

DOCKET NO. 601535

IN RE ANTHONY RAMOS BERNAL	§	BEFORE THE
D/B/A LITTLE ANTHONY'S BLUE MOON	§	
PERMIT NO. BG464605	§	
LICENSE NO. BL464606	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-1904)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of May, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cyrena Benson. The hearing convened on February 17, 2004 and adjourned on February 17, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 19, 2004. 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 Permit No. BG464605 and License No. BL464606 are hereby **SUSPENDED**.

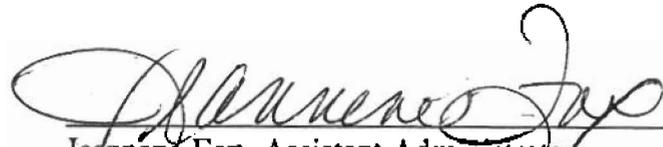
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **30th day of June, 2004**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of five (5) days, beginning at 12:01 A.M. on the **7th day of July, 2004**.

This Order will become final and enforceable on **MAY 28, 2004**, 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 the 7th day of May, 2004.

On Behalf of the Administrator,

A handwritten signature in cursive script, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

Hon. Cyrena Benson
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

Anthony Ramos Bernal Jr.

d/b/a Little Anthony's Blue Moon
2015 E Crockett
San Antonio, Tx. 782023226
CERTIFIED MAIL RRR 7000 1530 0003 1902 5246

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Compliance Division
Licensing Division
San Antonio District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 601535

REGISTER NUMBER:

NAME: Anthony Ramos Bernal

TRADENAME: Little Anthony's Blue Moon

ADDRESS: 2015 E. Crockett, San Antonio, Texas 78202

DATE DUE: June 30, 2004

PERMITS OR LICENSES: BG464604, BL464606

AMOUNT OF PENALTY: \$750.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 30TH DAY OF JUNE, 2004, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

SOAH DOCKET NO. 458-04-1904

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
ANTHONY RAMOS BERNAL, JR. D/B/A LITTLE ANTHONY'S BLUE MOON, PERMIT NO. BG-464605, BL-464606 BEXAR COUNTY, TEXAS TABC Case No. 601535	§ §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff, TABC) brought this enforcement action against Anthony Ramos Bernal, Jr., d/b/a Little Anthony's Blue Moon (Respondent, Permittee) alleging that on August 1, 2002, Permittee, its agent, servant or employee gave a check or draft for the purchase of beer that was dishonored when presented for payment. By giving a check or draft for the purchase of beer that was dishonored when presented for payment, Permittee violated Texas Alcoholic Beverage Code §§ 61.73(b) and 102.31. Staff recommended that Permittee's permits be suspended for five days or that Permittee pay a fine of \$150.00 per day in lieu of suspension. The ALJ agrees with and adopts Staff's recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened on February 17, 2004, at the State Office Of Administrative Hearings Office, 10300 Heritage, Suite 250, San Antonio, Texas, and concluded the same day. Staff's attorney Gayle Gordon appeared by video conference and represented the Petitioner. Respondent did not appear and was not represented at the hearing. Cyrena Benson, Administrative Law Judge (ALJ), presided.

After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations

are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without discussing the evidence. The factual findings support a conclusion that Permittee gave a check for the purchase of beer that was dishonored when presented for payment. Therefore, the ALJ recommends that Permittee's license or permits be suspended for five days or Permittee pay a fine of \$150.00 per day in lieu of suspension.

II. FINDINGS OF FACT

1. Anthony Ramos Bernal d/b/a Little Anthony's Blue Moon (the Permittee), located at 3015 Roosevelt, San Antonio, Bexar County, Texas 78214, holds Permit Nos. BG464605 and BL464606.
2. On January 13, 2004, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent at 2015 E. Crockett, San Antonio, Texas 78202-3226. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and the matters asserted.
3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was held **February 17, 2004**. Respondent did not appear at the hearing.
5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. On or about August 1, 2002, Permittee, its agent, servant, or employee tendered a check written in the amount of \$311.60 to BudCo, Ltd. of San Antonio, Texas.
7. On or about August 7, 2002, the check was returned by Drawee, Bank of America N. A. of Dallas, Texas for insufficient funds.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§ 6.01 and 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §1.01 *et seq.*

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 proposed 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 provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings rule, 1 TAC §155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31, on or about August 1, 2002; Respondent, its agent, servant, or employee, gave a check or draft for the purchase of beer that was dishonored when presented for payment.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, a five-day suspension of Respondents permits is warranted pursuant to 16 TAC § 37.60.
8. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$150.00 per day civil penalty in lieu of suspension of its permits.

SIGNED April 19, 2004.



CYRENA BENSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS