

DOCKET NO. 595144

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

MARIA DE LA LUZ ALCANTAR CORRAL
D/B/A LUCY'S BAR
PERMIT NO. BG467842
LICENSE NO. BL467843
EL PASO COUNTY, TEXAS
(SOAH Docket No. 458-02-1029)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of February, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis Lopez. The hearing convened on January 14, 2002 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 17, 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.

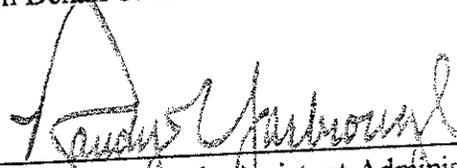
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on February 28, 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 8th day of January, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/yt

The Honorable Louis Lopez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (915) 834-5657

Maria De La Luz Alcantar Corral.
d/b/a Lucy's Bar
RESPONDENT
10917 Dizzy Dean
El Paso, Tx. 79934
CERTIFIED MAIL NO. 7000 1530 0003 1929 2013

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

Respondent did not appear at the hearing and did not notify either SOAH or the Staff of any reason for not appearing. Based on Respondent's default, the factual allegations against her are deemed admitted as true.

II. CONCLUSION

Based on a preponderance of the evidence, Respondent committed three violations of the Code since September 1, 1995, in violation of 16 TAC §33.24(j). As a consequence, the criteria for forfeiture of Respondent's conduct surety bond have been satisfied.

FINDINGS OF FACT

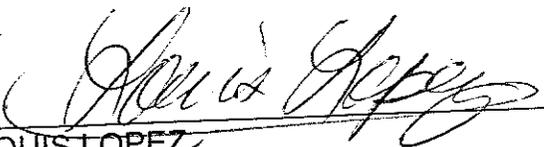
1. Maria de la Luz Alcantar Corral d/b/a Lucy's Bar (Respondent) is the holder of Wine and Beer Retailer's Permit No. BG-467842 and Retail Dealer's On Premise Late Hours License No. BL-467843, issued by the Texas Alcoholic Beverage Commission (TABC) on March 7, 2000. The licenses have been continuously renewed
2. On April 18, 2001, Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On June 4, 2001, the staff of TABC (the Staff) sent a notice by certified mail to Respondent asserting that TABC was seeking to forfeit Respondent's surety bond and that Respondent had the right to request a hearing on the matter.
4. On December 14, 2001, the Staff sent a Notice of Hearing by certified mail to Respondent. The hearing notice specified the time, place, and nature of the hearing; the legal authority for the hearing; and the matter to be determined. The State Office of Administrative Hearings notified Respondent of the hearing in an Order Setting Prehearing Conference on January 2, 2002.
5. Both Petitioner's Notice of Hearing and the SOAH Order contained the statement in 10-point, bold-face type found in 1 TEX. ADMIN. CODE §155.55(c) advising Respondent that, upon failure to appear at the hearing, the factual allegations would be admitted as true and the relief sought in the Notice of Hearing could be granted by default.
6. Respondent did not appear at the hearing, did not notify either SOAH or the Staff of any reason for not appearing, and defaulted.
7. Respondent signed an Agreement and Waiver of Hearing on two different occasions regarding two violations of the Texas Alcoholic Beverage Code (the Code) that occurred in 2000, and a third violation that occurred in 2001.

8. Since Respondent did not appear, the factual allegations in the Notice of Hearing are deemed admitted and found to be true.
9. Respondent committed three violations of the Code since September 1, 1995.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. [CODE] §§5.31--5.44 (Vernon 2001).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to CODE §5.43(a) and TEX. GOV'T. CODE ANN. §§2003.021 and 2003.042 (Vernon 2001).
3. Service of proper notice of the hearing was made on Respondent pursuant to CODE §11.63 and the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§2001.051 and 2001.052 (Vernon 2001).
3. The Staff met the requirement for a default judgment found in 1 TEX. ADMIN. CODE 155.55(c) (Vernon 2001) when it sent Respondent a Notice of Hearing containing the statement in 10-point, bold-face type that, upon failure of a party to appear at the hearing, the factual allegations would be admitted as true and the relief sought in the Notice of Hearing could be granted by default.
4. TABC is permitted by CODE §§11.11 and 61.31 and by 16 TEX. ADMIN. CODE §33.24(j) (West 2000) to forfeit the conduct surety bond of a permittee who commits three or more violations of the Code since September 1, 1995.
5. Based on the foregoing Findings of Fact and Conclusions of Law, the criteria for forfeiture of the conduct surety bond have been satisfied.

SIGNED this 17th day of January, 2002.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS