

DOCKET NO. 458-07-3546

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**MARGARITA AGUILAR
D/B/A EL FARAYON II
PERMIT NO. BG-442150
DALLAS COUNTY, TEXAS
(TABC NO. 562695)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Margarita Aguilar, d/b/a El Farayon II (Respondent), seeking a cancellation of Respondent's Wine and Beer Retailer's Permit, BG-442150. TABC alleged that on or about December 19, 2006, Respondent applied for a renewal permit for the on-premises consumption of beer exclusively or beer and wine exclusively and failed to timely file an approved performance surety bond in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (b-1). This Proposal for Decision finds Respondent's permits should be cancelled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened on August 6, 2007. Attorney Danielle Boazeman-Schick represented TABC. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On November 17, 1998, Respondent was issued Wine and Beer Retailer's Permit BG-442150.

(b) On July 12, 2007, Petitioner sent a notice of hearing, by certified mail, return receipt requested, to Respondent's address of record (13223 Fish Rd. #10, Dallas, TX 75253) asserting that the TABC was seeking to cancel Respondent's permits. The return receipt was stamped "unclaimed, unable to forward."

(c) The notice of hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 61.71 (a)(1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on or off premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true: the permittee violated a provision of this code or a rule of the commission.

TEX. ALCO. BEV. CODE ANN. § 11.61 (b-1) states:

Notwithstanding Section 204.01 and any other provision of this code, a person applying for a license or permit under Chapter 25 or 69 for the on-premises consumption of beer exclusively or beer and wine exclusively,

other than a license or permit for an establishment holding a food and beverage certificate whose primary business being operated on the premises is food service, must file with the commission a surety bond, in an amount to be determined by the commission, conditioned on the licensee's or permittee's conformance with the alcoholic beverage law.

16 TEX. ADMIN. CODE § 37.3 states:

(a) This rule relates to § 11.63 of the ALCOHOLIC BEVERAGE CODE.

(b) Service of notices of hearing, pleadings, or other documents related to contested cases shall be by certified mail addressed to the licensee/permittee/certificate holders' last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the licensee/permittee/certificate holder.

(c) Licensee/permittee/certificate holders and applicants for licenses, permits, or certificates, and their representatives, shall notify the commission in writing of any change of address within seven days of such change. Licensee/permittees shall file their change of address with the Licensing Division of the Texas Alcoholic Beverage Commission. Certificate holders shall file their change of address with the Seller Server Training Section of the Texas Alcoholic Beverage Commission

TEX. ADMIN. CODE § 155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

1. Margarita Aguilar, d/b/a El Farayon II (Respondent), is the holder of Wine and Beer Retailer's Permit BG-442150.
2. Respondent was notified of the factual allegations against Respondent in the notice of

hearing issued by Petitioner on July 12, 2007. The notice of hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

3. Respondent was notified of the date, time, and location of the scheduled hearing by the notice of hearing dated July 12, 2007.
4. On August 6, 2007, the hearing in this matter convened before ALJ Kyle J. Groves. Danielle Boazeman-Schick appeared for TABC. Respondent failed to appear.
5. On or about December 19, 2006, Respondent applied for a renewal permit for the on-premises consumption of beer exclusively or beer and wine exclusively and failed to timely file an approved performance surety bond in the amount of \$2,000 in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (b-1).

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.11.
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 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 and 16 Tex. Admin. Code § 37.3.
4. The factual allegations in the notice of hearing are deemed admitted as true.
5. By failing to timely file an approved performance surety bond when applying for a renewal permit for the on-premises consumption of beer exclusively or beer and wine exclusively, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b-1).
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine and Beer Retailer's Permit BG-442150 should be cancelled.

Signed September 26TH, 2007



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
Phone (214) 956-8616
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SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

STYLE CASE: TABC v. MARGARITA AGUILAR D/B/A EL FARAYON II

DOCKET NUMBER: 458-07-3546

AGENCY CASE NO. 562695

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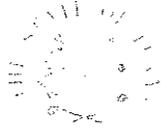
AGENCY COUNSEL
BY FAX 214-678-4050

Margarita Aguilar
D/B/A El Farayon II
13223 Fish Rd., # 10
Dallas, TX 75253-3183

RESPONDENT
BY MAIL

As of September 26, 2007

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 26, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-07-3546
TABC V. MARGARITA AGUILAR
D/B/A EL FARAYON II

Dear Ms. Fox:

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 "K. Groves", is written over a horizontal line.

Kyle J. Groves
Administrative Law Judge
State Office Of Administrative Hearings

JVH/sr
Enclosure

cc: Daniell Schick, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,
Margarita Aguilar, D/B/A El Farayon II, Respondent, **Via Mail**

