

DOCKET NO. 594500

IN RE AMELIA YVONNE CISNEROS	§	BEFORE THE
D/B/A LOS VAQUEROS RESTAURANT	§	
PERMIT NOS. MB147158, LB418741,	§	
CB418742, PE418743	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0352)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of February 2002, 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 December 14, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 23, 2002. 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. MB147158, LB418741, CB418742, and PE418743 are hereby **SUSPENDED** for **five (5) days**.

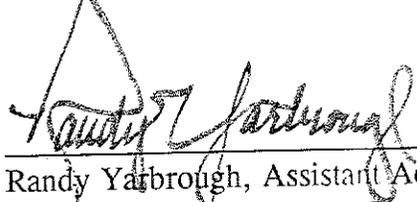
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **24th** day of **April 2002**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **five (5) days**, beginning at **12:01 A.M.** on the **1st** day of **May 2002**.

This Order will become final and enforceable on **March 21, 2002**, 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 28th day of February 2002.

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
VIA FACSIMILE (817) 377-3706

Amelia Yvonne Cisneros
d/b/a Los Vaqueros Restaurant
RESPONDENT
2516 Lotus
Fort Worth, Texas 76111
CERTIFIED MAIL/RRR NO. 7001 2510 0000 7279 0636

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 594500

REGISTER NUMBER:

NAME: AMELIA YVONNE CISNEROS

TRADENAME: LOS VAQUEROS RESTAURANT

ADDRESS: 2516 Lotus, Fort Worth, Texas 76111

DATE DUE: April 24, 2002

PERMITS OR LICENSES: MB147158, LB418741, CB418742, PE418743

AMOUNT OF PENALTY: \$750.00

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 24TH DAY OF APRIL 2002, 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. 458-02-0352

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

AMELIA YVONNE CISNEROS
D/B/A LOS VAQUEROS RESTAURANT
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 Amelia Yvonne Cisneros d/b/a Los Vaqueros Restaurant (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permits be suspended for 5 days, or in lieu of suspension, that Respondent pay a civil penalty of \$750. 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, §§ 11.61(b)(2), 28.12, 29.03, 31.04, and 61.73(b). 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.

On October 16, 2001, Petitioner issued its notice of hearing, directed to Amelia Yvonne Cisneros d/b/a Los Vaqueros Restaurant, 2516 Lotus, Fort Worth, Texas, 76111, via certified mail, return receipt requested. The notice of hearing was received by Respondent on October 18, 2001, as evidenced by the signature of "John Cisneros" on the return receipt. On December 14, 2001, a hearing convened before SOAH ALJ Monica Branch 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 closed on December 14, 2001.

DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, 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.

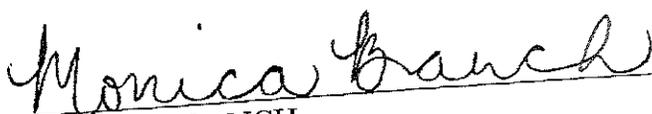
PROPOSED FINDINGS OF FACT

1. Respondent, Amelia Yvonne Cisneros d/b/a Los Vaqueros Restaurant, holds a Mixed Beverage Permit, MB-147158, Mixed Beverage Late Hours Permit, LB-418741, Caterer's Permit, CB-418742, and Beverage Cartage Permit, PE-418743, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2629 N. Main Street, Fort Worth, Tarrant County, Texas.
2. On October 16, 2001, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on December 14, 2001. This notice of hearing was received by Respondent on October 18, 2001.
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 10-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Monica Branch, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on December 14, 2001. Respondent did not appear and was not represented at the hearing.
6. On or about April 4, 2001, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 28.12, 29.03, 31.04, and 61.73(b).
2. 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.
3. Based upon Proposed Findings of Fact Nos. 2-4, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 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.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31.
6. Based upon Proposed Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 28.12, 29.03, 31.04, 61.73(b), and 102.31, Respondent's permits should be suspended for a period of 5 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 \$750 in lieu of suspension of the permits.

SIGNED on this the 23rd day of January, 2002.



MONICA BRANCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS