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**DOCKET NO. 604320**

IN RE JOSE SANTOS BLANCO	§	BEFORE THE
D/B/A RESTAURANTE EL	§	
SALVADORENO	§	
PERMIT/LICENSE NOS. BE444073,	§	
FB444074	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0462)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 6th day of March 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on December 19, 2005 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 15, 2006. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 food and beverage certificate be CANCELLED FOR CAUSE.**

**IT IS FURTHER ORDERED** that Respondent pay a civil penalty in the amount of **\$5,000.00**, to the Texas Alcoholic Beverage Commission, on or before **May 5, 2006**.

**This Order will become final and enforceable on March 27, 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** this 6th day of March 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

Judge Brenda Coleman  
Via Fax 214-956-8611

Stephen F. Shaw  
Attorney for Respondent  
8700 N. Stemmons Frwy., Ste. 470  
Dallas, TX 75247  
**CMRRR#7001 2510 0000 7274 208**

Jose Santos Blanco  
d/b/a Restaurante El Salvadoreno  
8414 Denton Drive  
Dallas, Texas 75235-3135  
**CMRRR#7001 2510 0000 7274 2192**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Fort Worth District Office



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PROPOSAL FOR DECISION

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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 November 28, 2005, the ALJ granted Petitioner's motion for continuance and reset the case for hearing on December 19, 2005. On December 19, 2005, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence regarding notice and jurisdiction. The record closed on December 19, 2005.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 T EX. ADMIN. CODE (TAC) § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO.BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.55, the allegations presented 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, Respondent's food and beverage certificate should be canceled and Respondent should pay a \$5,000 penalty.

## III. FINDINGS OF FACT

1. Jose Santos Blanco d/b/a Restaurante El Salvadoreno (Respondent), holds a Retail Dealer's On-Premises License, BE-444073, and a food and beverage certificate, FB-444074, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at 8414 Denton Drive, Dallas, Dallas County, Texas.
2. On November 4, 2005, 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

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PROPOSAL FOR DECISION

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merits for December 7, 2005.

3. The notice of hearing was received by Respondent on November 21, 2005. The return receipt was signed "J./S./B."
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 November 28, 2005, the Administrative Law Judge (ALJ) granted Petitioner's motion for continuance and reset the case for hearing on December 19, 2005.
7. A hearing convened before ALJ Brenda Coleman, with the State Office of Administrative Hearings (SOAH), on December 19, 2005. Petitioner appeared through its Staff Attorney, Timothy Griffith. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
8. On August 1, 2002, TABC conducted an inspection of Respondent's licensed premises.
9. The investigator discovered that Respondent was not operating primarily as a food service establishment. Respondent was operating a bar rather than a restaurant.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 61.71 and 69.16.
2. The 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.

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5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §69.16(d).
6. Respondent's food and beverage certificate should be canceled. Respondent should also pay a \$5,000 penalty. TEX. ALCO. BEV. CODE ANN. §§ 61.71 (a)(1) and 69.16(d).

SIGNED February 15, 2006.

*Brenda Coleman*

**BRENDA COLEMAN**

**ADMINISTRATIVE LAW JUDGE**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

### SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Jose Santos Blanco d/b/a Restaurante El Salvadoreno

DOCKET NUMBER: 458-06-0462

AGENCY CASE NO: 604320

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Timothy Griffith  
Staff Attorney  
8700 Stemmons Freeway, Ste. # 460  
Dallas, Texas 75247  
Telephone No: (214) 678-4000

**AGENCY COUNSEL**  
VIA FAX (214) 678-4001

Stephen Shaw  
Attorney at Law

**RESPONDENT'S ATTORNEY**  
VIA FAX (214) 920-2498

Jose Santos Blanco  
d/b/a Restaurante El Salvadoreno  
8414 Denton Drive  
Dallas, Texas 75235-3135

**RESPONDENT**  
VIA REGULAR MAIL

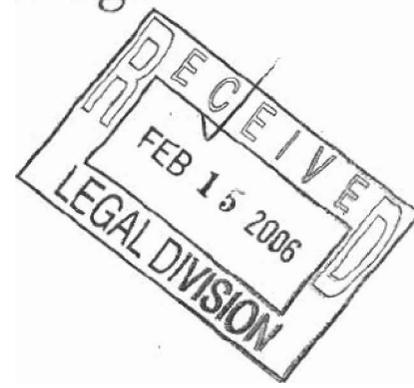
as of February 15, 2005

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# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
Chief Administrative Law Judge



February 15, 2006

Alan Steen,  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

**RE: Docket # 458-06-0462**  
**TABC VS. JOSE SANTOS BLANCO**  
**D/B/A RESTAURANTE EL SALVADORENO**

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,

*Brenda Coleman*  
Brenda Coleman  
Administrative Law Judge

BC/sr  
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax,  
Stephen Shaw, Respondent's Attorney, Via Fax, Jose Santos Blanco, Respondent, Via  
Mail