

DOCKET NO. 458-04-2002

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	1.	
ERNESTO BAZAN JR. D/B/A	§	
CAESAR'S CABARET	§	
WICHITA COUNTY, TEXAS	§	
(TABC CASE NO. 605319)	§	ADMINISTRATIVE HEARINGS

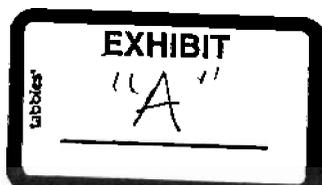
PROPOSAL FOR DECISION

I. Introduction

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought cancellation of the permits held by Ernesto Bazan Jr. d/b/a Caesar's Cabaret (Respondent) for Respondent's failure to pay taxes due to the State of Texas. The Staff also requested denial of any pending application for renewal of the permits. The Administrative Law Judge (ALJ) recommends that Respondent's permits be canceled and any pending application for renewal of the permits be denied.

II. Jurisdiction and Procedural History

On January 8, 2004, the Staff issued a Notice of Hearing, scheduling a public hearing in this case for February 19, 2004. On that date, a public hearing was convened before ALJ Robert F. Jones Jr., in the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant



Docket No. 458-04-2002

Proposal For Decision

Page 2

County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Respondent appeared *pro se*. The hearing and the record were closed on February 19, 2004.

Notice and jurisdiction were not contested issues, and those matters are addressed only in the Findings of Fact and Conclusions of Law.

III. Discussion and Analysis

A. The Governing Law

The TABC may cancel or suspend a permit if it finds the permittee "is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the commission, or by Chapter 183, Tax Code."¹ The State imposes a tax of 14% on the gross receipts of sales of mixed beverages.² The permittee is required to file a monthly return, and remit the tax due with the return.³ The State imposes a sales tax of 6¼% of the sales price on the sale of a taxable item.⁴ Sales of mixed beverages are subject to the sales tax.⁵ The seller is required to compute the sales tax due to the state, file a monthly return, and

¹ TEX. ALCO. BEV. CODE ANN. (the Code) § 11.61(b)(5).

² TEX. TAX CODE ANN. (the Tax Code) § 183.021. The TABC has a detailed rule concerning mixed beverage gross receipts taxes. See 16 TEX. ADMIN. CODE § 41.50.

³ §§ 183.022 & 183.023 of the Tax Code.

⁴ § 151.051 of the Tax Code.

⁵ §§ 151.005, 151.009, & 151.010 of the Tax Code.

Docket No. 458-04-2002

Proposal For Decision

Page 3

to remit the tax due with the return to the Comptroller.⁶

The TABC's regulation allows the Commission or the Comptroller to estimate Respondent's mixed beverage gross receipts tax "from any available source or records, and estimates of the tax liability may be made by use of any available record for any period for which the permittee has failed to maintain records or file a report with the commission."⁷ The Tax Code authorizes a similar estimate process for sales tax collections.⁸

B. The Evidence

The Texas Alcoholic Beverage Commission (the TABC) issued Respondent Mixed Beverage Permit MB491324 and Mixed Beverage Late Hours Permit LB491325. Respondent's licensed premises are located at 411 North Scott, Wichita Falls, Wichita County, Texas. Pam Page, an Enforcement Officer employed by the Texas State Comptroller's Office, testified. Respondent owes \$ 19,410.21 to the state for unpaid mixed beverage gross receipts taxes for the period of August to December 2003. Respondent owes \$ 2,823.13 to the state for unpaid sales taxes for the period of August to December 2003.

Ms. Page produced documentation of the debts at the hearing and two summaries of the accounts

⁶ §§ 151.401-151.403, 151.409, & 151.410 of the Tax Code.

⁷ 16 TEX. ADMIN. CODE (TAC) § 41.50(f)(2).

⁸ § 151.503 of the Tax Code.

Docket No. 458-04-2002

Proposal For Decision

Page 4

were admitted into evidence. She testified that Respondent never filed any mixed beverage gross receipts tax or sales tax returns for the five months. Respondent's tax liability for the five month period are based upon estimates; the estimates are based upon the highest monthly tax amount for the last calendar year preceding the estimated month. The Comptroller has sent bills and notices that these amounts were due, but Respondent has made no payments on the accounts, Ms. Page stated. Respondent is delinquent in paying its mixed beverage gross receipts taxes and sales taxes, she concluded.⁹

C. Analysis & Recommendation

Respondent was under a duty to report and pay his mixed beverage gross receipts taxes and sales taxes. The evidence clearly demonstrates that he did not. The ALJ recommends the TABC order that Respondent's permits be canceled, and if any application for renewal is pending, the application be denied.

IV. Findings of Fact

1. Ernesto Bazan Jr. d/b/a Caesar's Cabaret (Respondent) was issued Mixed Beverage Permit MB491324 and Mixed Beverage Late Hours Permit LB491325.
2. Respondent's licensed premises are located at 411 North Scott, Wichita Falls, Wichita County, Texas.
3. Respondent's mailing address is 411 North Scott, Wichita Falls, Wichita County, Texas.
4. Respondent owes \$ 19,410.21 to the state for unpaid mixed beverage gross receipts taxes for the period of August to December 2003.
5. The debt for mixed beverage gross receipts taxes consists of estimated taxes

⁹ Respondent agreed that he had sent in no returns, and made no uncredited payments.

6. The estimated mixed beverage gross receipts taxes for each month of August to December 2003 are based upon the highest monthly tax amount for the last calendar year preceding the estimated month.
7. Respondent owes \$ 2,823.13 to the state for unpaid sales taxes for the period of August to December 2003.
8. The debt for sales taxes consists of estimated taxes.
9. The estimated sales taxes for each month of August to December 2003 are based upon the highest monthly tax amount for the last calendar year preceding the estimated month.
10. Respondent had been sent bills and notices that these amounts were due.
11. Respondent has made no payments on the accounts.
12. Respondent is delinquent in paying his mixed beverage gross receipts taxes and sales taxes.
13. On January 8, 2004, Staff issued a notice of hearing notifying all parties that a hearing would be held and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
14. On February 19, 2004, a public hearing was convened before ALJ Robert F. Jones Jr., in the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy Griffith, an attorney with the TABC Legal Division. Respondent appeared. The hearing and the record were closed on February 19, 2004.

V. Conclusions of Law

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2003).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T

Docket No. 458-04-2002

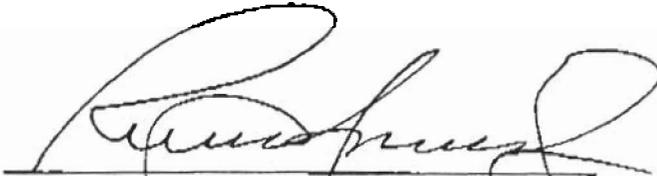
Proposal For Decision

Page 6

CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2003).

4. Based on the foregoing findings, Respondent indebted to the state for taxes, fees, or payment of penalties imposed by the Code, and by Chapter 183, Texas Tax Code. § 11.61(b)(5) of the Code; TEX. TAX CODE ANN. Chapters 151, 183.
5. Based on the foregoing findings and conclusions, Mixed Beverage Permit MB491324 and Mixed Beverage Late Hours Permit LB491325 should be canceled. § 11.61(b)(5) of the Code.
6. Based on the foregoing findings and conclusions, any pending the application filed by Respondent should be denied. § 11.61(b)(5) of the Code.

SIGNED February 23, 2004.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 605319

IN RE ERNESTO BAZAN JR.	§	BEFORE THE
D/B/A CAESAR'S CABARET	§	
PERMIT NOS. MB491324, LB491325	§	
	§	TEXAS ALCOHOLIC
	§	
WICHITA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2002)	§	BEVERAGE COMMISSION

AMENDED ORDER

This order amends the name of the Administrative Law Judge in this cause.

CAME ON FOR CONSIDERATION this 1st day of April 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert Jones. The hearing convened on February 19, 2004, and adjourned on February 19, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 23, 2004. 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. 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.

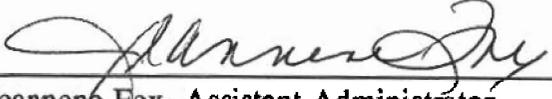
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. MB491324 and LB491325 are hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on April 19, 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 or through the U.S. Mail, as indicated below.

SIGNED this 1st day of April, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert Jones
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

ERNESTO BAZAN JR.
D/B/A CAESAR'S CABARET
RESPONDENT
411 N Scott
Wichita Falls, TX 76306-3238
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1903 3777

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Wichita Falls District Office