

DOCKET NO. 458-07-1430

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
THELMA HERNANDEZ D/B/A TEXAS ROADHOUSE PERMIT/LICENSE NOS. BG524068, BL526638 CAMERON COUNTY, TEXAS (TABC CASE NO. 543750)	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Thelma Hernandez d/b/a Texas Roadhouse (Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. and the Texas Alcoholic Beverage Commission's rules, found in 16 TEX. ADMIN. CODE . The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the Permittee's permit/license issued by the TABC be cancelled.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on April 4, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by Melissa M. Ricard, Administrative Law Judge (ALJ). TABC's Staff was represented by its counsel, Sandra K. Patton. The Permittee did not make an appearance at the hearing. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact.

The Commission and SOAH 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. (Code) § 11.61 authorizes the Commission to cancel a license or permit if it is found, after notice and hearing, that the Permittee violated a provision of the Code or the rules. As described in the findings of fact, the Permittee violated CODE §§ 11.61 (a)(17) and (b)(7) and 16 TEX. ADMIN. CODE (Rules) § 35.31.

Several witnesses appeared for the hearing from the Commission and the Cameron County District Attorney's Office, and they were prepared to give testimony. The staff attorney introduced three exhibits into evidence. Exhibit 1 is a copy of the affidavit of Amy Harrison, Licensing Department Director, showing that Permits BG-524068, and BL-526638 were issued to Permittee. The Exhibit Permittee's mailing address is P.O. Box 9507, La Feria, Texas 78559. Exhibit 2 is the return receipt showing Permittee received the Notice of Hearing on February 12, 2007. Exhibit 3 is a Certified Judgment of Conviction showing that on January 16, 2007, Sergio Alonzo Hernandez was convicted of Possession of a Controlled Substance of 400 grams or more and sentenced to serve five years and one day confinement in a Texas Department of Criminal Justice Institutional Division facility.

III. RECOMMENDATION

The notice of hearing, dated February 6, 2007, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegation in this notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's address, as shown by the agency's records. The return receipt has a delivery date to Permittee of February 12, 2007. Therefore, the allegations that Permittee violated CODE §§11.61 (a)(17) and (b)(7) and RULES § 35.31. are admitted as true. The relief sought should be granted, the permits should be cancelled, and renewals should be denied.

IV. FINDINGS OF FACT

1. Permits BG-524068 and BL-526638 were issued to Thelma Hernandez d/b/a Texas Roadhouse (Permittee) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Permittee is P.O. Box 9507, La Feria, Texas 78559.
2. TABC's Staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified mail, return receipt requested, and mailed the notice to Permittee's address as shown in the agency's records.
3. The Notice of Hearing contained a statement of the time, location, date, 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 allegations and the relief sought by the TABC.
4. Permittee received the Notice of Hearing on February 12, 2007.
5. The notice of hearing contained the following language in capital letters in 12-point boldface type:

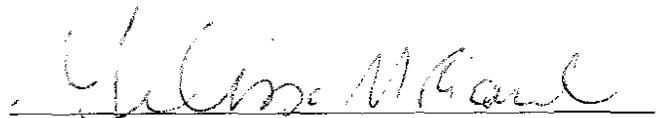
If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.
6. The hearing on the merits was held on April 4, 2007, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra K. Patton. The Permittee did not appear and was not represented at the hearing and the record was closed on the same day.
7. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
8. Respondent violated the Texas Alcoholic Beverage Code in that on or about July 14, 2006, Permittee, Permittee's agents, servant or employee, sold or permitted others to sell a narcotic on the licensed premises.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61.
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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 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. Based upon Finding of Fact No. 8, Permittee violated TEX. ALCO. BEV. CODE ANN. §§11.61 (a)(17) and (b)(7) and 16 TEX. ADMIN. CODE § 35.31.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a cancellation of the permit and license is warranted.

SIGNED this 1st day of June, 2007.



MELISSA M. RICARD

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

5155 Flynn Parkway
Suite 200
Corpus Christi, Texas 78411
Phone (361) 884-5023
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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 1, 2007

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

**RE: Docket No. 458-07-1430/TABC vs. Thelma Hernandez
dba Texas Road House**

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,

Melissa M. Ricard
Administrative Law Judge

MMR/mar
Enclosure

xc: Natalie Howard, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Thelma Hernandez, Respondent, P.O. Box 9507, La Feria, Tx 78559 - **VIA REGULAR MAIL**