

DOCKET NO. 596950

IN RE ELENO TREVINO
D/B/A LAS CARINOSAS
PERMIT NO. BG475998
LICENSE NO. BL475999

HARRIS COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-1105)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of April 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on January 18, 2002 and the record closed on January 28, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 28, 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 May 14, 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 23rd day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Tim Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Eleno Trevino
d/b/a Las Carinosas
RESPONDENT
6305 Westward #185
Houston, Texas 77081
CERTIFIED MAIL NO. 7001 2510 0000 7278 9524

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

DOCKET NO. 458-02-1105

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

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BEFORE THE STATE OFFICE

VS.

OF

**ELENO TREVINO
D/B/A LAS CARINOSAS
HARRIS COUNTY, TEXAS
PERMIT NO. BG-475998
(TABC CASE NO. 596950)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking forfeiture of the conduct surety bond of Eleno Trevino, d/b/a Las Carinosas (Respondent) following final adjudication of three violations by Respondent since September 1, 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing convened January 18, 2002, by Administrative Law Judge (ALJ) Timothy J. Horan from the State Office of Administrative Hearings, 2020 N. Loop West, Suite 111, Houston, Texas 77018 and the record was closed on January 28, 2002. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Lindy To. Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, and the ALJ recommends that it be granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

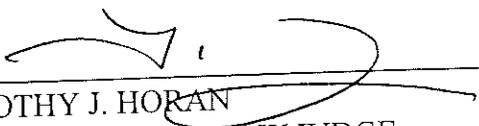
1. Eleno Trevino, d/b/a Las Carinosas (Respondent) held a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License Permit No. BG 475998, issued by the Texas Alcoholic Beverage Commission (Commission).
2. Notice of the hearing in this matter dated December 11, 2001, was properly addressed and sent by certified mail to Respondent at his Houston, Texas mailing address as listed in Commission records.

3. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
4. 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.
5. Respondent did not attend and was not represented at the hearing in this matter held January 18, 2002.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos.1 through 5, and the above Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.
6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited.

SIGNED this 28TH day of March 2002.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS