

TEXAS ALCOHOLIC	§	BEFORE THE
BEVERAGE COMMISSION	§	
VS.	§	
CARMELO AGUILERA MARTINEZ	§	STATE OFFICE OF
D/B/A/ CARMELO'S BAR	§	
(TABC CASE NO. 574659)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking revocation of the Beer Retailer's On Premise License held by Carmelo Aguilera Martinez d/b/a Carmelo's Bar (Respondent), because Respondent is subject to a final determination of sales taxes due and no longer holds a sales tax permit. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends the license be canceled.

I. Procedural History

On December 2, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Clyde Burlison, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for default judgment pursuant to 1 TEX. ADMIN. CODE §155.55, and the motion was granted.

II. Reasons for Decision

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and the recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

III.

PROPOSED FINDINGS OF FACT

1. Carmelo Aguilera Martinez d/b/a Carmelo's Bar (Respondent) is the holder of Beer Retailer's On Premise License BE-306647 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises known as Carmelo's Bar located at 618 Pecos Street, Lockhart, Caldwell County, Texas 78644.
2. On October 27, 1998, Staff sent, by certified mail, a Notice of Hearing to Respondent, which 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 statutes and rules involved; and a statement of the matters asserted.
 - a. The Notice of Hearing was sent to Respondent at its mailing address of record, 618 Pecos Street, Lockhart, Texas 78644 by certified mail (No. P 419 580 201), return receipt requested, and it was received at that address on October 29, 1998.

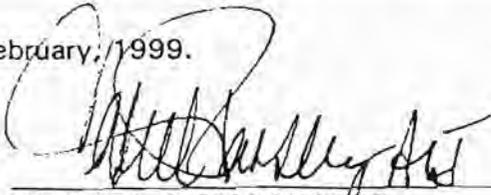
- b. The notice disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought could be granted.
3. On December 2, 1998, a public hearing was convened before Barbara C. Marquardt, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings in the Stephen F. Austin Building, 1700 North Congress, Austin, Travis County, Texas. Staff was represented by Clyde Burleson, an attorney with the Commission's Legal Division, but Respondent failed to appear and was not represented by an attorney.
4. Respondent is subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (TEX. TAX CODE ANN. §151) or the Municipal Sales and Use Tax Act (TEX. TAX CODE ANN. §321).
5. Respondent does not currently hold a valid sales tax permit, as required under TEX. TAX CODE ANN. §151.

IV.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§11.61(c) and 61.712 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. As referenced in Finding 2, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to the Code §11.61(c), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE §§155.27 and 155.55.
4. Based on the foregoing, Respondent violated Code §61.712, and cancellation of Respondent's Beer Retailer's On Premise License BE-306647 is warranted.

SIGNED this 12th day of February, 1999.



BARBARA C. MARQUARDT
Senior Administrative Law Judge
State Office of Administrative Hearings