

**DOCKET NO. 530033**

IN RE GLORIA GUADALUPE MALDONADO	§	BEFORE THE TEXAS
D/B/A TRES HERMANOS	§	
LICENSE No. BE545244	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2292)	§	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 Timothy J. Horan. The hearing convened on August 11, 2006 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 4, 2006. 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, 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's license is herein **SUSPENDED for twelve (12) days**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,800.00 on or before the **26<sup>th</sup> day of December 2006**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **twelve (12) days** beginning at 12:01 A.M. on the **3rd day of January 2007**.

This Order will become final and enforceable on the 28<sup>th</sup> day of November 2006 unless a Motion for Rehearing is filed before that date.

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By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**SIGNED** on this the 30<sup>th</sup> day of October 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Timothy J. Horan  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FACSIMILE: (713) 812-1001**

Gloria Guadalupe Maldonado  
**RESPONDENT**  
d/b/a Tres Hermanos  
8010 Arbury Glen Ln  
Humble, Texas 77338  
**VIA CERTIFIED MAIL NO. 7005 3110 0000 6411 3730**

Gloria Guadalupe Maldonado  
d/b/a Tres Hermanos  
**RESPONDENT**  
3830 Aldine Mail Rd.  
Houston, Texas 77039  
**VIA CERTIFIED MAIL NO. 7005 3110 0000 6411 3747**

Licensing Division

Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
GLORIA GUADALUPE MALDONADO	§	
D/B/A TRES HERMANOS	§	
HARRIS COUNTY, TEXAS	§	
	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Gloria Guadalupe Maldonado d/b/a Tres Hermanos (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended twelve days, or in lieu of suspension, that Respondent pay a civil penalty of \$1800. The Administrative Law Judge (ALJ) agrees with this recommendation.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a)(1). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On June 30, 2006, Petitioner issued its notice of hearing, directed to Gloria Guadalupe Maldonado d/b/a Tres Hermanos, 8010 Arbury Glen Ln., Humble, Texas 77338 and also to Gloria Guadalupe Maldonado d/b/a Tres Hermanos, 3830 Aldine Mail Rd., Houston, Texas 77039, via certified mail, return receipt requested. The notices were returned "unclaimed" and "undeliverable", as evidenced by the certified mail receipts. On August 11, 2006, a hearing convened before SOAH ALJ

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Carrie McLarty at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed. After the hearing, the case was reassigned to ALJ Timothy Horan, who reviewed the record in the case, including the tape of the proceedings and the exhibits admitted into evidence, and who issues this Proposal for Decision.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

## III. FINDINGS OF FACT

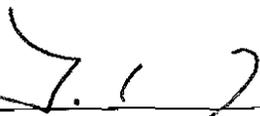
1. Respondent, Gloria Guadalupe Maldonado d/b/a Tres Hermanos holds a Beer Retailer's On-Premise License BE-545244 and Retail Dealer's On-Premise Late Hours License BL-545245 issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3830 Aldine Mail Road, Houston, Harris County, Texas.
2. On June 30, 2006, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on August 11, 2006. The notices of hearing were sent via certified mail to Respondent's last known address and was returned "unclaimed" and "undeliverable" as evidenced by the certified mail receipts.
3. The notice of hearing 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; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

4. The notice of hearing also contained the following language in 12-point or larger 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. A hearing convened before Carrie McLarty, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 11, 2006. Respondent did not appear and was not represented at the hearing and the record was closed.
6. On or about February 3, 2006, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of twelve days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$1800 in lieu of suspension of the permit/license.

SIGNED October 4, 2006.

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

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# State Office of Administrative Hearings



*Re: default  
C. L. Lewis*

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

October 4, 2006

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

**VIA REGULAR MAIL**

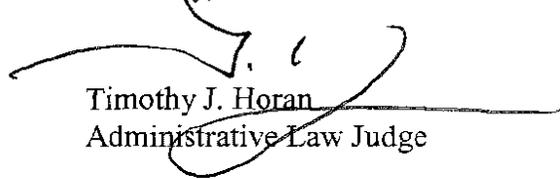
**RE: Docket No. 458-06-2292; Texas Alcoholic Beverage Commission v. Gloria Guadalupe Maldonado d/b/a Tres Hermanos**

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](http://www.soah.state.tx.us).

Sincerely,

  
Timothy J. Horan  
Administrative Law Judge

TJH/mc  
Enclosure

xc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 - **VIA REGULAR MAIL**  
Gloria Guadalupe Maldonado d/b/a Tres Hermanos, 8010 Arbury Glen Ln, Houston, Texas 77338 - **VIA REGULAR MAIL**