

SOAH DOCKET NO. 458-08-0247

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	OF
TEX-MEX TAQUERIA #2 INC. D/B/A	§	
TEX-MEX RESTAURANT & BAR	§	
HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Tex-Mex Taqueria #2 Inc. d/b/a Tex-Mex Restaurant & Bar (Respondent), alleging the following violations of the Texas Alcoholic Beverage Code (Code) :

Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code, in violation of Code § 11.61 (c) (2).

Respondent is indebted to the state for taxes, fees or payments of penalties imposed by Chapter 183, Tax Code (Mixed Beverage Gross Receipt Tax Act), in violation of Code §§ 11.46 (a) (5) and/or 11.61 (b) (5).

Staff recommended that Respondent's permits/licenses be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. PROCEDURAL HISTORY

The hearing convened on November 30, 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. Administrative Law Judge (ALJ) Don Smith presided.

On September 26, 2007, Petitioner issued its Notice of Hearing, directed to Tex-Mex Taqueria #2 Inc. d/b/a Tex-Mex Restaurant & Bar, 13758 Sablebend Lane, Houston, Texas 77014, via certified mail, return receipt requested, to Respondent's last known mailing address. The letter was "returned to sender unclaimed," as evidenced by the certified mail receipt. After presenting evidence of notice, Staff moved for a default decision, 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. The facts, as deemed admitted, support the requested sanction.

II. FINDINGS OF FACT

1. Tex-Mex Taqueria #2 Inc. d/b/a Tex-Mex Restaurant & Bar (Respondent), located at 13192 Veterans Memorial Drive, Houston, Harris County, Texas, holds Mixed Beverage Permit MB-517428, which includes the Mixed Beverage Late Hours Permit.
2. On September 26, 2007, the staff of the Texas Alcoholic Beverage Commission (TABC) timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 13758 Sablebend Lane, Houston, Texas 77014. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing would be held; and the matters asserted.
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 convened as scheduled on November 30, 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 is shown on the records of the Comptrollers Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use

Tax Act (Chapter 151, Tax Code) or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

7. Respondent is indebted to the state for taxes, fees or payments of penalties imposed by Chapter 183, Tax Code (Mixed Beverage Gross Receipt Tax Act).

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to Subchapter B of Chapter 5, and § 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. §§ 11.46 (a) (5), 11.61 (b) (5), and 11.61 (c) (2).
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 cancellation of Respondent's permits/licenses is warranted.

SIGNED December 19, 2007.

DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS