

DOCKET NO. 525269

GUADALUPE BARRAGAN	§	BEFORE THE TEXAS
D/B/A EL ALACRAN	§	
PERMIT/LICENSE NO(s). BG570782	§	
BL570783	§	
	§	ALCOHOLIC
	§	
GALVESTON COUNTY, TEXAS	§	
(<i>SOAH DOCKET NO. 458-06-2613</i>)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of October 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on August 18, 2006 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 September 13, 2006. 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 that 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 permit(s) and license(s) be **SUSPENDED** for twelve (12) days.

IT IS FURTHER ORDERED that unless Respondent pays a civil penalty in the amount of **\$1,800.00** on or before the **12th day of December 2006**, all rights and privileges granted by the Commission under the above described permit(s) and license(s) will be **SUSPENDED for twelve (12) days** starting at 12:01 A.M. on the **20th day of December 2006**.

This Order will become final and enforceable on the 27th day of November 2006 unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this the 30th day of October 2006 at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Judge Don Smith
State Office Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Guadalupe Barragan
RESPONDENT
d/b/a EL Alacran
731 4th Avenue N
Texas City, Texas 77590
CERTIFIED MAIL NO. 7005 3110 0000 6411 2948

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Galveston Outpost

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 511210

REGISTER NUMBER:

NAME: GUADALUPE BARRAGAN D/B/A EL ALACRAN

ADDRESS: 4102 BROADWAY, GALVESTON TX 77551

DATE DUE: DECEMBER 12, 2006

PERMITS OR LICENSES: BG570782, BL570783

AMOUNT OF PENALTY: \$1,800.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE DUE DATE YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

DOCKET NO. 458-06-2613

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
GUADALUPE BARRAGAN D/B/A EL ALACRAN PERMIT NO. BG570782 and BL570783 GALVESTON COUNTY, TEXAS (TABC CASE NO. 525269)	§	
	§	
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Guadalupe Barragan d/b/a El Alacran (Respondent) for two offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(2), 61.73(b), and 102.31, and 16 TEXAS ADMINISTRATIVE CODE §45.121. The alleged violations occurred on or about January 7, 2006, and February 10, 2006, when Respondent, its agent, servant, or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §§61.73(b) and 102.31.

Respondent did not make an appearance at the hearing on August 18, 2006. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 12 days or that Respondent be allowed to pay a civil penalty of \$1,800.00 in lieu of suspension.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on August 18, 2006, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Ramona Perry. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §61.73(b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the respondent gave a distributor a check for payment which is dishonored when presented for payments. As described in the Findings of Fact, the Respondent violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by writing a check to a distributor that was subsequently returned for insufficient funds.

The staff attorney introduced four exhibits into evidence:

Exhibit 1 is an affidavit of Amy Harrison, Licensing Department Director, that the Permit No. BG570782 and BL570783 were issued to Guadalupe Barragan, doing business as El Alacran, 4102 Broadway, Galveston, Galveston County, Texas, by the Texas Alcoholic Beverage Commission. The mailing address of Guadalupe Barragan is 731 4th Ave N, Texas City, Texas 77590. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the Notice of Hearing to Guadalupe Barragan, mailed on May 25, 2006, to 731 4th Avenue N, Texas City, Texas 77590, and returned to sender, attempted-not known, unable to forward.

Exhibit 2A is the Notice of Hearing to Guadalupe Barragan, mailed certified mail, return receipt requested, on June 26, 2006, to 731 4th Avenue N, Texas City, Texas 77590, and returned to sender, attempted-not known.

Exhibit 2B is the Notice of Hearing to Guadalupe Barragan at El Alacran, mailed certified mail, return receipt requested, on June 26, 2006, to 4102 Broadway, Galveston, Texas 77551, and returned to sender refused.

The ALJ took official notice of the Court's file which shows the hearing was scheduled for August 18, 2006. Notice was properly served on May 25, 2006 and June 26, 2006. The Hearing convened on August 18, 2006, and the respondent did not appear.

III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states **“if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.”** Because the Respondent failed to attend the hearing, the allegations that on or about January 7, 2006, Respondent gave a check or draft in the amount of \$229.25 for the purchase of beer that was dishonored when presented for payment; and that on or about February 10, 2006, Respondent gave a check or draft in the amount of \$457.25 for the purchase of beer that was dishonored when presented for payment in violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(2), 61.73(b), and 102.31, and 16 TEXAS ADMINISTRATIVE CODE §45.121 are deemed admitted as true. The permits should be suspended for a period of 12 days, or in lieu of suspension, Respondent should pay a civil penalty of \$1,800.00.

IV. FINDINGS OF FACT

1. Permit No. BG570782 and BL570783 were issued to Guadalupe Barragan, doing business as El Alacran, by the Texas Alcoholic Beverage Commission. The mailing address of Guadalupe Barragan is 731 4TH Avenue N, Texas City, Texas 77590.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Respondent on May 25, 2006, and on June 26, 2006. The Notices of Hearing were sent to the address that Respondent gave to TABC. Both Notice of Hearing were returned to TABC “attempted service, person not known, unable to forward.”

3. The staff also sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to Respondent at the location of El Alacran, 4102 Broadway, Galveston, Texas 77551. Respondent was properly noticed of the hearing, but refused to accept the Notice of Hearing, and the notice was returned to sender.
4. The hearing on the merits was held on August 18, 2006, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Ramona Perry. The Respondent did not appear and was not represented at the hearing.
5. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

On or about January 7, 2006, Respondent gave a check or draft in the amount of \$429.25 for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §§61.73(b) and 102.31.

On or about February 10, 2006, Respondent gave a check or draft in the amount of \$457.25 for the purchase of beer that was dishonored when presented for payment, in violation of TEX. ALCO. BEV. CODE ANN. §§61.73(b) and 102.31.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §61.71.
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 findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
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. Respondent violated TEX. ALCO. BEV. CODE ANN. §§61.73(b) and 102.31 by giving a check or draft for the purchase of beer that was dishonored when presented for payment.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a twelve-day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. §11.64, the

Respondent should be allowed to pay a \$1,800.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED September 13, 2006.

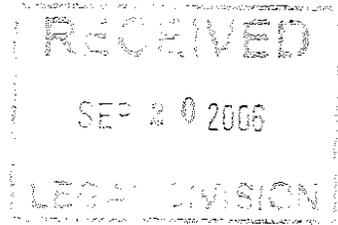
A handwritten signature in cursive script that reads "Don Smith".

**DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



September 13, 2006

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

VIA REGULAR MAIL

RE: Docket No. 458-06-2613; Texas Alcoholic Beverage Commission vs. Guadalupe Barragan d/b/a El Alacran

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,

Don Smith
Administrative Law Judge

DS/mc
Enclosure

xc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 - **VIA REGULAR MAIL**
Guadalupe Barragan d/b/a El Alacran, 731 4th Ave N, Texas City, Texas 77590 - **VIA REGULAR MAIL**