

DOCKET NO. 534252

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ALFONSO GARCIA	§	
D/B/A EL NOPALITO #3	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG554192	§	
FB554193	§	
	§	
GALVESTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-2776)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this 4th day of December 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 September 15, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 10, 2006. The 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 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's permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on December 27, 2006, 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 this the 4th day of December 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Alfonso Garcia
D/B/A El Nopalito #3
RESPONDENT
6001 Heards Ln.
Galveston, TX 77551
CERTIFIED MAIL NO. 7005 3110 0000 6411 4003

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Galveston Outpost

SOAH DOCKET NO. 458-06-2776

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
V.	§	
ALFONSO GARCIA	§	OF
D/B/A EL NOPALITO # 3	§	
PERMIT NOS. BG-554192, FB-554193	§	
GALVESTON COUNTY, TEXAS	§	
(TABC CASE NO. 534252)	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Alfonso Garcia d/b/a El Nopalito # 3 (Respondent), alleging that Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code) in violation of §§ 61.712 and/or 61.71 (a)(1).

Staff recommended that Respondent's permits/licenses be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing in this matter convened on September 15, 2006, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy J. Horan presided.

On July 24, 2006, Petitioner issued its notice of hearing, directed to Alfonso Garcia d/b/a El Nopalito # 3, 6001 Heards Lane, Galveston, Texas 77551 via certified mail, return receipt requested, to Respondent's last known address and was signed for as evidenced by the certified mail receipt. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

II. FINDINGS OF FACT

1. Alfonso Garcia d/b/a El Nopalito # 3 (Respondent), located at 6001 Heards Lane, Galveston, Galveston County, Texas, holds Wine and Beer Retailer's Permit BG-554192 and Food and Beverage Certificate FB-554193.
 2. On July 24, 2006, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known address at 6001 Heards Lane, Galveston, Texas 77551. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
 3. The Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
 4. The hearing on the merits was held September 15, 2006. Respondent did not appear at the hearing and the record was closed on the same day.
 5. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
 6. Respondent violated the Texas Alcoholic Beverage Code in that Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Municipal Sales and Use Tax Act (Chapter 321, Tax Code) in violation of §§ 61.712 and/or 61.71 (a)(1).
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III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. §1.01 *et seq.*
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 proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC §155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b)(5), 11.61 (b)(2), and 11.61 (c)(2).
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits is warranted.

SIGNED November 10, 2006.



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

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 10, 2006

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

VIA REGULAR MAIL

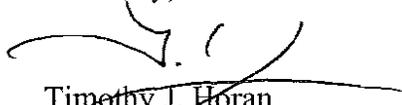
RE: Docket No. 458-06-2776; Texas Alcoholic Beverage Commission vs. Alfonso Garcia d/b/a El Nopalito #3

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,



Timothy J. Horan
Administrative Law Judge

TJH/ja
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona M. Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Alfonso Garcia D/B/A El Nopalito #3, 6001 Heards Lane, Galveston, Texas 77551 -**VIA REGULAR MAIL**

