

DOCKET NO. 565654

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § § § § § § § § §	BEFORE THE TEXAS
VS.		
PAUL JAMES PONCE TRAINER CERTIFICATE #4016		ALCOHOLIC
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-07-3774)		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 George Lambright. The hearing convened on September 11, 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 October 8, 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.

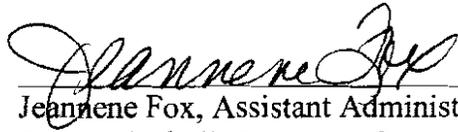
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Trainer Certificate No. 4016 be Cancelled.

This Order will become final and enforceable November 26, 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 this October 31, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

WMC\bc

The Honorable George Lambright
Administrative Law Judge
VIA FAX (210) 308-6854

PAUL JAMES PONCE
RESPONDENT
4310 SHALLOW WATERS
SAN ANTONIO, TX 78233

W. Michael Cady
ATTORNEY FOR PETITIONER
TABC Legal Section

Education & Prevention Division

SOAH DOCKET NO. 458-07-3774

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § § §	BEFORE THE STATE OFFICE
V.		
PAUL JAMES PONCE TRAINER NO. 4016 BEXAR COUNTY, TEXAS (TABC CASE NO. 565654)		OF
		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks cancellation or suspension of the Trainer Certificate issued to Paul James Ponce (Respondent). Petitioner alleged Respondent was issued an original Trainer Certificate on March 25, 2004, and failed to meet the minimum requirements in order to maintain said certificate. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's Certificate.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5 and § 106.14, as well as 16 TEX. ADMIN. CODE (TAC) §§ 50.3(h), 50.5(a)(1) and 50.7(a)(4) of the TABC Rules (the Rules). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

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On August 8, 2007, Petitioner issued its Notice of Hearing (NOH) to Respondent at his address, 4300 Shallow Waters, San Antonio, Texas 78233, return receipt requested. The NOH 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; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. §2001.052. The NOH also included the following language in at least 12-point or larger bold face type, "Upon failure of a party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." On August 9, 2007, Yolanda Gallegos signed a receipt for the NOH at the above address.

On September 11, 2007, a hearing was convened before ALJ George Lambright at the SOAH office located in San Antonio, Texas. Petitioner was represented by W. Michael Cady, Staff Attorney, who announced ready. Respondent did not appear and was not represented by counsel. The record was closed the same day after admission of jurisdictional documents and argument for default and cancellation.

II. DISCUSSION

During the hearing Respondent offered two exhibits, P#1, and P#2. P#1 is the NOH with the signed return receipts attached thereto.

P#2 is an affidavit signed by Deborah Dixon, Director of Education and Prevention, Texas Alcoholic Beverage Commission. The affidavit reflects Respondent was, on March 25, 2004, issued his Original Trainer Certificate.

Petitioner alleged that Respondent has failed to meet or maintained the minimum

requirements to maintain his Certificate as required by TEX. ALCO. BEV. CODE ANN. ch. 5 and § 106.14, as well as 16 TEX. ADMIN. CODE (TAC) §§ 50.3(h), 50.5(a)(1) and 50.7(a)(4).

V. FINDINGS OF FACT

1. Paul James Ponce (Respondent) is the holder of an approved seller training program issued by TABC (Petitioner) on March 25, 2004.
2. On August 8, 2007, Petitioner issued its Notice of Hearing (NOH) to Respondent at his address, 4300 Shallow Waters, San Antonio, Texas 78233, return receipt requested.
3. The NOH 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; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. §2001.052.
4. The NOH also included the following language in at least 12-point or larger bold face type, "Upon failure of a party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
5. On August 9, 2007, Yolanda Gallegos signed a receipt for the NOH at the above address.
6. Respondent failed to meet or maintained the minimum requirements to maintain his Certificate as required by TEX. ALCO. BEV. CODE ANN. ch. 5 and § 106.14, as well as 16 TEX. ADMIN. CODE (TAC) §§ 50.3(h), 50.5(a)(1) and 50.7(a)(4).

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5 and § 106.14, as well as 16 TEX. ADMIN. CODE (TAC) §§ 50.3(h), 50.5(a)(1) and 50.7(a)(4) of the TABC Rules (the Rules).
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 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. Respondent failed to meet or maintained the minimum requirements to maintain his Certificate as required by TEX. ALCO. BEV. CODE ANN. ch. 5 and § 106.14, as well as 16 TEX. ADMIN. CODE (TAC) §§ 50.3(h), 50.5(a)(1) and 50.7(a)(4).
5. Respondent' Trainer Certificate should be cancelled.

Signed on this the 8th day of October 2007.



GEORGE LAMBRIGHT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

October 9, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-07-3774, TABC vs Paul James Ponce, Trainer No 4016

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,



George Lambright
Administrative Law Judge

GL/ilap
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
W. Michael Cady, 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
Paul James Ponce, 4310 Shallow Waters, San Antonio, TX 78233 -**VIA REGULAR MAIL**

