

DOCKET NO. 610401

IN RE MI RANCHO CARNICERIA	§	BEFORE THE
Y FRUTERIA INC.	§	
D/B/A MI RANCHO CARNICERIA	§	
Y FRUTERIA	§	TEXAS ALCOHOLIC
PERMIT NO. BQ-548016	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0848)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of January, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on October 29, 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 December 17, 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, 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 Off-Premise Permit No. BQ-548016 is hereby **SUSPENDED**.

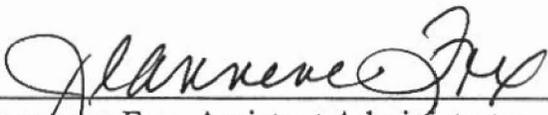
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$900.00 on or before the 24th day of February, 2005, all rights and privileges under the above described permit will be **SUSPENDED** for a period of six (6) days, beginning at 12:01 A.M. on the 3rd day of March, 2005.

This Order will become final and enforceable on February 3, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by the method indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 13th day of January, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/yt

Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

Mi Rancho Carniceria Y Fruteria, Inc.
d/b/a Mi Rancho Carniceria Y Fruteria
RESPONDENT
10341 Palestine Street
San Jacinto City, Texas 77029
CERTIFIED MAIL NO. 7000 1530 0003 1902 7455
RETURN RECEIPT REQUESTED

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCED

DOCKET NUMBER: 610401

REGISTER NUMBER:

NAME: MI RANCHO

TRADENAME: MI RANCHO CARNICERIA Y

CARNICERIA Y FRUTERIA, INC.

FRUTERIA

ADDRESS: 10341 Palestine Street, Jacinto City, Texas 77029

DATE DUE: February 24, 2005

PERMITS OR LICENSES: BQ-548016

AMOUNT OF PENALTY: \$900.00

Amount remitted \$ _____ Date remitted _____

If you wish to a pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 24th DAY OF February, 2005, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

DOCKET NO. 458-05-0848

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
MI RANCHO CARNICERIA Y FRUTERIA D/B/A MI RANCHO CARNICERIA Y FRUTERIA HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Mi Rancho Carniceria Y Fruteria d/b/a Mi Rancho Carniceria Y Fruteria (Respondent), alleging that Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended for six days, or in lieu of suspension, that Respondent pay a civil penalty of \$900. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a)(1). The State Office of Administrative Hearings (SOAH) 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.

On October 12, 2004, Petitioner issued its notice of hearing, directed to Mi Rancho Carniceria Y Fruteria d/b/a Mi Rancho Carniceria Y Fruteria, 10341 Palestine St., Jacinto City, Texas 77029, via

certified mail, return receipt requested to Respondent's last known address which was signed by Respondent as evidenced by the certified mail receipt. On October 29, 2004, a hearing convened before SOAH ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 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. As admitted, the allegation support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. Respondent, Mi Rancho Carniceria Y Fruteria d/b/a Mi Rancho Carniceria Y Fruteria holds a Wine and Beer Retailer's Off-Premise Permit BQ-548016, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 10341 Palestine Street, Jacinto City, Harris County, Texas.
2. On October 12, 2004, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on October 29, 2004. The notice of hearing was sent via certified mail to Respondent's last known address and was signed by Respondent evidenced by the certified mail receipt.
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

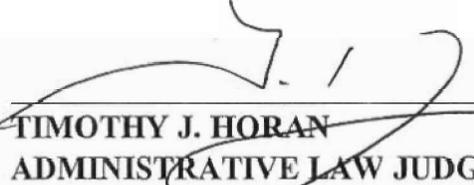
to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.

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 Timothy J. Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on October 29, 2004. Respondent did not appear and was not represented at the hearing. The record was closed.
6. On or about April 13, 2004 and September 28, 2004, Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment for beer.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).
2. SOAH 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. Based upon Findings of Fact Nos. 2-4, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of six days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$900 in lieu of suspension of the permit/license

SIGNED December 17, 2004.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS