

DOCKET NO. 608984

IN RE ALMA PATRICIA LIMONES	§	BEFORE THE
D/B/A MARI'S DISCOTEQUE	§	
PERMIT NOS. BG-545131	§	
	§	TEXAS ALCOHOLIC
	§	
HUTCHINSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6096)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 20th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on August 13, 2004, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 18, 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 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 Wine and Beer Retailer's Permit No. BG-545131 is hereby **CANCELLED FOR CAUSE**.

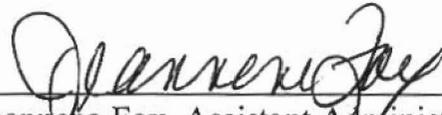
IT IS FURTHER ORDERED that all rights and privileges under the above described permit will be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on November 10, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 20th day of October, 2004.

On Behalf of the Administrator,



Jeannette Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
Lubbock, Texas
VIA FACSIMILE: (806) 792-0149

Alma Patricia Limones
d/b/a Mari's Discoteque
RESPONDENT
1420 N. Main
Borger, Texas 79007
CERTIFIED MAIL NO. 7000 1530 0003 1902 6960
RETURN RECEIPT REQUESTED

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Amarillo District Office

DOCKET NO. 458-04-6096

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

v.

ALMA PATRICIA LIMONES
D/B/A MARI'S DISCOTEQUE
HUTCHINSON COUNTY, TEXAS
(TABC NO. 608984),
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC, Staff) brought this disciplinary action against Alma Patricia Limones dba Mari's Discoteque (Respondent), alleging that Respondent, its agent, servant, or employee consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours on or about February 7, 2004. A hearing was scheduled and convened; however, Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds Staff's allegations are deemed admitted as true and recommends that Respondent's permit be canceled.

I. PROCEDURAL HISTORY

On June 21, 2004, Staff issued a Notice of Hearing (NOH) to Respondent at its mailing address of record reflected on Respondent's permits: 1420 N. Main, Borger, Texas, 79007. The NOH was sent by certified mail, return receipt requested, and was returned to Staff by the U.S. Postal Service undelivered. The Staff attorney stated at the hearing that TABC has been unable to locate Respondent.

A hearing was convened before ALJ B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas, on August 13, 2004. TABC was represented at the hearing by Dewey A. Brackin, Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing concluded and the record closed that same day.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.55 be invoked. Respondent's certified Permit history was admitted into evidence and reflects that Respondent's mailing address on the permit was: 1420 N. Main, Borger, Texas 79007-2010. The Notice of Hearing (NOH) sent to Respondent by certified mail was also admitted into evidence showing that the NOH was sent to the mailing address set forth on the permit and that the NOH was returned undelivered with the notation "Moved, Left No Address". Sgt. Brian Williams of the Texas Alcoholic Beverage Commission testified that a permittee is required to notify the TABC district office of any change of mailing address and that Respondent has failed to do so. The ALJ finds that Staff 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.

Staff requested that the ALJ recommend a penalty in this case of cancellation of Respondent's permit.

III. PROPOSED FINDINGS OF FACT

1. Alma Patricia Limones dba Mari's Discoteque (Respondent) holds a Wine and Beer Retailer's Permit, BG545131, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1420 N. Main, Borger, Hutchinson County, Texas.
2. On June 21, 2004, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 1420 N. Main, Borger, Texas, 79007. The Notice was sent by certified mail, return receipt requested, and returned by the U.S. Postal Service with a notation on the envelope "MOVED, LEFT NO ADDRESS."
3. A permittee is required to notify the district office of TABC of any change of mailing address, but the Respondent has not done so.
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

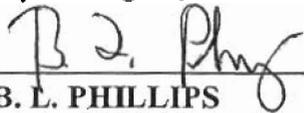
was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.

5. The Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
6. On August 13, 2004, a hearing was convened before Administrative Law Judge B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. TABC was represented at the hearing by Dewey A. Brackin, Staff Attorney. Respondent did not appear and was not represented at the hearing.
7. Respondent committed the violation of consuming or permitting others to consume an alcoholic beverage on the licensed premises during prohibited hours on or about February 7, 2004.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.32, 5.44, 26.03, and 61.71.
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Staff issued the notice of hearing in compliance with 1 TEX. ADMIN. CODE (TAC) §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TAC § 155.55.
5. Based upon Proposed Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(18) and 105.06.
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permit should be canceled.

SIGNED on the 18th day of August, 2004.



B. L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS