

DOCKET NO. 548702

MARTIN CANALES CRUZ § BEFORE THE TEXAS
D/B/A EL ALAZAN NIGHT CLUB §
LICENSE NOS. BG508700, BL508701 § ALCOHOLIC
§
HARRIS COUNTY, TEXAS §
(SOAH DOCKET NO. 458-07-1012) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this 13th day of June 2007,
the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on February 2, 2007 and adjourned the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 7, 2007. The 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 permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on July 6, 2007 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED on this 13th day of June 2007, at Austin, Texas.

On Behalf of the Administrator,


Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/aa

Hon. Don Smith
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Martin Canales Cruz
d/b/a El Alazan Night Club
RESPONDENT
10585 Telephone Rd
Houston, TX 77075
VIA FIRST CLASS MAIL

Martin Canales Cruz
d/b/a El Alazan Night Club
RESPONDENT
PO Box 320
Harden, TX 77561
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Section

Houston District Office

DOCKET NO. 458-07-1012

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**MARTIN CANALES CRUZ D/B/A
EL ALAZAN NIGHT CLUB
PERMIT/LICENSE NOS. BG508700, BL508701
HARRIS COUNTY, TEXAS
(TABC CASE NO. 548702)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Martin Canales Cruz d/b/a El Alazan Night Club (Permittee) for offenses committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) or the Texas Alcoholic Beverage Commission's rules, 16 TEX. ADMIN. CODE (the rules), or both. 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 license be cancelled and the renewals be denied.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on February 2, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. TABC's Staff was represented by its counsel, Sandra K. Patton. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact. TABC requested the record remain open until February 26, 2007, to see whether the matter would become moot by Permittee not filing a 2007 renewal application. The record remained open until February 26, 2007, when Staff reported that Permittee did file a 2007 renewal application.

The Commission and the 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

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 (b-1) and 61.71 (j).

The staff attorney introduced two exhibits into evidence. Exhibit 1 is the return receipt showing Permittee received the Notice of Hearing on December 12, 2006. Exhibit 2 is a copy of the affidavit of Amy Harrison, Licensing Department Director, that Permits BG-508700 and BL-508701 were issued to Permittee. Permittee's mailing address is 10585 Telephone Road, Houston, Texas 77075.

III. RECOMMENDATION

The notice of hearing, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegations (s) 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 December 12, 2006. Therefore, the allegations that Permittee violated CODE §§ 11.61 (b-1) and 61.71 (j) are admitted as true. The relief sought should be granted, and the permits should be cancelled and renewals should be denied.

IV. FINDINGS OF FACT

1. Permits BG-508700 and BL-508701 were issued to Martin Canales Cruz d/b/a El Alazan Night Club (Permittee) by the Texas Alcoholic Beverage Commission (TABC). The mailing address
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of Permittee is 10593 Telephone Road, Houston, Texas 77075.

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 December 12, 2006.
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.

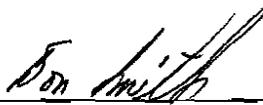
6. The hearing on the merits was held on February 2, 2007, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Sandra K. Patton. The Permittee did not appear and was not represented at the hearing.
7. On or about January 19, 2006, Permittee applied for a renewal license under Chapter 25 (Wine and Beer Retailer's Permit) or 69 (Retail Dealer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively, and failed to file with the Commission a surety bond in the amount of \$2,000.00.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 AND 11.61.
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. 5, Permittee violated TEX. ALCO. BEV. CODE ANN. §§ 11.61 (b-1) and 61.71 (j).
6. Based on the foregoing Findings of Fact and Conclusions of Law, a cancellation of the permit and license is warranted and the renewals should be denied.

SIGNED this 7th day of March, 2007.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 7, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-07-1012/ Texas Alcoholic Beverage Commission vs. Martin Canales Cruz d/b/a El Alazan Night Club

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,

A handwritten signature in black ink, appearing to read "Don Smith".

Don Smith
Administrative Law Judge

DS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra K. Patton, 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
Martin Canales Cruz d/b/a El Alazan Night Club, Respondent, 10585 Telephone Road, Houston, Texas 77075 -**VIA REGULAR MAIL**