8) and 16 TEX. ADMIN. CODE § 35.31.
10. Based on Conclusions of Law Nos. 5 - 9, Respondent's original application for a Private Club Registration Permit, a Beverage Cartage Permit, and a Food and Beverage Certificate should be denied.
11. Based on Findings of Fact Nos. 2 - 4, and Conclusion of Law No. 3, a default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.

ISSUED this 28 day of November, 2001.

  
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JERRY VAN HAMME  
Administrative Law Judge  
State Office of Administrative Hearings