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**DOCKET NO. 614598**

IN RE CASA BLANCA CLUB AND	§	BEFORE THE
RESTAURANT	§	
PERMIT/LICENSE NOS. N-254618,	§	
PE254619	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-5273)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 14th day of September, 2005, 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 June 9, 2005 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 August 1, 2005. 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.

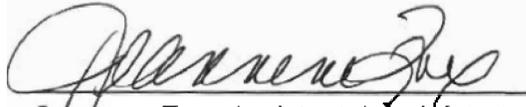
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permits be **CANCELLED FOR CAUSE**.

**This Order will become final and enforceable on October 5, 2005** 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** this 14th day of September, 2005

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

TEG/bc

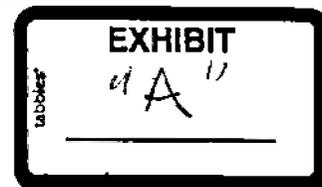
The Honorable Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (214) 956-8611**

**CASA BLANCA CLUB AND RESTAURANT**  
**RESPONDENT**  
925 CEDAR TERRACE  
CEDAR HILL, TX 75104-7908  
**VIA CM/RRR NO. 7005 0390 0005 7550 2941**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas District Office



SOAH DOCKET NO. 458-05-5273

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner

§ § § § § § § § § § §

BEFORE THE STATE OFFICE

v.

OF

CASA BLANCA CLUB AND RESTAURANT, Respondent

ADMINISTRATIVE HEARINGS



PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this action against Casa Blanca Club and Restaurant (Respondent), alleging that Respondent failed to provide requested information to Petitioner, 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 that Respondent's permits be canceled for cause. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

1. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.61. 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 April 20, 2005, Petitioner issued its notice of hearing, directed to Respondent at Respondent's last known mailing address: 925 Cedar Terrace, Cedar Hill, Texas, 75104-7908, via certified mail, return receipt requested.<sup>1</sup> 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

<sup>1</sup> Service of notices of hearings, 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 (TAC) § 37.3.

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PROPOSAL FOR DECISION

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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 May 11, 2005, the notice of hearing was returned unclaimed from the U.S. Postal Service.

On May 27, 2005, SOAH notified Respondent of the scheduled hearing date, time and location, via regular mail sent to Respondent at Respondent's last known mailing address. SOAH has not received the mailing back from the U.S. Postal Service; therefore, the ALJ presumes that Respondent received notice of the hearing date, time and location.<sup>2</sup>

On June 9, 2005, 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 June 9, 2005.

## 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 Findings of Fact below. Based on the deemed factual findings in this case, Respondent's permits should be canceled.

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<sup>2</sup> 1 TAC § 155.25(d)(3) provides for a rebuttable presumption if a document was sent to a party to a proceeding by regular mail, certified mail, or registered mail. In that instance, the judge is to presume that the mailed document was received no later than three days after mailing.

### III. FINDINGS OF FACT

1. Casa Blanca Club and Restaurant (Respondent) holds a Private Club Registration Permit, N-254618, and a Beverage Cartage Permit, PE-254619, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 5303 Challenger Drive, Dallas, Dallas County, Texas.
2. Respondent's last known mailing address, as reflected in Petitioner's records, is 925 Cedar Terrace, Cedar Hill, Texas, 75104-7908.
3. On April 20, 2005, Petitioner issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address, setting the hearing on the merits for June 9, 2005.
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. On May 11, 2005, the notice of hearing was returned unclaimed from the U.S. Postal Service.
7. On May 27, 2005, SOAH also notified Respondent of the scheduled hearing date, time and location, via regular mail sent to Respondent at Respondent's last known mailing address.
8. A hearing convened before SOAH ALJ Brenda Coleman on June 9, 2005. 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.
9. On or about December 24, 2004, Respondent failed to provide requested information to Petitioner.

### 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 § 11.61.
- 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.

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PROPOSAL FOR DECISION

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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 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. §§ 5.32 and 11.61(b)(2).
6. Respondent's permits should be canceled. TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2).

SIGNED August 1, 2005.



**BRENDA COLEMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

*Failed to appear at  
the hearing, proceeded  
on a default basis.*

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