

DOCKET NO. 615690

IN RE ANTONIO ALVARADO	§	BEFORE THE TEXAS
D/B/A MI CHARRITO FOOD STORE	§	
PERMIT NOS. BG538857, FB538858	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1373)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2006, 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 March 17, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 11, 2006. 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, 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 are herein **SUSPENDED**.

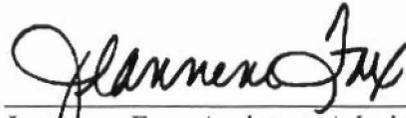
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of \$450.00 on or before the **11th day of July, 2006**, all rights and privileges under the above described permits will be **SUSPENDED for a period of seven (3) days, beginning at 12:01 A.M. on the 19th day of July, 2006**.

This Order will become final and enforceable on June 26, 2006 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 5th day of June, 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/aa

Hon. Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas 77018
VIA FAX (713) 812-1001

Antonio Alvarado
d/b/a Mi Charrito Food Store
RESPONDENT
16107 Bootridge
Houston, Texas 77053
CERTIFIED MAIL NO. 7005 3110 0000 6409 2486

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Houston District Office

State Office of Administrative Hearings

SP +
card law



Shelia Bailey Taylor
Chief Administrative Law Judge

May 11, 2006



VIA REGULAR MAIL

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

RE: Docket No. 458-06-1373; Texas Alcoholic Beverage Commission v. Antonio Alvarado d/b/a Mi Charrito Food Store

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,

Timothy J. Horan
Administrative Law Judge

TJH/mc
Enclosure

xc: Sandra K. Patton, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Antonio Alvarado d/b/a Mi Charrito Food Store, 16107 Bootridge, Houston, Texas 77053 - **VIA REGULAR MAIL**

DOCKET NO. 458-06-1373



TEXAS ALCOHOLIC BEVERAGE
COMMISSION

BEFORE THE STATE OFFICE

V.

OF

ANTONIO ALVARADO
D/B/A MI CHARRITO FOOD STORE
HARRIS COUNTY, TEXAS
(TABC CASE NO. 615690)

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ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Antonio Alvarado d/b/a Mi Charrito Food Store (Respondent), alleging that Respondent issued a check for purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended for five days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$750.00. The Administrative Law Judge (ALJ) recommends that Respondent's permit be suspended for three days and that Respondent be allowed to pay a civil penalty in the amount of \$450 in lieu of suspension.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

On March 17, 2006, a hearing convened before ALJ Timothy Horan, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Sandra K. Patton, TABC Staff Attorney. Respondent, Antonio Alvarado, appeared pro se and represented himself. Evidence was presented and the record closed that same day.

II. DISCUSSION

Staff offered documents and called Respondent as a witness. Both Staff and Respondent agreed that Respondent gave a check for purchase of beer which was dishonored when presented for payment. However, the Respondent claimed that on February 16, 2005, the delivery person for Silver Eagle Distributors agreed to take a post dated check from Respondent for the payment of beer. The check was post dated for February 20, 2005, in the amount of \$ 510.50. The Respondent stated it was agreed by the beer delivery person not to deposit the check till February 20, 2005. The check was deposited by the Silver Eagle Distributors on February 16, 2005. Respondent had not made deposits in an amount sufficient to cover the check, therefore, the check bounced. Respondent testified the amount in question, \$510.50 has since been paid to the Silver Eagle Distributors. It was also noted that Respondent had a prior cash law violation on August 21, 2004.

III. ANALYSIS

The facts of this case are not in dispute. TEX. ALCO. BEV. CODE ANN. § 61.73(b) provides for a suspension for up to 60 days or cancellation for the permit. The Standard Penalty Chart found at 16 TEX. ADMIN. CODE § 37.60 recommends a warning or up to a three-day suspension for a first violation, a three-day suspension for a second violation, and a five-to-ten day suspension for a third violation.

Based on the fact that a reasonable explanation was provided that indicated that Respondent was not completely at fault for the check being dishonored, the ALJ is of the opinion that because of these mitigating circumstances, a three-day suspension is warranted and that Respondent be allowed to pay a civil penalty in the amount of \$450.00 in lieu of suspension.

IV. FINDINGS OF FACT

1. Respondent, Antonio Alvarado d/b/a Mi Charrito Food Store, holds Wine and Beer Retailer's Permit BG-538857 issued by the Texas Alcoholic Beverage Commission (TABC or Petitioner) for the premises located at 14613 S. Post Oak Road, Houston, Harris County, Texas.
2. On February 13, 2006, Petitioner issued its notice of hearing to Respondent. This notice of hearing was received by Respondent.
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. A hearing was convened before Timothy Horan, Administrative Law Judge with the State Office of Administrative Hearings, on March 17, 2006. Petitioner appeared and was represented by Sandra K. Patton, TABC Staff Attorney. Respondent, Antonio Alvarado appeared and represented himself.
5. On or about February 20, 2005, Respondent issued a check for the purchase of beer which was dishonored when presented for payment.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 61.73(b), and 102.31.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. 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. Respondent violated TEX. ALCO. BEV. CODE ANN. § 61.73(b).
5. Based upon the above Conclusions of Law and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 61.73(b), and 102.31, Respondent's permit should be suspended for a period of three days.

6. Based upon above Conclusions of Law and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$450 in lieu of suspension of the permit.

SIGNED May 11, 2006.



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