

DOCKET NO. 553001

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§
§
§

BEFORE THE TEXAS

VS.

ALCOHOLIC

MARIA GUADALUPE CANTU
D/B/A A.C.'S CORRAL
PERMIT/LICENSE NO(s). BG301908
BEXAR COUNTY, TEXAS
(SOAH DOCKET NO. 458-07-2793)

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kerry D. Sullivan. The hearing convened on July 11, 2007 and adjourned July 11, 2007. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 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, which 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 and/or license is hereby **CANCELLED FOR CAUSE** and shall not be renewed.

This Order will become final and enforceable on October 24, 2007, 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 on September 28, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

MARIA GUADALUPE CANTU
RESPONDENT
d/b/a A.C.'S CORRAL
17490 OLD PLEASANTON RD
SAN ANTONIO, TX 78221
VIA REGULAR MAIL

Hon. Kerry D. Sullivan
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FAX (512) 475-4994

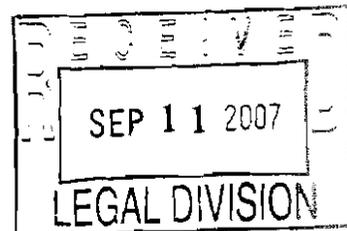
W. Michael Cady
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



September 7, 2007

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

HAND DELIVERY

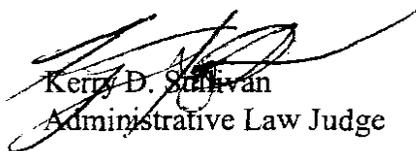
RE: Docket No. 458-07-2793; TABC Case no. 553001; Maria Guadalupe Cantu, d/b/a A.C.'s Corral

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,


Kerry D. Sullivan
Administrative Law Judge

KDS/ds
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
W. Michael Cady, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Maria Guadalupe Cantu, d/b/a A.C.'S Corral, 17490 Old Pleasanton Rd., San Antonio, TX 78221 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-07-2793

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	
MARIA GUADALUPE CANTU	§	OF
d/b/a A.C.'S CORRAL	§	
PERMIT/LICENSE NO(s).	§	
MB301908	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 553001)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) seeks cancellation of the permit of Maria Guadalupe Cantu d/b/a A.C.'s Corral (Respondent) for violations of the Texas Alcoholic Beverages Code.

Despite being sent proper notice, the Respondent did not appear and was not represented at the hearing. Based on the Respondent's failure to appear, the hearing proceeded on a default basis. This proposal for decision recommends cancellation of the Respondent's permit in accordance with Staff's request.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On July 11, 2007, Administrative Law Judge (ALJ) Kerry D. Sullivan convened a hearing on this matter at the hearing facilities of the State Office of Administrative Hearings (SOAH) in San Antonio, Texas. Staff was represented by W. Michael Cady. The Respondent did not appear to contest the allegations and was not represented at the hearing.

Staff offered competent evidence establishing that the Commission has jurisdiction and that the Respondent was sent appropriate notice of the hearing. Those matters are set out in the Findings of Fact and Conclusions of Law. Based on the Respondent's failure to appear after receiving proper notice of hearing, Staff's motion for default was granted and its allegations were deemed admitted as true. Based on these violations, cancellation of the Respondent's permit is appropriate.

II. PROPOSED FINDINGS OF FACT

1. Maria Guadalupe Cantu d/b/a A.C.'s Corral(Respondent) holds a Wine and Beer Retailer's On Premise Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises known as A.C.'s Corral, located at 17490 Old Pleasanton Road, San Antonio, Bexar County, Texas 78221.
2. On or about September 21, 2006, and thereafter, the Respondent's state sales tax permit was suspended because the Respondent became delinquent in the payment of her state sales tax.
3. Since on or about September 21, 2006, the Respondent has also been delinquent for her limited sales, excise and use tax, and has been shown on the records of the Comptroller of Public Accounts as being delinquent and/or subject to a final determination of taxes, plus penalties and interest, pursuant to Chapter 321 of the Tax Code.
4. The Respondent has filed an application for renewal of her alcoholic beverage permit.
5. On May 18, 2007, Staff sent notice of the hearing on this matter to the Respondent by certified mail delivered to the Respondent's address of record.
6. The Notice contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; references to particular sections of the statute and rules involved; and a short, plain statement of the matters asserted.
7. The Notice contained the following language in 12-point or larger bold face type: "If you fail to appear at the hearing, the allegations in this notice will be deemed to be admitted as true and the relief sought may be granted by default."

8. On July 11, 2007, a hearing convened at the State Office of Administrative Hearings located at 10300 Heritage Boulevard, Suite 250, San Antonio, Bexar County, Texas.
9. Staff appeared and was represented by W. Michael Cady. The Respondent did not appear at the hearing either in person or by representative.

III. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ch. 5.
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 Ch. 2003.
3. TABC provided appropriate notice to the Respondent. 1 TEX. ADMIN. CODE §§ 155.27 and 155.55; TEX. ALCO. BEV. CODE ANN. § 11.63; TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact No. 2, the Respondent violated TEX. ALCO. BEV. CODE §§ 11.61(c)(1) and 61.712(1).
6. Based on Finding of Fact 3, the Respondent violated TEX. ALCO. BEV. CODE §§ 11.61(b)(5) and (c)(2) and 61.712(2).
7. Based on the above Findings of Fact and Conclusions of Law, the Respondent's permit should be cancelled and not renewed. TEX. ALCO. BEV. CODE § 11.46(a)(5), 11.46(b), 11.61(c), 61.42(a)(2), 61.50, and 61.712.

SIGNED: September 7, 2007.


KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS