

DOCKET NO. 589178

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	ALCOHOLIC BEVERAGE
VICTOR TREVINO	§	
D/B/A BANK SHOT	§	
PERMIT NO. BG451877	§	
LICENSE NO. BL451878	§	
CAMERON COUNTY, TEXAS	§	
(SOAH DOCKET NO.458-00-1839)	§	COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge James W. Norman. The hearing convened on October 2, 2000, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 27, 2000. 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 the above-referenced Permit No. BG451877 and License No. BL451878 are hereby **SUSPENDED**.

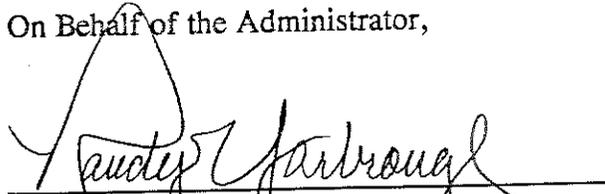
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1500.00** on or before the **28th day of February, 2001**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 7th day of March, 2001.**

This Order will become final and enforceable on January 18, 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.

SIGNED on this the 28th day of December, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/vr

Administrative Law Judge James W. Norman
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Holly Wise, Docket Clerk
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE (512) 475-4994

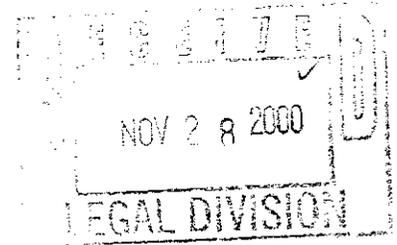
Victor Trevino
d/b/a Bank Shot
RESPONDENT
P.O. Box 530346
Harlingen, Texas 78553
CERTIFIED MAIL/RRR NO. Z 280 626 875

Licensing Division
McAllen District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



November 27, 2000

Mr. Doyme Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-00-1839; *TABC vs. Victor Trevino d/b/a Bank Shot Permit No. BG451877, License No. BL451878, Cameron County, Texas*

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Christopher Burnett, Attorney representing the Texas Alcoholic Beverage Commission, and to Victor Trevino d/b/a Bank Shot (Respondent). For reasons discussed in the Proposal for Decision, this proposal finds the motion for a default should be granted and Respondent's permit and license should be suspended; however, Respondent should be permitted to pay a civil penalty in lieu of suspension.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Norman".

James W. Norman
Administrative Law Judge

JWN/dc

Enclosure

xc: Christopher Burnett, Attorney, *TABC*, 5806 Mesa, Suite 160, Austin, Texas - **REGULAR U.S. MAIL**
Victor Trevino, d/b/a Bank Shot, P. O. Box 530346, Harlingen, Texas 78553 - **REGULAR U.S. MAIL**
Rommel Corro, Docket Clerk, *State Office of Administrative Hearings*- **HAND DELIVERY**

DOCKET NO. 458-00-1839
TABC Case No. 589178

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

**V.
VICTOR TREVINO, d/b/a BANK SHOT
PERMIT NO. BG451877, LICENSE NO.
BL451878, CAMERON COUNTY, TEXAS**

§
§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Commission) staff (Petitioner) brought this action against Victor Trevino, d/b/a Bank Shot (Respondent) alleging violations of the Texas Alcoholic Beverage Code (Code) and Commission rules. Respondent did not appear and was not represented at the hearing. The Petitioner moved for a default. This proposal finds the motion for a default should be granted and Respondent's permit and license should be suspended; however, Respondent should be permitted to pay a civil penalty in lieu of a suspension.

I. Procedural History, Jurisdiction, Notice, and Default

On October 2, 2000, James W. Norman, State Office of Administrative Hearings Administrative Law Judge (ALJ), convened a hearing at the hearing facilities of the Texas Workers' Compensation Commission, 1508 Dove Avenue, McAllen, Texas. Christopher Burnett, Attorney for the Commission Legal Section, represented the Petitioner.

On July 20, 2000, Respondent received the Petitioner's Notice of Hearing setting forth its allegations. Orders stating the time and place of the hearing (Exhibits 4 and 5) were shown by circumstantial evidence to have been properly stamped and placed in the United States mails, and sent to Respondent at his address in Harlingen, Texas. This evidence gives rise to an evidentiary presumption that the orders were delivered to Respondent. *Texas Employers Insurance Association v. Wermske*, 349 S.W. 2d 90 (Tex. 1961).

After Respondent failed to appear at the hearing, Staff moved for a default and asked that Respondent's permit and license be suspended for 20 days, or in lieu thereof, that he be permitted to pay a \$3000 civil penalty (\$150 for each day of suspension). The ALJ concluded the Staff's motion for a default should be granted pursuant to 1 TEX. ADMIN. CODE § 155.55. Accordingly, the allegations in the notice of hearing are deemed admitted. The ALJ recommends that the Commission suspend Respondent's permit and license for 20 days, but in accordance with TEX. ALCO. BEV. CODE ANN. §§ 11.64 and 61.761(e) (Vernon Supp. 2000 and Vernon 1995), Respondent should be permitted to pay a civil penalty of \$3000 in lieu of suspension.

II. Findings of Fact

1. Victor Trevino, d/b/a Bank Shot (Respondent) is the holder of Wine and Beer Retailer's Permit No. BG 451877 and Retail Dealer's On Premise Late Hours License No. BL 451878 issued by the Texas Alcoholic Beverage Commission.
2. Respondent received notices of hearing in this case dated July 6, 2000, August 18, 2000, and September 21, 2000, for a hearing that was held on October 2, 2000.
3. The notices of hearing included a statement of the time, place, and nature of the hearing, 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. On or about March 20, 2000, Respondent knowingly engaged in or permitted on the licensed premises an act of sexual contact intended to arouse or gratify sexual desires.
5. On or about March 20, 2000, Respondent consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.

III. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§ 25.04 and 61.71(a). (Vernon 1995 and Vernon Supp. 2000).
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Notice of the hearing on the merits was provided in compliance with TEX. GOV'T. CODE ANN. ch. 2001 (Vernon 2000) and 1 TEX. ADMIN. CODE §§ 155.27 and 155.55.
4. Respondent engaged in or permitted a lewd or vulgar act on the licensed premises. TEX. ALCO. BEV. CODE ANN. § 104.01(6) (Vernon 1995); TEX. PEN. CODE ANN. § 21.07 (a) (Vernon 1994); 16 TEX. ADMIN. CODE ANN. § 35.41.
5. Respondent consumed or permitted others to consume an alcoholic beverage on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 105.06 (Vernon 1995).
6. Respondent is subject to a suspension or cancellation of its permit and license. TEX. ALCO. BEV. CODE ANN. § 61.71(a).

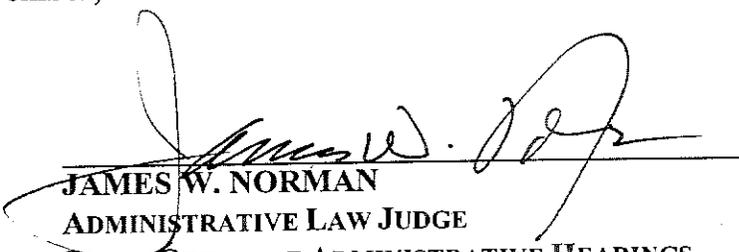
7. Respondent should be permitted to pay a civil penalty in lieu of a suspension of his permit and license. TEX. ALCO. BEV. CODE ANN. §§ 11.64 and 61.761 (Vernon Supp. 2000 and Vernon 1995).

IV. PROPOSED ORDER

IT IS HEREBY ORDERED that Respondent's Wine and Beer Retailer's Permit No. BG 451877 and Retail Dealer's On Premise Late Hours License No. BL451878 be, and the same are hereby, suspended for 20 days.

IT IS ORDERED FURTHER that Respondent be, and he is hereby, permitted to pay a civil penalty of \$3000 in lieu of a suspension of his permit and license.

SIGNED this 27th day of November, 2000.



JAMES W. NORMAN

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS