

DOCKET NO. 609144

IN RE PROGRESSIVE ADVENTURE INC.	§	BEFORE THE
D/B/A LOS RIOS EXPRESS MART	§	
PERMIT NO. BQ461021	§	
	§	TEXAS ALCOHOLIC
	§	
COLLIN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-8606)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1st day of December, 2004, 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 October 15, 2004, and adjourned on October 15, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 12, 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. 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.

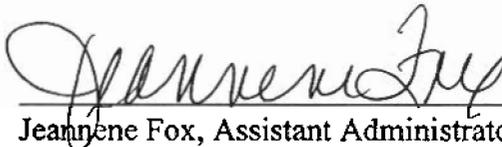
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Permit No. BQ461021 be **CANCELED**.

This Order will become final and enforceable on December 22, 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 1st day of December, 2004, at Austin, Texas.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

Progressive Adventure Inc.
d/b/a Los Rios Express Mart
RESPONDENT
4100 E. Park Blvd.
Plano, TX 75074
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 1941

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-04-8606

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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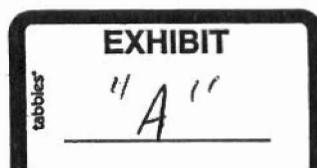
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Progressive Adventure Inc. d/b/a Los Rios Express Mart (Respondent), alleging that Respondent failed to pay delinquent ad valorem taxes to Collin County, in violation of the Texas Alcoholic Beverage Code. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested cancellation of Respondent's permit. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 61.36(d). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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.

On September 1, 2004, Petitioner issued its notice of hearing, directed to Respondent. The notice of hearing was received by Respondent on or about September 3, 2004. 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, 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 October 15, 2004, 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 October 15, 2004.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. 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 renewal application should be denied.

III. FINDINGS OF FACT

1. Progressive Adventure Inc. d/b/a Los Rios Express Mart (Respondent), holds a Wine and Beer Retailer's Off-Premise Permit, BQ-461021, issued by the Texas Alcoholic Beverage Commission (Petitioner), for the premises located at 4100 East Park Boulevard, Plano, Collin County, Texas.
2. On September 1, 2004, Petitioner issued its notice of hearing to Respondent. The notice of hearing was received by Respondent on September 3, 2004.
3. 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.
4. 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."
 5. A hearing convened before Brenda Coleman, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 15, 2004. 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.
 6. Respondent failed to pay delinquent ad valorem taxes to Collin County, Texas
 7. Respondent has failed to pay its franchise taxes.
 8. Respondent has forfeited its corporate status and existence.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Staff) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 61.36, 61.71 and 109.53.
7. The State Office of Administrative Hearings 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.
8. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE (TAC) § 155.55.
9. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
10. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 61.36(d), 61.71(a)(17) and 109.53.
11. Respondent's permit should be canceled. TEX. ALCO. BEV. CODE ANN. §§ 61.36 (d), 61.71(a)(17) and 109.53.

SIGNED November 12, 2004.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS