

**SOAH DOCKET NO. 458-08-0484**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**V.**

**HITLER HELEODORO QUEZADA  
D/B/A EL NUEVO LEON BAR  
PERMIT NO. BG427177, BL427178  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 567654)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff (staff) of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Hitler Heleodoro Quezada d/b/a El Nuevo Leon Bar (Respondent) for engaging in conduct that is prohibited by the Texas Alcoholic Beverage Code (Code) and the administrative rules (Rules) adopted by the Commission to implement the Code.

Respondent did not make an appearance at the hearing on January 11, 2008. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be cancelled.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on January 11, 2008, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas before Administrative Law Judge Don Smith (ALJ). Staff was represented by its counsel, Ramona Perry. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings 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.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE §§11.61(b)(2) and 61.71(a)(1) authorizes the Commission to cancel or suspend a license if it is found, after notice and hearing, that the respondent violated a provision of the code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period.

The staff attorney introduced three exhibits into evidence:

Exhibit 1 is an affidavit of Amy Harrison, Licensing Department Director, that the Permit No. BG-427177, which includes the Retail Dealer's On-Premise Late Hours License, was issued to Respondent at 5546 Lawndale Street, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission. The mailing address of Respondent is 5302 Lindsay Street, Houston, Texas 77023. Attached to the affidavit is the permit and violation history.

Exhibit 2 is the Notice of Hearing sent by certified mail to Respondent at 5302 Lindsay Street, Houston, Texas 77023 and returned unclaimed.

Exhibit 3 is the Notice of Hearing sent regular mail to Respondent at 5302 Lindsay Street, Houston, Texas 77023.

The ALJ took official notice of the Court's file, which shows the hearing was scheduled for January 11, 2008. Notice was properly served on November 5, 2007 by sending the notice by certified mail to the last known address that Respondent provided the Commission. TEX. ALCO. BEV. CODE § 11.63 and 16 TEX. ADMIN. CODE § 37.3. Further, the notice that was sent by regular mail was not returned, so it is presumed that Respondent received the notice. The Hearing convened on January 11, 2008, and the Respondent did not appear.

## III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "**if you fail to appear at the hearing, the**

**Commission will proceed without you, the allegations in this notice will be deemed admitted as true, and the relief sought may be granted by default.**” Because the Respondent failed to attend the hearing, the allegations in the Notice of Hearing are deemed admitted as true. The permit should be cancelled.

#### IV. FINDINGS OF FACT

1. Permits No. BG427177 and BL427178 were issued to Respondent at 5546 Lawndale Street, Houston, Harris County, Texas by the Texas Alcoholic Beverage Commission. The mailing address of Respondent is 5302 Lindsay Street, Houston, Texas 77023.
2. TABC staff (staff) sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Respondent by certified mail and by regular mail on November 5, 2007 to the mailing address as shown in the agency’s records.
3. The Notice of Hearing contained a statement of the time, date, location, and the 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 hearing on the merits was held on January 11, 2008, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Ramona Perry. The Respondent did not appear and was not represented at the hearing.
5. The hearing proceeded on a default basis, and the factual allegations in the Notice of Hearing were deemed admitted.
6. On or about October 20, 2001 a breach of the peace occurred on the licensed premises or on premises under the Respondent’s control.
7. On or about October 20, 2001 the breach of the peace was not beyond the control of the Respondent and resulted from his improper supervision of persons permitted to be on the licensed premises or premises under his control.
8. On or about October 20, 2001 Respondent failed to promptly report to the commission a breach of the peace occurring on the Respondent’s licensed premises.
9. On or about October 20, 2001 Respondent conducted his business in a place or manner

which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people.

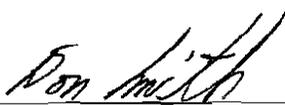
10. On or about October 20, 2001 Respondent rudely displayed or permitted a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment.
11. On or about July 10, 2002 Respondent received deferred adjudication for an offense involving Respondent's use of a deadly weapon, namely a firearm.
12. On or about October 14, 2002 Respondent received an adjudication of guilt for an offense involving Respondent's use of a deadly weapon, namely a firearm, indicating that Respondent is not qualified or not suitable to hold a permit or license.
13. On or about February 10, 2003 Respondent made a false statement or misrepresentation in his original application or a renewal application.
14. On or about February 3, 2004 Respondent made a false statement or misrepresentation in his original application or a renewal application.
15. On or about January 27, 2005 Respondent made a false statement or misrepresentation in his original application or a renewal application.

#### V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §61.71.
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.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55, TEX. ALCO. BEV. CODE § 11.63, and 16 TEX. ADMIN. CODE § 37.3.
5. On October 20, 2001 Respondent violated TEX. ALCO. BEV. CODE §§ 69.13, 25.04, and 61.71 (a)(1).
6. On October 20, 2001 Respondent violated TEX. ALCO. BEV. CODE §§ 61.71 (a)(31), 25.04, and 61.71 (a)(1).

- and 61.71 (a)(1).
7. On October 20, 2001 Respondent conducted his business in a place or manner which warrants the cancellation or suspension of the license under TEX. ALCO. BEV. CODE §§ 61.71 (a)(17), 25.04, and 61.71 (a)(1) and 16 TEX. ADMIN. CODE § 35.31 (b)(c)(16).
  8. On October 20, 2001 Respondent violated TEX. ALCO. BEV. CODE §§ 104.01 (3) and 61.71 (a)(1).
  9. Respondent is not qualified or not suitable to hold a permit or license under 16 TEX. ADMIN. CODE § 33.1 (b)(3) and TEX. ALCO. BEV. CODE § 109.532 (b)(1).
  10. On February 10, 2003 Respondent made a false statement or misrepresentation in his original application or a renewal application in violation of TEX. ALCO. BEV. CODE §§ 61.71 (a)(4), 25.04, and 61.71 (a)(1).
  11. On February 3, 2004 Respondent made a false statement or misrepresentation in his original application or a renewal application in violation of TEX. ALCO. BEV. CODE §§ 61.71 (a)(4), 25.04, and 61.71 (a)(1).
  12. On January 27, 2005 Respondent made a false statement or misrepresentation in his original application or a renewal application in violation of TEX. ALCO. BEV. CODE §§ 61.71 (a)(4), 25.04, and 61.71 (a)(1).
  13. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permit and license should be cancelled.

**SIGNED January 13, 2008.**



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**DON SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

January 18, 2008

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

**VIA REGULAR MAIL**

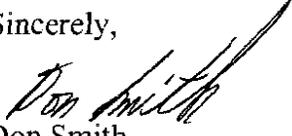
**RE: Docket No. 458-08-0484/Texas Alcoholic Beverage Commission vs. Hitler Heleodoro Quezada d/b/a El Nuevo Leon Bar**

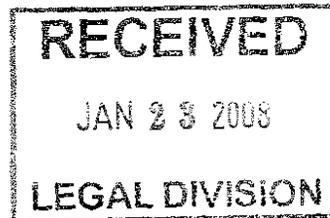
Dear Mr. Steen:

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,

  
Don Smith  
Administrative Law Judge



DS/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Hitler Heleodoro Quezada d/b/a El Nuevo Leon Bar, Respondent, 5302 Lindsay Street, Houston, TX 77023 -**VIA REGULAR MAIL**