

DOCKET NO. 609065

IN RE PAUL M. ORTIZ JR.	§	BEFORE THE
D/B/A ORTIZ BAR & RECREATION	§	
PERMIT NOS. BG-266906	§	
	§	TEXAS ALCOHOLIC
	§	
COMAL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-6453)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 2nd day of December, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on August 10, 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 October 11, 2004. The 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.

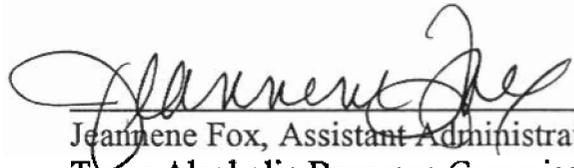
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Wine and Beer Retailer's Permit No. BG-266906 is hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on DECEMBER 23, 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 2nd day of December, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
Austin, Texas  
*VIA FACSIMILE: (512) 475-4994*

Paul M. Ortiz, Jr.  
d/b/a Ortiz Bar & Recreation  
**RESPONDENT**  
246 Seele  
New Braunfels, Texas 78130  
**CERTIFIED MAIL NO.**  
**RETURN RECEIPT REQUESTED**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Austin District Office

**DOCKET NO. 458-04-6453**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**VS.**

**PAUL M. ORTIZ, JR.  
d/b/a ORTIZ BAR & RECREATION  
PERMIT NO. BG-266906  
COMAL COUNTY, TEXAS  
(TABC CASE NO. 609065)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this action seeking cancellation of the Wine and Beer Retailer's Permit held by Paul M. Ortiz, Jr., for the premises know as Ortiz Bar & Recreation, located at 283 W. San Antonio, New Braunfels, Comal County, Texas. Staff alleged that Respondent possessed or permitted others to possess a narcotic on the licensed premises. Following a hearing that Respondent failed to attend, the Administrative Law Judge (ALJ) recommends that the permit be canceled.

**I. PROCEDURAL HISTORY**

The hearing on the complaint convened before ALJ John H. Beeler on August 10, 2004, at the State Office of Administrative Hearings, 10300 Heritage, Suite 250, San Antonio, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. After establishing jurisdiction and notice, Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE § 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.

**II. FINDINGS OF FACT**

1. Paul M. Ortiz, Jr. d/b/a Ortiz Bar & Recreation (Respondent) holds Wine and Beer Retailer's Permit No. BG-266906, issued by the Commission on July 18, 1991, for the business known as Ortiz Bar & Recreation, located at 283 W. San Antonio, New Braunfels, Comal County, Texas.
2. On June 23, 2004, the Commission sent a notice to Respondent by certified mail at the address listed in the Commission's records, alleging that Respondent, his agent, servant or

- employee, on January 17, 2003, possessed or permitted others to possess a narcotic on the licensed premises.
3. Notice of the hearing in this matter, dated June 23, 2004, was properly addressed and sent by certified mail to Respondent's New Braunfels, Texas, mailing address as listed in the Commission's records.
  4. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
  5. The notice also contained language in 12-point bold 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.
  6. Respondent did not attend and was not represented at the hearing in this matter conducted on August 10, 2004.
  7. On January 17, 2003, Respondent, his agent, servant, or employee, possessed or permitted others to possess a narcotic on the licensed premises.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 11.61(b) of the TEX. ALCO. BEV. CODE ANN. (the Code).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Pursuant to the Code §§ 11.61(b)(2) and (7), the Commission or administrator may cancel an original or renewal permit or license if it finds that the permittee violated a provision of the Code or that the manner in which the permittee conducts his business warrants the cancellation of the permit based on the general health, welfare, and safety of the people.
5. Based upon Finding of Fact No. 7, Respondent is in violation of the Code §§ 104.01(9) and 11.61(b)(2) and 16 TAC § 31.1 *et seq.*
6. Based on Findings of Fact Nos. 3-7 and Conclusions of Law Nos. 3-5, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.

7. Based upon the foregoing, Respondent's Wine and Beer Retailer's Permit No. BG-266906, should be canceled pursuant to the Code § 11.61(b)(2).

SIGNED on October 11, 2004.



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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**