

**SOAH DOCKET NO. 458-07-2221**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	<b>§</b>	
<b>Petitioner</b>	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>INOCENCIO ORTEGA MARTINEZ</b>	<b>§</b>	
<b>D/B/A FULTON PLACE</b>	<b>§</b>	
<b>PERMIT NO. BE-299491</b>	<b>§</b>	
<b>HARRIS COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC CASE NO. 560537),</b>	<b>§</b>	
<b>Respondent</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Inocencio Ortega Martinez d/b/a Fulton Place (Respondent), alleging that on or about August 2, 2006, Respondent 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 \$2,000.00, and that failure to post the required \$2,000.00 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 April 20, 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 Lindy Hendricks represented the Petitioner. Respondent did not appear and was not represented at the hearing. ALJ Timothy Horan presided.

On March 30, 2007, Petitioner issued its notice of hearing, directed to Inocencio Ortega Martinez d/b/a Fulton Place, 7512 Fulton, Houston, Texas 77009, via certified mail, return receipt requested, to Respondent's last known address. The letter was returned to Petitioner marked "Return To Sender" as evidenced by the certified mail envelope. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE § 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.

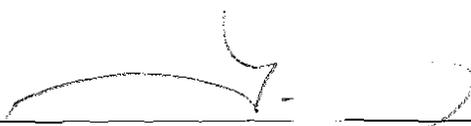
## II. FINDINGS OF FACT

1. Inocencio Ortega Martinez d/b/a Fulton Place (Respondent), located at 7512 Fulton, Houston, Harris County, Texas, holds Beer Retailer's On-Premise License BE-299491, which includes the Retail Dealer's On-Premise Late Hours License.
2. On March 30, 2007, The Staff of the Texas Alcoholic Beverage Commission timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 7512 Fulton, Houston, Texas 77009. 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 he 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 April 20, 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. On or about August 2, 2006, Respondent 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 \$2,000.00.

**III. CONCLUSIONS OF LAW**

1. The 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 June 8, 2007.**

  
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**TIMOTHY 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**

June 8, 2007

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-07-2221; Texas Alcoholic Beverage Commission v. Inocencio Ortega Martinez D/B/A Fulton Place**

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,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan  
Administrative Law Judge

TH/jh  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Lindy B. Hendricks, Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> 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**  
Inocencio Ortega Martinez, d/b/a Fulton Place, 7512 Fulton, Houston, Texas 77009 -**VIA REGULAR MAIL**