

DOCKET NO. 584392

IN RE BARCELONA TAPAS INC.
D/B/A BARCELONA TAPAS BAR
PERMIT NOS. MB416487, LB416488,
PE416489 & FB416490

DALLAS COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-2948)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 9th day of May, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Mark Richards. The hearing convened and adjourned on March 9, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 12, 2001. 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 Permit Nos. MB416487, LB416488, PE416489 and FB416490 are herein **SUSPENDED**.

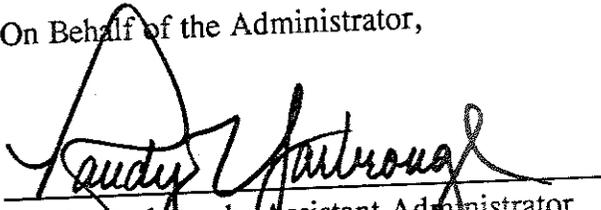
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,050.00** on or before the **9th day of August, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of seven (7) days, beginning at **12:01 A.M. on the 16th day of August, 2001**.

This Order will become final and enforceable on May 30, 2001, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 9th day of May, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Mark Richards
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE (512) 475-4994

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Judy Ray, Owner
Barcelona Tapas, Inc.
d/b/a Barcelona Tapas Bar
RESPONDENT
2100 Greenville Ave.
Dallas, Texas 75206
CERTIFIED MAIL NO. 7000 1530 0003 1927 4316

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 584392

REGISTER NUMBER:

NAME: BARCELONA TAPAS INC.

TRADENAME: BARCELONA TAPAS BAR

ADDRESS: 2100 Greenville Avenue, Dallas, Texas 75206

DATE DUE: August 9, 2001

PERMITS OR LICENSES: MB416487, LB416488, PE416489, FB416490

AMOUNT OF PENALTY: \$1,050.00

Amount remitted \$ _____ Date remitted _____

If you wish to 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 9TH DAY OF AUGUST 2001, 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

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.

3. The notice also contained language in 10-point type informing Permittee that if a representative failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
4. Permittee did not attend and was not represented at the hearing in this matter held March 9, 2000.
5. On or about March 7, 1999, the Permittee, its agent, servant, or employee sold or made available on the licensed premises an alcoholic beverage to a minor.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (Vernon 1995 & Supp. 2000) (the Code).
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 2000).
3. Service of proper and timely notice of the hearing was effected upon Permittee pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55 (2000).
4. Based on Findings of Fact Nos. 2-4 and Conclusion of Law No. 3, Staff is entitled to a default judgment against Permittee pursuant to 1 TAC § 155.55.
5. Based on Finding of Fact No. 5, Permittee violated the Code §§ 106.05 and 106.06.
6. Based on Finding of Fact No. 5, Barcelona's permits should be suspended for seven days pursuant to the Code § 106.13.
7. Pursuant to the Code § 11.64, Permittee should be allowed to pay a \$1050.00 civil penalty in lieu of the seven-day suspension of its license.

SIGNED this 12th day of April 2001.



MARK RICHARDS
Administrative Law Judge
State Office of Administrative Hearings