

**DOCKET NO. 596259**

IN RE ADRIANA PEREZ BRAVO  
D/B/A HENRY'S SPORTS BAR  
PERMIT NO. BG-451354

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BEFORE THE

TEXAS ALCOHOLIC

BEXAR COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-1344)

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 15th day of May, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on February 26, 2002, 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 April 16, 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.

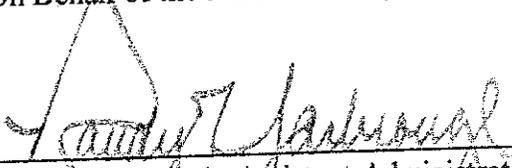
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit/License Nos. BG-451354 & BL-451355 are hereby **CANCELLED**.

**This Order will become final and enforceable on June 5, 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 15th day of May, 2002.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator,  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Leah Davis Bates  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (210) 308-6854**

Adriana Perez Bravo  
d/b/a Henry's Sports Bar  
**RESPONDENT**  
615 Humboldt  
San Antonio, Texas 78211  
**CERTIFIED MAIL NO. 7000 1530 0003 1927 6051**

Jeffrey Sapyta  
**ATTORNEY FOR RESPONDENT**  
519 S. Presa Street  
San Antonio, Texas 78205  
**VIA FACSIMILE: (210) 281-0366**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
Texas Alcoholic Beverage Commission  
Legal Division

San Antonio District Office  
Licensing Division

SOAH DOCKET NO. 458-02-1344

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner

VS.

ADRIANA PEREZ BRAVO  
d/b/a Henry's Sports Bar  
Permit No. BG451354 & BL451355  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff, Commission) brought this enforcement action against Adriana Perez Bravo, d/b/a Henry's Sports Bar (Respondent) alleging that on July 22, 2001, the Respondent possessed, delivered, or sold or permitted others to possess, or sell equipment used or designed for administering a narcotic on the licensed premise, in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61 (a)(7) and 104.01(9), and that the place or manner in which the Permittee conducts its business warrants a cancellation of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (a)(7). Respondent failed to attend the hearing, either in person or through counsel. Staff recommended that Respondent's permits be canceled. The Administrative Law Judge (ALJ) recommends that the Respondent's permits be canceled.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on February 26, 2002, at the State Office Of Administrative Hearings Office, 10300 Heritage, Suite 250, San Antonio, Texas, and concluded the same day. Staff's attorney Dewey Brackin represented the Petitioner. Respondent did not appear and was not represented at the hearing. Leah Bates, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings, presided.

On February 25, 2002, Jeffrey Sapyta, attorney for the Respondent, filed a request for continuance. On February 26, 2002, during the scheduled hearing, the Court reached Mr. Sapyta by phone. Mr. Sapyta argued his motion for continuance and Mr. Brackin opposed the continuance, noting he had never agreed to the motion. The motion was denied. The ALJ offered Mr. Sapyta an opportunity to attend the hearing, which he declined.

Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without discussing the evidence.

## II. FINDINGS OF FACT

1. Adriana Perez Bravo d/b/a Henry's Sports Bar (Respondent) holds a Wine and Beer Retailer's Permit, BG451354 and Retail Dealer's On-Premise Late Hours Permit, BL451355, issued by the Texas Alcoholic Beverage Commission (TABC) on May 17, 1999, for the business known as Henry's Sports Bar, located at 1302 Somerset Road, San Antonio, Bexar County, Texas.
2. On January 11, 2002, TABC timely sent a Notice of Hearing by certified mail, return receipt requested to Respondent at 615 Humboldt, San Antonio, Texas 78211. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
3. The Notice of Hearing also contained language in 10-point type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. On January 16, 2002, the Court issued a Prehearing Order. The order set a prehearing conference and stated the case was set for February 26, 2002, at 9:30 a.m. The order was mailed to Mr. Jeffery Sapyta, Attorney at Law, 519 S. Presa, San Antonio, Texas, 78205.
5. On January 30, 2002, the Court attempted to reach Mr. Sapyta for a prehearing conference. He was not in the office. On that same date, Mr. Brackin faxed to Mr. Sapyta the Notice Of Hearing, again informing counsel of the February 26, 2002, hearing.
6. On February 25, 2002, after 5:00 p.m., Mr. Sapyta faxed a motion for continuance to SOAH. The motion was filed stamped received on February 26, 2002. The motion stated several reasons for the request for continuance, including: the Respondent's attorney was preparing for another trial and did not have time to prepare for the hearing, counsel also had a vacation letter on file, counsel's staff failed to log the hearing date on the calender, and Mr. Brackin, counsel for TABC, was not opposed to the motion.

7. The hearing on the merits was held February 26, 2002. Respondent did not appear at the hearing. The Court reached Mr. Sapyta by telephone, and Mr. Brackin was present with his witness. Mr. Brackin was opposed to the late filed motion for continuance. The ALJ noted that the vacation letter was not on file with SOAH and that the Motion was not timely. The motion was denied. Mr. Sapyta was offered an opportunity to attend the hearing after his motion was denied. He declined.
8. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing was deemed admitted as true.
9. On July 22, 2001, Respondent, her agent, servant, or employee, possessed, delivered, or sold, or permitted others to possess, deliver, or sell equipment used or designed for administering a narcotic on the licensed premise.
10. The place or manner in which Respondent conducts its business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

### III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, §§ 6.01 and 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55.
5. Based on the above Finding of Facts, Respondent violated Texas Alcoholic Beverage Code §§ 11.61(b)(7) and 104.01(9), on or about July 22, 2001.
6. Based on the above Finding of Facts, Respondent violated Texas Alcoholic Beverage Code § 11.61(b)(7).

- 7. Based on Findings of Facts and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
- 8. Based upon the foregoing Findings of Fact and Conclusions of law, a cancellation of Respondent's Wine and Beer Retailer's Permit, BG451354 and Retail Dealer's On-Premise Late Hours Permit, BL451355 is warranted.

SIGNED this 16<sup>th</sup> day of April 2002.

  
LEAH DAVIS BATES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS