

DOCKET NO. 611870, 612341 & 515265

MOISES REYES	§	BEFORE THE TEXAS
D/B/A ELIZABET CLUB II	§	
PERMIT NOS. BG533810, BL533811	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET # 458-06-1134)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this 18th day of May 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on February 24, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 26, 2006. The 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, Transcript 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 permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on June 8, 2006 unless a Motion for Rehearing is filed **before** that date.

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

SIGNED on 18th day of May 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Roshunda Pringle
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Moises Reyes
d/b/a Elizabeth Club II
RESPONDENT
2647 Kodiak Ct.
Houston, Texas 77060
CMRRR NO. 7005 1160 0003 3717 8191

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Section

State Office of Administrative Hearings

RP +
D



Shelia Bailey Taylor
Chief Administrative Law Judge

515265
611870

April 26, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-06-1134; Texas Alcoholic Beverage Commission v. Moises Reyes
d/b/a Elizabet Club II**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

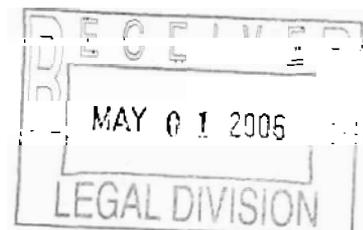
Sincerely,

A handwritten signature in cursive script that reads "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mc
Enclosure

xc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL
Moises Reyes d/b/a Elizabet Club II, 2647 Kodiak Ct., Houston, Texas 77060 - VIA REGULAR MAIL



North Loop Office Park
2020 North Loop West, Suite 111 Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

SOAH DOCKET NO. 458-06-1134

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
MOISES REYES D/B/A ELIZABET CLUB II	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Moises Reyes d/b/a Elizabet Club II (Respondent), alleging that Respondent, his agent, servant, or employee on more than one occasion consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited, in violation of Tex. Alco. Bev. Code Ann. §§ 61.71 (a)(18) and 105.06. In addition, TABC alleges that, with criminal negligence, the Respondent permitted a minor to possess or consume an alcoholic beverage, in violation of the Tex. Alco. Bev. Code Ann. § 106.13. Respondent failed to appear at the hearing, and the hearing proceeded on a default basis. Petitioner requested that Respondent's permits be canceled for cause. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 44.03. 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 February 2, 2006, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known designated mailing address: 2647 Kodiak Court, Houston, Texas 77060, via certified mail, return receipt requested.¹ 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 February 24, 2006, a hearing convened before SOAH ALJ Roshunda Pringle at 2020 North Loop West, Ste. 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Ramona Perry, 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 February 24, 2006.

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. Petitioner's Notice of Hearing complies 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, the ALJ recommends that Respondent's permits be canceled.

¹ Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the permittee's last known address as reflected in the commission's records. A certificate of service to such address shall be *prima facie* evidence of adequate service on the permittee. 16 TEX. ADMIN. CODE § 37.3.

III. FINDINGS OF FACT

1. Moises Reyes d/b/a Elizabet Club II (Respondent) holds a Wine and Beer Retailer's Permit, BG-533810, and Retail Dealer's On-Premise Late Hours License, BL-533811, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 12669 Veteran's Memorial Parkway, 'B', Houston, Texas 77014.
2. Respondent's last known designated mailing address, as reflected in Petitioner's records, is 2647 Kodiak Court, Houston, Texas 77060.
3. On February 2, 2006, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for February 24, 2006.
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 short, plain statement of the matters asserted.
5. 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."
6. A hearing convened before Roshunda Pringle, Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on February 24, 2006. Petitioner appeared through its Staff Attorney, Ramona Perry. Respondent did not appear and was not represented at the hearing. The record closed on that same date.
7. On or about July 30, 2004, Respondent consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverage was prohibited.
8. On or about July 30, 2004, Respondent with criminal negligence permitted a minor to possess or consume an alcoholic beverage.
9. On or about August 22, 2004, Respondent consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverage was prohibited.

10. On or about December 10, 2005, Respondent consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverage was prohibited.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 5.32, 11.61, 61.71, 29.03, 31.03, and 4403.
2. SOAH 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.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.
5. Respondent violated the Texas Alcoholic Beverage Code. TEX. ALCO. BEV. CODE ANN. §§ 61.71 (a)(18), 105.06, and 106.13.
6. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b)(2) and 61.71(a)(1).

SIGNED April 26, 2006.



ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS