

DOCKET NO. 591309

IN RE ALEJANDRO GUADALUPE GONSALEZ	§	BEFORE THE
D/B/A THE OFFICE CLUB	§	
PERMIT NO. BG404952	§	
LICENSE NO. BL404953	§	TEXAS ALCOHOLIC
	§	
NUECES COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-0863)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 4th day of April, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened and adjourned on March 1, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 16, 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 No. BG404952 and License No. BL404953 are herein **SUSPENDED**.

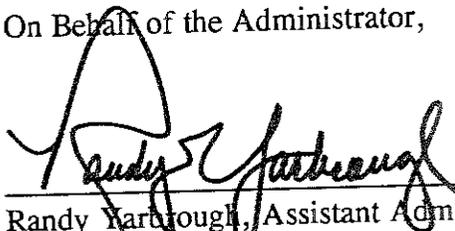
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$9,000.00** on or before the **5th day of July, 2001**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of sixty (60) days, beginning at 12:01 A.M. on the 12th day of July, 2001.**

This Order will become final and enforceable on April 25, 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 4th day of April, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings
Corpus Christi, Texas
VIA FACSIMILE (361) 884-5427

Alejandro Guadalupe Gonzalez
d/b/a The Office Club
RESPONDENT
2623 Baldwin
Corpus Christi, Texas 78405-2015
CERTIFIED MAIL NO. 7000 1530 0003 1927 2589

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Corpus Christi District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 591309

REGISTER NUMBER:

NAME: ALEJANDRO GUADALUPE GONSALEZ

TRADENAME: THE OFFICE CLUB

ADDRESS: 2623 Baldwin, Corpus Christi, Texas 78405-2015

DATE DUE: July 5, 2001

PERMITS OR LICENSES: BG404952, BL404953

AMOUNT OF PENALTY: \$9,000.00

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 5TH DAY OF JULY 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.

DOCKET NO. 458-01-0863

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

vs.

**ALEJANDRO GUADALUPE GONSALEZ
D/B/A THE OFFICE CLUB
PERMIT NO. BG-404952
LICENSE NO. BL-404953
NUECES COUNTY, TEXAS**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks suspension of Permit No. BG-404952 and License No. BL-404953 held by Alejandro Guadalupe Gonzalez, d/b/a The Office Club (Respondent) for allegedly selling or delivering an alcoholic beverage to an intoxicated person. Petitioner seeks to suspend Respondent's permit for 60 days or, in lieu of suspension, to assess a civil penalty against Respondent in the amount of \$150.00 per day of violation for a total of \$9,000.00. The Administrative Law Judge recommends that Petitioner's action be sustained.

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

The hearing in this case was convened on March 1, 2001, at the State Office of Administrative Hearings in Corpus Christi, Texas before Administrative Law Judge Kyle J. Groves. Christopher Burnett, staff attorney, represented Petitioner. Respondent did not attend the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued on a default basis pursuant to 1 Tex. Admin. Code §155.55 (1998). There are no contested issues of jurisdiction or notice, and the allegations against Respondent are deemed admitted. Therefore, these matters are addressed as findings of fact and conclusions of law without further discussion here.

II. APPLICABLE LAW

1. Section 11.61(b)(2) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: (2) the permittee violated a provision of this code or a rule of the commission . . . Tex. Alco. Bev. Code Ann. §11.61 (Vernon 1998).

2. Section 11.64(a) of the Texas Alcoholic Beverage Code states, in pertinent part: "When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended . . ." Tex. Alco. Bev. Code Ann. §11.61 (Vernon 1998).

3. Section 11.71 (a)(1) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee: (1) violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period . . ." Tex. Alco. Bev. Code Ann. §11.71 (Vernon 1998).

4. Section 2003.021(b) of the Texas Government Code states in pertinent part: "The office (1) shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency; (2) shall conduct administrative hearings in matters for which the office is required to conduct the hearing under other law . . ." Tex. Gov't. Code Ann. §2003.021 (Vernon 1998).

5. Section 2001.051 of the Texas Government Code states: "In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case." Tex. Gov't. Code Ann. §2001.051 (Vernon 1998).

6. Section 61.71 (a)(6) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premises license if it is found, after notice and hearing, that the licensee sold, served, or delivered an alcoholic beverage to an intoxicated person . . ." Tex. Alco. Bev. Code Ann. §61.71 (Vernon 1998).

7. Section 155.55 (a) of Title 1 of the Texas Administrative Code states, in pertinent part: "If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ

may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party." 1 Tex. Admin. Code §155.55 (1998).

8. Section 155.55 (b) of Title 1 of the Texas Administrative Code states, in pertinent part: "For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof." 1 Tex. Admin. Code §155.55 (1998).

III. FINDINGS OF FACT

1. The hearing in Docket No. 458-01-0863 was convened on March 1, 2001 before Administrative Law Judge Kyle J. Groves at the State Office of Administrative Hearings in Corpus Christi, Texas. Christopher Burnett, staff attorney, appeared on behalf of the Texas Alcoholic Beverage Commission (Petitioner). Alejandro Guadalupe Gonzalez, d/b/a The Office Club, (Respondent) did not appear.

2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on November 7, 2000.

2. Respondent was notified of the date, time, and location of the scheduled hearing by the Court's Order Rescheduling Hearing and Setting Pre-Hearing Conference dated December 14, 2000.

3. Respondent holds Wine and Beer Retailer's Permit No. BG-404952 and Retail Dealer's On-Premise Late Hours License No. BL-404953.

4. On July 17, 2000, Respondent sold or delivered an alcoholic beverage to an intoxicated person.

IV. CONCLUSIONS OF LAW

1. Petitioner has jurisdiction over this case pursuant to Tex. Alco. Bev. Code Ann. §11.61 (Vernon 1998).

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with findings of fact and conclusions of law, pursuant to Tex. Gov't. Code Ann. §2003.021 (Vernon 1998).

3. Respondent received proper and timely notice of the hearing in this case.

4. Respondent violated Tex. Alco. Bev. Code §61.71 (a)(6) (Vernon 1995 and Supp. 2000)

because he sold or delivered an alcoholic beverage to an intoxicated person.

5. Based upon the Findings of Fact and Conclusion of Law No. 4, Petitioner's adverse action of suspending Respondent's Permit No. BG-404952 and License No. BL-404953 for 60 days or, in lieu of suspension, assessing a civil penalty against Respondent in the amount of \$150.00 per day of violation for a total of \$9,000.00, is proper.

SIGNED on this 16 day of March, 2001.



KYLE J. GROVES
Administrative Law Judge
State Office of Administrative Hearings