

DOCKET NO. 524709

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
VS.	§	
MARTHA GUERRERO RODRIGUEZ	§	ALCOHOLIC
D/B/A BIG M'S	§	
PERMIT/LICENSE NO(s). BG464851	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-2796)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kerry D. Sullivan. The hearing convened on July 11, 2007 and adjourned on July 11, 2007. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 7, 2007. The 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 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.

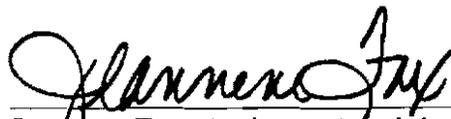
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's permit and/or license is hereby **SUSPENDED for sixty (60) days beginning November 24, 2007, with no option to pay a civil penalty.**

This Order will become final and enforceable on October 24, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED on September 28, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jearlene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

MARTHA GUERRERO RODRIGUEZ

RESPONDENT

d/b/a BIG M'S

106 E RAVENHILL DR

SAN ANTONIO, TX 782142549

VIA REGULAR MAIL

W. Michael Cady

ATTORNEY FOR PETITIONER

TABC Legal Section

Licensing Division

San Antonio District Office

SOAH DOCKET NO. 458-07-2796

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	
MARTHA GUERRERO RODRIGUEZ	§	OF
d/b/a BIG M'S	§	
PERMIT/LICENSE NO(s).	§	
BG464851	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 524709)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) seeks mandatory suspension of the permit and license of Martha Guerrero Rodriguez d/b/a Big M's (Respondent) for violations of the Texas Alcoholic Beverages Code.

Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. Based on the Respondent's failure to appear, the hearing proceeded on a default basis. This proposal for decision recommends suspension of the Respondent's permit and license for sixty days in accordance with Staff's request.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On July 11, 2007, Administrative Law Judge (ALJ) Kerry D. Sullivan convened a hearing on this matter at the hearing facilities of the State Office of Administrative Hearings (SOAH) in San Antonio, Texas. Staff was represented by W. Michael Cady. The Respondent did not appear to contest the allegations and was not represented at the hearing.

Staff offered competent evidence establishing that the Commission has jurisdiction and that Respondent was sent appropriate notice of the hearing. Those matters are set out in the Findings of Fact and Conclusions of Law. Based on the Respondent's failure to appear after receiving proper notice of hearing, Staff's motion for default was granted and its allegations were deemed true. In light of these violations, a sixty day suspensions of the Respondent's permit and license is appropriate.

II. PROPOSED FINDINGS OF FACT

1. Martha Guerrero Rodriguez d/b/a Big M's (Respondent) holds a Wine and Beer Retailer's On Premise Permit Retailer's On Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises known as big M's, located at 5702 S. Presa, San Antonio, Bexar County, Texas 78223.
2. On or about December 16, 2005, the Respondent's manager, Louis Contreas, Jr., knowingly and intentionally possessed a controlled substance (cocaine) and narcotics paraphernalia (two baggies with cocaine residue) on the licensed premises.
3. On or about December 16, 2005, Respondent Martha Guerrero Rodriguez knew or, in the exercise of reasonable care, should have known that her manager, Louis Contreas, Jr., possessed cocaine and narcotics paraphernalia on the licensed premises.
4. On May 21 2007, Staff sent notice of the hearing on this matter to the Respondent by certified mail delivered to the Respondent's address of record.
5. The Respondent received the notice of hearing on June 26, 2007, as evidenced by her signature on the return receipt.
6. The Notice contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; references to particular sections of the statute and rules involved; and a short, plain statement of the matters asserted.
7. The Notice contained the following language in 12-point or larger bold face type: "If you fail to appear at the hearing, the allegations in this notice will be deemed to be admitted as true and the relief sought may be granted by default."
8. On July 11, 2007, a hearing convened at the State Office of Administrative Hearings located at 10300 Heritage Boulevard, Suite 250, San Antonio, Bexar County, Texas.

9. Staff appeared and was represented by W. Michael Cady. The Respondent did not appear at the hearing either in person or by representative.

III. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ch. 5.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE Ch. 2003.
3. TABC provided appropriate notice to the Respondent. 1 TEX. ADMIN. CODE §§ 155.27 and 155.55; TEX. ALCO. BEV. CODE ANN. § 11.63; TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Findings of Fact Nos. 2 and 3, the Respondent violated TEX. HEALTH & SAFETY CODE §§ 481.115 and 481.125 and TEX. ALCO. BEV. CODE §§ 11.61(b)7, 61.71(a)(17), and 104.01(9).
6. Based on the above Findings of Fact and Conclusions of Law, the Respondent's Permit should be suspended for a period of sixty days.

SIGNED: September 7, 2007.



KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 7, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-07-2796; TABC No. 524709; Martha Guerrero Rodriguez, d/b/a Big M's

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

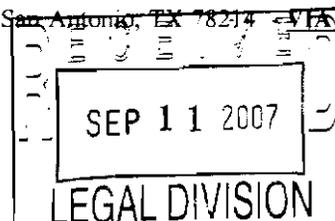
Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Kerry D. Sullivan
Administrative Law Judge

KDS/ds
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
W. Michael Cady, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Martha Guerrero Rodriguez, d/b/a Big M's, 106 E Ravenhill Drive, San Antonio, TX 78214 - **VIA REGULAR MAIL**



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