

TEXAS ALCOHOLIC
BEVERAGE COMMISSION

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BEFORE THE STATE OFFICE

vs.

OF

EL HERRADERO
D/B/A EL HERRADERO
PERMIT NOS. N-214004 AND PE-214005
ELLIS COUNTY, TEXAS
(TABC CASE NO. 598700)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks cancellation of Permit Nos. N-214004 and PE-214005 held by El Herradero d/b/a El Herradero (Respondent) because Respondent allegedly failed to pay ad valorem taxes. The Administrative Law Judge recommends that Petitioner's action be sustained.

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

The hearing in this case was convened on September 20, 2002, at the State Office of Administrative Hearings in Dallas, Texas before Administrative Law Judge Kyle J. Groves. Timothy Griffith, staff attorney, represented Petitioner. Respondent did not attend the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued on a default basis pursuant to 1 Tex. Admin. Code §155.55. There are no contested issues of jurisdiction or notice, and the allegations against Respondent are deemed admitted as true.

II. APPLICABLE LAW

1. Section 11.61 (b)(2) of the Texas Alcoholic Beverage Code states: "The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: the permittee violated a provision of this code or a rule of the commission;"

2. Section 2003.021(b) of the Texas Government Code states in pertinent part: "The office (1) shall conduct all administrative hearings in contested cases under Chapter 2001 that are before a state



agency that does not employ an individual whose only duty is to preside as a hearings officer over matters related to contested cases before the agency; (2) shall conduct administrative hearings in matters for which the office is required to conduct the hearing under other law . . . ”

3. Section 2001.051 of the Texas Government Code states: “In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) to respond and to present evidence and argument on each issue involved in the case.”

4. Section 11.38 (e) of the Texas Alcoholic Beverage Code states: “The commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. ...”

5. Section 155.55 (a) of Title 1 of the Texas Administrative Code states, in pertinent part: “If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party’s absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.”

6. Section 155.55 (b) of Title 1 of the Texas Administrative Code states, in pertinent part: “For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.”

III. EVIDENCE

Petitioner offered documentary evidence from the TABC files. Those documents include:

(a) The August 1, 2002 Notice of Hearing sent to Respondent via certified mail. The Notice of Hearing informed Respondent of the date, time and place of the hearing.

(b) The TABC licensing information for Respondent showing Respondent’s address to be 110 Margaret Lane, Red Oak, Texas 75120-1314.

(c) Respondent’s Private Club Registration Permit No. N-214004 and Beverage Cartage Permit No. PE-214005 issued by Petitioner.

(d) The certified mail green card showing the Notice of Hearing was received and signed for at 110 Margaret Lane, Red Oak, Texas 75120-1314 on August 3, 2002.

IV. FINDINGS OF FACT

1. The hearing was convened on September 20, 2002 before Administrative Law Judge Kyle J. Groves at the State Office of Administrative Hearings in Dallas, Texas. Timothy Griffith, staff attorney, appeared on behalf of the Texas Alcoholic Beverage Commission (Petitioner). El Herradero (Respondent) did not appear.
2. Respondent was notified of the factual allegations against Respondent and of the date, time, and location of the scheduled hearing in the Notice of Hearing issued by Petitioner on August 1, 2002.
3. The Notice of Hearing was sent to Respondent's last known address.
4. The Notice of Hearing contained the following language in 12-point 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. Respondent holds Private Club Registration Permit No. N-214004 and Beverage Cartage Permit No. PE-214005.
6. Respondent failed to pay ad valorem taxes to the Ennis Independent School District.

V. CONCLUSIONS OF LAW

1. Petitioner has jurisdiction over this case pursuant to Tex. Alco. Bev. Code Ann. §11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with findings of fact and conclusions of law, pursuant to Tex. Gov't. Code Ann. §2003.021.
3. Respondent received proper and timely notice of the hearing in this case.
4. Respondent violated Tex. Alco. Bev. Code §11.38 (e) by failing to pay ad valorem taxes to the Ennis Independent School District.
5. Based upon the Findings of Fact and Conclusion of Law No. 4, Petitioner's adverse action of canceling Respondent's Private Club Registration Permit No. N-214004 and Beverage Cartage Permit No. PE-214005, is proper.

SIGNED on this 3rd day of October, 2002.



KYLE J. GROVES
Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 598700

IN RE EL HERRADERO
D/B/A EL HERRADERO
PERMIT NOS. N-214004, PE214005

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ELLIS COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-3825)

ORDER

CAME ON FOR CONSIDERATION this 28th day of October 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge The Honorable Kyle Groves. The hearing convened on September 20, 2002, and adjourned on September 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 3, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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.

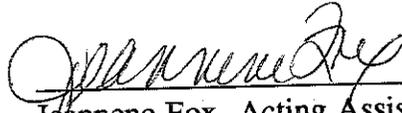
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. N-214004 and PE214005 are hereby **CANCELED FOR CAUSE** effective **immediately**.

This Order will become final and enforceable on November 18, 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 or through the U.S. Mail, as indicated below.

SIGNED this 28th day of October, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

The Honorable Kyle Groves
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

EL HERRADERO
D/B/A EL HERRADERO
RESPONDENT
110 Margaret Ln.
Red Oak, Texas 75120-1314
CERTIFIED MAIL NO. 7001 2510 0000 7278 5724

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Tax Assessor/Collector
Ennis Independent School District
PO Box 1420
Ennis, TX 75120

Regulatory Division
Dallas District Office