

**DOCKET NO. 548690**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ALFREDO PEREZ JR. D/B/A EL TAMARINDO CAFÉ & BAR PERMIT/LICENSE NO(s). BG410273 BL410274	§	ALCOHOLIC
	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO.458-07-0985)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29<sup>th</sup> day of May 2007, 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 February 2, 2007 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 March 23, 2007. 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 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.

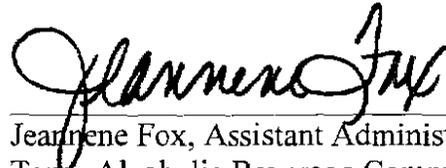
**IT IS THEREFORE ORDERED** by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permit(s) and /or license(s) will be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on June 21, 2007 unless a Motion for Rehearing is filed before that date.

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

**SIGNED** on this the 29<sup>th</sup> day of May 2007.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Timothy J. Horan  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FAX (713) 812-1001**

Alfredo Perez, Jr.  
d/b/a El Tamarindo Café & Bar  
**RESPONDENT**  
13506 Bridgewalk Cove  
Houston, Texas 77041  
**VIA FIRST-CLASS MAIL**

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Houston District Office

SOAH DOCKET NO. 458-07-0985

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>ALFREDO PEREZ, JR.</b>	§	<b>OF</b>
<b>D/B/A EL TAMARINDO CAFE &amp; BAR</b>	§	
<b>PERMIT NOS. BG-410273, BL-410274</b>	§	
<b>HARRIS COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 548690)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Alfredo Perez, Jr. d/b/a El Tamarindo Cafe & Bar (Respondent), alleging that on or about April 2, 2006, Permittee applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively and failed to file with the Commission an approved performance surety bond in the amount of \$2000.00, and that failure to post the required \$2000.00 performance surety bond is a violation of the Texas Alcoholic Beverage Code §§ 11.61 (b-1) and 61.71(j).

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 February 2, 2007, 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.

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On December 4, 2006, Petitioner issued its notice of hearing, directed to Alfredo Perez, Jr. d/b/a El Tamarindo Cafe & Bar, 13506 Bridgewalk Cove, Houston, Texas 77041 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. Alfredo Perez, Jr. d/b/a El Tamarindo Cafe & Bar (Respondent), located at 3829 Mangum Road, Houston, Harris County, Texas, holds Wine and Beer Retailer's Permit BG-410273 and Retail Dealer's On-Premise Late Hours License BL-410274.
2. On December 4, 2006, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 13506 Bridgewalk Cove, Houston, Texas 77041. 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 February 2, 2007. 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 that on or about April 2, 2006, Permittee applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premise

consumption of beer exclusively or beer and wine exclusively and failed to file with the Commission an approved performance surety bond in the amount of \$2000.00. Failure to post the required \$2000.00 performance surety bond is a violation of the Texas Alcoholic Beverage Code §§ 11.61 (b-1) and 61.71(j).

### 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-1) and 61.71 (j).
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/licenses is warranted.

SIGNED March 23, 2007



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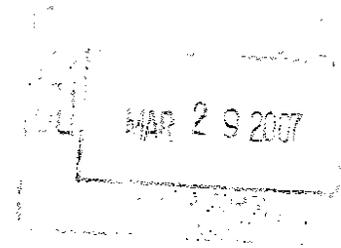
**TIMOTHY J. HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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# State Office of Administrative Hearings



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



March 23, 2007

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

**VIA REGULAR MAIL**

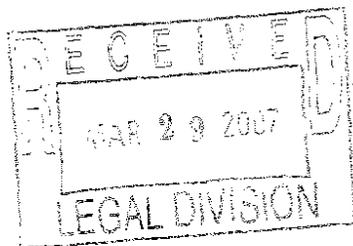
**RE: Docket No. 458-07-0985/Texas Alcoholic Beverage Commission vs. Alfredo Perez, Jr. d/b/a El Tamarindo Cafe & Bar**

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,



*[Handwritten Signature]*  
Timothy J. Horan  
Administrative Law Judge

TJH/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 500, 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**  
Alfredo Perez, Jr. d/b/a El Tamarindo Cafe & Bar, Respondent, 13506 Bridgewalk Cove, Houston, TX 77041 -**VIA REGULAR MAIL**

2020 North Loop West, Suite 111 ♦ Houston, Texas 77018

(713) 957-0010 Fax (713) 812-1001

<http://www.soah.state.tx.us>