

DOCKET NO. 458-08-0137**TEXAS ALCOHOLIC BEVERAGE
COMMISSION****VS.****SILVIA IZARRARS D/B/A
ICE MINE DRIVE INN
PERMIT/LICENSE NOS. BQ622559
NUECES COUNTY, TEXAS
(TABC CASE NO. 566611)**§
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§**BEFORE THE STATE OFFICE****OF****ADMINISTRATIVE HEARINGS****PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Silva Izarrars d/b/a Ice Mine Drive Inn (Respondent) for offenses committed in violation of the Texas Alcoholic Beverage Code. The Respondent did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the Respondent's permit/license issued by the TABC be suspended for period of 15 days.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter was convened on October 24, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by Melissa M. Ricard, Administrative Law Judge (ALJ). TABC's Staff was represented by its counsel, Sandra K. Patton. The Respondent did not make an appearance at the hearing. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact below.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

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II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

Texas Administrative Code, TEX. ADMIN. CODE (Rules) § 155.55, provides that if a party does not appear for a hearing, the factual allegations contained in the notice of hearing will be deemed as admitted. Therefore, as described in the findings of fact, it is deemed as admitted that the Respondent issued for checks in payment for beer and the checks were dishonored when presented for payment. These actions violated TEX. ALCO. BEV. CODE ANN CODE (CODE) §§ 61.73 and 102. 31. Therefore, Code § 11.61 authorizes the Commission to cancel a license or permit if it is found, after notice and hearing, that the Respondent violated a provision of the Code or the rules.

The notice of hearing, dated September 18, 2007, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegation in this notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, and by regular mail to Respondent's address, as shown by the agency's records. The return receipt requested mail was unclaimed and returned to the Commission. The regular mail was not returned to the Commission.

III. RECOMMENDATION

The allegation that Respondent violated Code §§ 61.73 and 102 is admitted as true. Staff recommended that Respondent's license be suspended for 15 days, or in lieu of suspension, Respondent be allowed to pay a \$2,250 civil penalty (\$150 per day). The relief sought should be granted, the permit should be suspended.

IV. FINDINGS OF FACT

1. Permit BQ-622559 was issued to Silvia Izarrars d/b/a Ice Mine Drive Inn (Respondent) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Respondent is 3821 Baldwin Boulevard, Corpus Christi, Nueces County, Texas 78405.
2. TABC's Staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the Respondent by certified mail, return receipt requested, and mailed the notice to Respondent's address as shown in the agency's records.
3. The notice of hearing contained a statement of the time, location, date, 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 allegations and the relief sought by the TABC.
4. The notice of hearing sent by return receipt requested mail was unclaimed and returned to the Commission. The notice sent by regular mail was not returned to the Commission.
5. The notice of hearing contained the following language in capital letters in 12-point boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.
6. The hearing on the merits was held on October 24, 2007, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra K. Patton. The Respondent did not appear and was not represented at the hearing and the record was closed on the same day.
7. The hearing proceeded on a default basis, and the allegations contained in the notice of hearing were deemed admitted as true.
8. On or about November 17, 2006, Respondent, Respondent's agent, servant or employee presented a check in the amount of \$690.10 for the purchase of beer that was dishonored when presented for payment.
9. On or about December 8, 2006, Respondent, Respondent's agent, servant or employee presented a check in the amount of \$481.20 for the purchase of beer that was dishonored when presented for payment.
10. On or about December 22, 2006, Respondent, Respondent's agent, servant or employee presented a check in the amount of \$540.35 for the purchase of beer that was dishonored when presented for payment.

11. On or about December 22, 2006, Respondent, Respondent's agent, servant or employee presented a check in the amount of \$290.20 for the purchase of beer that was dishonored when presented for payment.

V CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61.
2. SOAH 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.
4. Notice of the hearing was sufficient to allow entry of default decision under State Office of Administrative Hearings rules, 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Findings of Fact Nos. 8- , Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73 and 102. 31.
6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permit should be suspended for 15 days, or in lieu of suspension, Respondent should pay a \$2,250 civil penalty.

SIGNED December 21, 2007


MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS