

**DOCKET NO. 596977**

IN RE VALLARE LTD	§	BEFORE THE
D/B/A VALLARE	§	
PERMIT NO. MB480363	§	
	§	TEXAS ALCOHOLIC
	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1030)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of May, 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 April 18, 2002, and adjourned on April 18, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 22, 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 JUNE 10, 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 20th day of June, 2002.

On Behalf of the Administrator,



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Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

Hon. Louis Lopez  
State Office of Administrative Hearings  
401 E. Franklin Ave.  
Suite 580  
El Paso, Texas 79901  
**VIA FAX (915) 834-5657**

Vallare Ltd..  
d/b/a Vallare  
**RESPONDENT**  
808 McPhaul  
Austin, Texas 78758  
**VIA CERTIFIED MAIL RRR NO. 7000 2510 0000 7278 8749**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
El Paso District Office

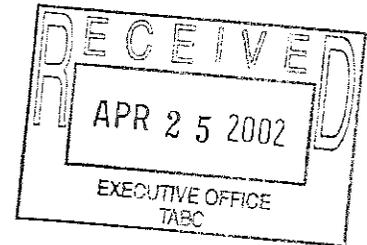
# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

April 23, 2002

Rolando Garza  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, TX. 78731



**RE: Docket No. 458-02-1030; Texas Alcoholic Beverage Commission vs. Vallare Ltd. d/b/a  
VALLARE**

Dear Mr. Garza:

Enclosed please find a Proposal for Decision in the above-referenced cause. Copies of the proposal are being sent to Gayle Gordon, Texas Alcoholic Beverage Commission and to Hassan M. Dandachli, Respondent.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia Rodriguez".

Celia Rodriguez  
Administrative Technician II

DOCKET NO. 458-02-1030  
(TABC NO. 596977)

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
	Petitioner §	
VS.	§	
	§	OF
VALLARE LTD.	§	
dba VALLARE	§	
PERMIT NOS. MB-480363 & LB-480364	§	
EL PASO COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
	Respondent §	

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (the Staff) brought this action against Vallare Ltd. d/b/a Vallare (Respondent) seeking forfeiture of Respondent's conduct surety bond. The Staff alleged that Respondent's permits had been canceled on the basis of a violation. This proposal finds that the criteria for forfeiture of Respondent's conduct surety bond have been satisfied.

The hearing on the merits was held on April 18, 2002, at the State Office of Administrative Hearings, 401 East Franklin Avenue, Suite 580, El Paso, Texas. The Staff appeared by telephone through attorney Gayle Gordon. Respondent appeared through a general partner, Hassan M. Dandachli. Administrative Law Judge Louis Lopez presided. The record was closed on the same day.

Since there were no contested issues related to jurisdiction or notice, those matters are set out below in the Findings of Fact and Conclusions of Law.

**I. EVIDENCE**

The only exhibit was a set of documents presented by the Staff related to Respondent's permits. One of the documents was a Texas Alcoholic Beverage Commission (TABC) form called an Agreement and Waiver of Hearing. It listed a violation by Respondent which occurred on June 10, 2001, for an employee consuming alcoholic beverages during prohibited hours. The employee was Michael Anthony Briones.

The form was signed by Mr. Dandachli on July 5, 2001. The paragraph directly above Respondent's signature stated that Respondent was waiving his right to a hearing. It also stated that he understood that "all associated licenses or permits will be suspended/canceled . . ." In the space provided for entry of a monetary civil penalty, the word "cancellation" was handwritten. The last line of the paragraph read, "The signing of this waiver may result in the forfeiture of any related conduct surety bond." As a result of the agreement, TABC issued an order reciting that Respondent had violated "sections of

the Code as stated in the agreement and waiver of hearing” and imposing the penalty of cancellation.

The Staff contended that, by signing the form, Mr. Dandachli had agreed that a violation had occurred at Vallare and that the Staff could consequently cancel Respondent’s permits on the basis of that violation.

Respondent’s defense was that he had not been made aware that his signing the form could result in the forfeiture of Respondent’s conduct surety bond. He said he had signed the form and personally turned in Respondent’s license in Austin on July 5, 2001, to TABC Agent Ferrero, but that the agent had mentioned nothing about any later consequences. He did not deny that the form listed the violation specified above nor that he had the opportunity to read the form before signing it.

## II. ANALYSIS

The applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. §11.11(b)(2) and §61.13(b)(2) state:

[T]he holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code. . . .

The TABC rule applicable in this case, found at 16 TEX. ADMIN. CODE (TAC) §33.24(j), provides:

- (1) When a license or permit is canceled . . . the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.
- (2) The licensee or permittee may . . . request a hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code §11.11 and §61.13 and this rule, have been satisfied.

The Agreement and Waiver of Hearing signed by Respondent related to a Code violation and was clear in its intent that a cancellation was to take place based on a blank that was filled in with the word “cancellation.” The cancellation was based on the violation and was thus justified. Mr. Dandachli, as owner of Respondent, had the responsibility when he first applied for TABC permits to become properly informed of the Texas Alcoholic Beverage Code and rules so that he would know the consequences of violations and of a cancellation of the permits. He should have been fully aware of the statutory consequences before he went into the Staff office to sign the form. He did not allege that Agent Ferrero misled him in any way but only that the agent did not mention all the possible consequences of cancellation. In other words, Mr. Dandachli thought the agent had a positive duty to inform him of all consequences, but this is incorrect. Mr. Dandachli had the responsibility of informing himself and had every opportunity to read the paragraph at the bottom of the form mentioning a forfeiture of a conduct surety bond. He was not obligated to sign the form or to waive a hearing on the violation.

### III. CONCLUSION

Based on a preponderance of the evidence, Respondent's permits were canceled. As a consequence, the criteria for forfeiture of Respondent's conduct surety bond set out in 16 TAC §33.24(j) have been satisfied.

### FINDINGS OF FACT

1. Vallare Ltd. d/b/a Vallare (Respondent) was the holder of Mixed Beverage Permit No. MB-480363 and Mixed Beverage Late Hours Permit No. LB-480364, issued by the Texas Alcoholic Beverage Commission (TABC) on October 4, 2000, and canceled for cause on July 30, 2001.
2. On September 13, 2000, Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On October 26, 2001, the staff of TABC (the Staff) sent a notice to Respondent asserting that TABC was seeking to forfeit Respondent's surety bond and that he had the right to request a hearing on the matter.
4. On December 12, 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 a hearing in an Order Setting Prehearing Conference on January 2, 2002.
6. On July 5, 2001, Respondent signed an Agreement and Waiver of Hearing regarding a violation of the Texas Alcoholic Beverage Code, to-wit: employee consuming alcoholic beverage during prohibited hours.
7. The Agreement and Waiver of Hearing provided for cancellation of Respondent's permits and contained the handwritten word "cancellation" in the space providing for the penalty.
7. Based on Respondent's Agreement and Waiver of Hearing, TABC entered an order which canceled Respondent's permits.
8. Respondent did not file any motion for rehearing with TABC, and the TABC order became final.

### 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.

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.
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.
4. TABC is permitted by CODE §§11.11 and 61.31 and by 16 TEX. ADMIN. CODE §33.24(j) to forfeit the conduct surety bond of a permittee whose permit has been canceled.
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 22nd day of April, 2002.

  
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LOUIS LOPEZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS