

DOCKET NO. 591865

IN RE JESSE DELEON, JR.
D/B/A DOUBLE J BAR
PERMIT NO. BG460976
LICENSE NO. BL460977

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BEFORE THE

TEXAS ALCOHOLIC

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-1851)

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 Monica Branch. The hearing convened and adjourned on February 15, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 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 No. BG460976 and License No. BL460977 are herein **SUSPENDED**.

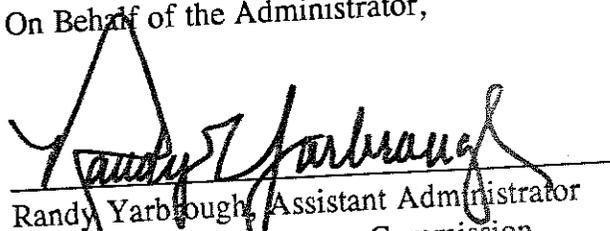
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$3,000.00** on or before the **5th day of July, 2001**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of **twenty (20) days, beginning at 12:01 A.M. on 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

TEG/bc

The Honorable Monica Branch
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FACSIMILE (817) 377-3706

Randy Myers
ATTORNEY FOR RESPONDENT
University Centre I, Suite 602
1300 South University Drive
Fort Worth, Texas 76107-5754
CERTIFIED MAIL NO. 7000 1530 0003 1927 2602

Jesse DeLeon, Jr.
d/b/a Double J Bar
RESPONDENT
2833 N. Main
Fort Worth, Texas 76107-7107
CERTIFIED MAIL NO. 7000 1530 0003 1927 2619

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABAC Legal Section

Licensing Division
Fort Worth District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE**

DOCKET NUMBER: 591865 REGISTER NUMBER:
NAME: JESSE DELEON, JR. TRADENAME: DOUBLE J BAR
ADDRESS: 2833 N. Main, Fort Worth, Tarrant County, Texas 76107-7107
DATE DUE: July 5, 2001
PERMITS OR LICENSES: BG460976, BL460977
AMOUNT OF PENALTY: \$3,000.00

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. 458-01-1851

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

JESSE DELEON, JR.
D/B/A DOUBLE J BAR
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Jesse DeLeon, Jr. d/b/a Double J Bar (Respondent), alleging that Respondent was intoxicated on the licensed premises, in violation of the Texas Alcoholic Beverage Code (Code). Petitioner requested that Respondent's permit and license be suspended for 20 days, or in lieu of suspension, that Respondent pay a civil penalty in the amount of \$3,000. The Administrative Law Judge (ALJ) agrees with this recommendation.

JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 25.04, and 61.71 (Vernon 2000). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).

On January 31, 2001, Petitioner issued its notice of hearing, directed to Randy S. Myers, Attorney for Respondent, University Centre I, Suite 602, 1300 South University Drive, Fort Worth, Texas, 76107-5754, via certified mail. The notice of hearing was shown by circumstantial evidence to have been properly stamped and placed in the United States mails. This evidence gives rise to an evidentiary presumption that the notice was delivered to Respondent. *Texas Employers Insurance Association v. Werniske*, 349 S.W. 2d 90 (Tex. 1961). On February 15, 2001, a hearing convened before ALJ Monica Branch (SOAH) at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed on February 15, 2001.

DISCUSSION

Failure of Respondent to appear at the hearing. Petitioner requested that the provisions of 1 TEX. ADMIN. CODE § 155.55 (2000) be invoked. The ALJ finds that notice was served in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 (2000) and the Administrative Code. Pursuant to 1 TEX. ADMIN. CODE § 155.55 (2000), the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

PROPOSED FINDINGS OF FACT

1. Respondent, Jesse DeLeon, Jr. d/b/a Double J Bar, holds a Wine and Beer Retailer's Permit, BG-460976, and a Retail Dealer's On-Premise Late Hours License, BL-460977, issued by TABC, for the premises located at 2833 N. Main, Fort Worth, Tarrant County, Texas.
2. On January 31, 2001, Staff issued its notice of hearing to Respondent, for a hearing that was held on February 15, 2001. This notice of hearing was correctly addressed and was shown by circumstantial evidence to have been properly stamped and placed in the United States mails, which gives rise to an evidentiary presumption that the notice was delivered to Respondent. *Texas Employers Insurance Association v. Wermske*, 349 S.W. 2d 90 (Tex. 1961).
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. The notice of hearing also contained the following language in at least 10-point or larger boldface type: "If you fail to appear at the hearing, the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default."
5. A hearing was convened before Monica Branch, an Administrative Law Judge with the State Office of Administrative Hearings, on February 15, 2001. Respondent did not appear and was not represented at the hearing.
6. On September 2, 2000, Respondent was intoxicated on the licensed premises.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, 25.04, and 61.71 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of 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. Based upon Proposed Findings of Fact Nos. 2-4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 (2000) and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2-5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55 (2000).
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.61(b)(13), 25.04, 61.71(a)(1), and 104.01(5).
6. Based upon Proposed Conclusion of Law No. 5, Respondent's permit and license should be suspended for a period of 20 days.
7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN § 11.64, Respondent should be permitted to pay a civil penalty of \$3,000 in lieu of suspension of the permit and license.

SIGNED on this the 12th day of March, 2001.

Monica Branch

MONICA BRANCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS