

DOCKET NO. 560213

ABEL GALINDO	§	BEFORE THE TEXAS
CONSUELO ARIAS HERNANADEZ	§	
D/B/A EL ALACRAN 2000 BAR	§	
PERMIT/LICENSE NOS. BG536611,	§	
BL536612	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-2204)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8<sup>th</sup> day of June 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on May 4, 2007 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 17, 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.

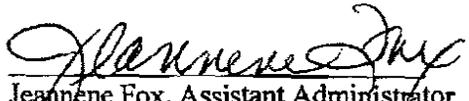
**IT IS THEREFORE ORDERED** by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that the renewal of Respondent's permits and/or licenses be **DENIED**.

This Order will become final and enforceable on July 2, 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 8<sup>th</sup> day of June 2007, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

Hon. Rex A. Shaver  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
*VIA FAX (713) 812-1001*

Abel Galindo  
Consuelo Arias Hernandez  
d/b/a El Alacran 2000 Bar  
**RESPONDENT**  
2603 Palo Pinto Dr.  
Houston, TX 77080  
*VIA FIRST-CLASS MAIL*

Abel Galindo  
Consuelo Arias Hernandez  
d/b/a El Alacran 2000 Bar  
**RESPONDENT**  
302 S. Lockwood Drive  
Houston, TX 77011  
*VIA FIRST-CLASS MAIL*

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Enforcement Division

**SOAH DOCKET NO. 458-07-2204**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>    Petitioner</b>	§	
<b>V.</b>	§	
	§	
<b>ABEL GALINDO AND CONSUELO</b>	§	
<b>ARIAS HERNANDEZ D/B/A EL</b>	§	<b>OF</b>
<b>ALACRAN 2000 BAR</b>	§	
<b>PERMIT/LICENSE NOS. BG536611</b>	§	
<b>BL536612</b>	§	
<b>HARRIS COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 560213),</b>	§	
<b>    Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Abel Galindo and Consuelo Arias Hernandez d/b/a El Alacran 2000 Bar (Respondent), alleging that on or about June 4, 2006, Respondent applied for a renewal permit and license and failed to file with the Commission an approved performance surety bond in the amount of \$2,000.00. Staff argued 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) and recommended that renewal of Respondent's permit/license be denied. The Administrative Law Judge (ALJ) agrees with this recommendation.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on May 4, 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 Sandra Patton represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Rex A. Shaver presided.

On March 28, 2007, Petitioner issued its notice of hearing, directed to Abel Galindo and Consuelo Arias Hernandez d/b/a El Alacran, 2603 Palo Pinto Dr., Houston, Texas 77080, via certified mail, return receipt requested, to Respondent's last known address. The notice was returned as, "Attempted Not Known". Notice was also sent and by regular mail to Abel Galindo and Consuelo Arias Hernandez at 302 S. Lockwood Drive, Houston, Texas 77011. 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

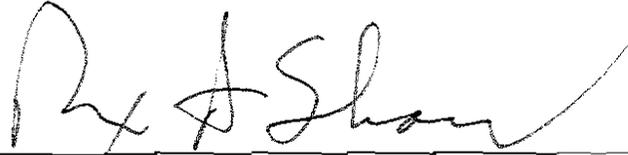
1. Abel Galindo and Consuelo Arias Hernandez d/b/a El Alacran 2000 Bar, located at 302 S. Lockwood Drive, Houston, Harris County, Texas, hold Wine and Beer Retailer's Permit BG-536611, which includes the Retail Dealer's On-Premise Late Hours License BL-536612.
  2. On March 28, 2007, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 2603 Palo Pinto Dr., Houston, Texas 77080. 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 May 4, 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 when on or about April 2, 2006, the Respondent applied for a renewal permit and/or license under Chapter 25 (Wine and
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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.

### 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 decision 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 decision against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the renewal of Respondent's permit/license is warranted.

**SIGNED May 17, 2007**

  
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**REX A. SHAVER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



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

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order*  
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MAY 23 2007  
LEGAL DIVISION

May 17, 2007

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-07-2204; Texas Alcoholic Beverage Commission v. Abel Galindo and Consuelo Arias Hernandez D/B/A El Alacran 2000 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,  
  
Rex A. Shaver  
Administrative Law Judge

RAS/jh  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra K. Patton, Attorney, Texas Alcoholic Beverage Commission, 427 W. W20th Street, Suite 600, Houston, Texas 77008- **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Abel Galindo Consuelo Arias Hernandez d/b/a El Alacran 2000 Bar, 2603 Palo Pinto Drive, Houston, Texas 77080 -**VIA REGULAR MAIL**  
Abel Galindo Consuelo Arias Hernandez d/b/a El Alacran 2000 Bar, 302 S. Lockwood Drive, Houston, Texas 77011 -**VIA REGULAR MAIL**