

SOAH DOCKET NO. 458-07-0455

PROPOSAL FOR DECISION

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On October 24, 2006, TABC issued a Notice of Hearing to Respondent at his mailing address of record reflected on Respondent's permit and license applications. The Notice of Hearing was sent by U.S. Post Office certified mail, return receipt requested. Petitioner proffered into evidence the U.S. Post Office's return receipt "green card" number 7005 3110 0000 6411 3396, which indicates a delivery date of October 27, 2006.

A hearing was convened as scheduled before ALJ Veronica S. Najera at the SOAH El Paso Regional Office, located at the State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas, on December 18, 2006. Petitioner was represented at the hearing by Sandra K. Patton, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. During the hearing, Petitioner offered evidence to support a default decision against Respondent. The hearing concluded and the record closed on that same day.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. TABC's Notice of Hearing complies 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 incorporates these allegations into the Findings of Fact below. This evidence establishes that Respondent was adjudged guilty of a felony offense in 2004.²

Petitioner seeks cancellation of Respondent's permits and license. After review of the evidence of record, the ALJ agrees that Petitioner's penalty recommendation is appropriate. The Texas Alcoholic Beverage Commission has authority to cancel an original or renewal permit if it is

² See TABC Exhibit No. 2, Judgment, *United States v. Jose Manuel Saenz*, case no. EP-03-CR-1975-KC. Defendant was adjudged guilty of importing five kilograms of cocaine on February 12, 2004, and the final order was executed on May 20, 2004. See also TABC Exhibit No. 3, Amended Judgment in *United States v. Jose Manuel Saenz*. The Amended Judgment was executed on April 4, 2005.

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found that the permittee was convicted of a felony while holding an original or renewal permit.³ It can also seek cancellation if it is found that the permittee made a false or misleading statement in connection with his original or renewal application.⁴ Furthermore, the Commission may refuse to issue an original or renewal permit if five years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony.⁵ The Commission's refusal may also be exercised if the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application.⁶

Based upon the above-listed Code provisions, the evidence of record, and Respondent's failure to appear at the hearing as scheduled, cancellation of Respondent's Mixed Beverage Permit, Beverage Cartage Permit, and Mixed Beverage Late Hours License, under number MB-246885, is recommended.

III. FINDINGS OF FACT

1. Jose Manuel Saenz d/b/a JC's Lounge (Respondent) holds a Mixed Beverage Permit, a Beverage Cartage Permit, and a Mixed Beverage Late Hours License, issued by TABC under number MB-246885, for the premises located at 3900 Pershing Drive, El Paso, Texas.
2. On October 24, 2006, TABC issued a Notice of Hearing to Respondent at his mailing address of record reflected on Respondent's permit and license applications.
3. The Notice of Hearing was sent by U.S. Post Office certified mail, return receipt requested. The "green card" number 7005 3110 0000 6411 3396 was returned to TABC with a signature indicating receipt.
4. The Notice of Hearing contained a statement of the time, place and nature of the hearing; a

³ TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(3) [Cancellation or Suspension of Permit].

⁴ *Id.* at § 11.61(b)(4).

⁵ *Id.* at § 11.46(a)(2) [General Grounds for Refusal].

⁶ *Id.* at § 11.46(a)(4).

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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 statement of the matters asserted.

5. The Notice of Hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed to be admitted as true, and the relief sought may be granted by default.
6. On December 18, 2006, a hearing was convened at the State Office of Administrative Hearings, El Paso Regional Office, located in the State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas. TABC was represented at the hearing by Sandra K. Patton, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
7. In May 2004, Respondent was adjudged guilty of a felony offense. Defendant was convicted of importing five kilograms or more of cocaine.
8. On or about May 19, 2004, Respondent was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 50 months.
9. Respondent made a false or misleading statement in connection with his renewal application in June 2004 by answering "no" to question number 7(a) and (b) which asked whether he had been convicted of any offense under federal or state law, or of any felony offense.
10. Respondent made a false or misleading statement in connection with his renewal application in June 2005 by answering "no" to question number 7(a) and (b) which asked whether he had been convicted of any offense under federal or state law, or of any felony offense.
11. Five years have not elapsed since the sentence of 50 months imprisonment was imposed on the Respondent for the conviction of a felony.
12. Respondent has prior Code violations of record, as follows:

May 1995	two counts of possession of drugs by employee	45 days suspension or \$6,750.00 civil penalty
October 1999	cash law violation	five days suspension or \$750.00 civil penalty
March 2000	cash law violation	10 days suspension or \$1,500.00 civil penalty

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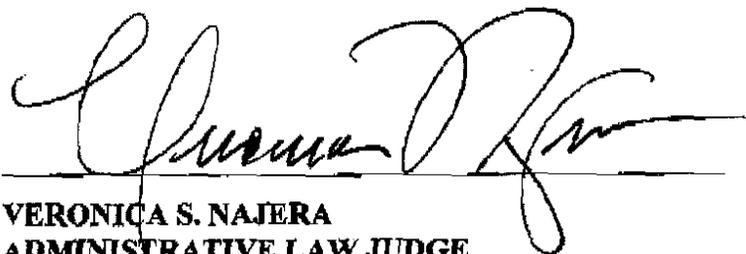
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Sept. 2000	cash law violation	10 days suspension or \$1,500.00 civil penalty
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IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and TEX. ALCO. BEV. CODE ANN. § 5.43.
3. Proper and timely notice of hearing was effected on all parties pursuant to 1 TEX. ADMIN. CODE (TAC) §§ 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 TAC § 155.55.
5. Based upon Findings of Fact Nos. 7- 11, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.61(b)(2), (3) and (4), and § 11.46(a)(2)and (4).
6. Respondent's Mixed Beverage Permit, Beverage Cartage Permit, and Mixed Beverage Late Hours License, under number MB-246885, should be cancelled.

SIGNED February 9, 2007.



VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 9, 2007

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA FACSIMILE NO. 512-206-3350
AND REGULAR MAIL

RE: Docket No. 458-07-0455
Texas Alcoholic Beverage Commission v. Jose Manuel Saenz d/b/a JC's Lounge
(TABC case no. 540827).

Dear Ms. Fox:

Please find enclosed the Proposal for Decision on the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera", written over a horizontal line.

Veronica S. Najera
Administrative Law Judge
State Office of Administrative Hearings
El Paso Regional Office

VSN/cr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA Docket Change Form**

Sandra K. Patton, Attorney, TABC Legal Division- **VIA Facsimile No. 713-426-7965**

Jose Manuel Saenz, 3900 Pershing Drive, El Paso, Tx. 79903- **VIA regular mail**