

DOCKET NO. 458-98-1957

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
V.	§	
PATRICIA ELAINE MARTINEZ	§	OF
D/B/A TORTILLAS CANTINA	§	
PERMITS MB-227811 & LB-227812	§	
(TABC CASE NO. 579846)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action against Patricia Elaine Martinez d/b/a Tortillas Cantina (the Permittee), asserting she had not paid her Harris County 1998-1999 local permits fee. The Permittee did not attend the November 20, 1998, hearing. This Proposal for Decision finds the allegation proven and agrees with Staff that the permits should be cancelled.

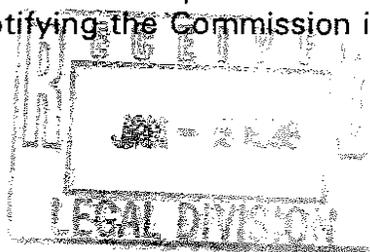
I. REASONS FOR PROPOSED DECISION

The Permittee's address of record on file with the Commission is 9518 Spencer Highway, LaPorte, Texas 77571. Staff sent its notice of hearing to that address by certified mail, return receipt requested, on October 21, 1998. According to Staff's counsel, Staff had not received a return receipt for the letter at the time of the hearing.

On November 9, 1998, the Administrative Law Judge (ALJ) issued an order changing the date of the hearing from November 23, 1998, to November 20, 1998. The ALJ's order was sent to the Permittee at her address of record by certified mail, return receipt requested. After the record closed on November 20, 1998, the ALJ's letter was returned to the State Office of Administrative Hearings (SOAH) with the typed address marked through and the following address written on the envelope: P.O. Box 1597, Deer Park, Texas 77536. The record was reopened on December 31, 1998, and the ALJ took administrative notice of the envelope and its contents.

Exhibit 2, the Commission's computer license printout for the Permittee, shows the physical location of her business as NASA Rd. 1 'A,' Webster, Texas 77598-4944. The printout also includes her mailing address.

TEX. ALCO. BEV. CODE ANN. (Vernon 1995 and Vernon Supp. 1998) (Code) §11.08 requires a permittee to file an application for a change of location with the Commission whenever the permittee "desires to change the location of his place of business." In the ALJ's opinion, this provision can reasonably be interpreted as applying not only to a business's physical location but also to the permittee's mailing address. Thus, the Permittee was responsible for notifying the Commission in the



event her mailing address changed. The ALJ finds that Staff met its burden of providing notice as required by TEX. GOV'T CODE ANN. §2001.051 and 2001.052 (Vernon 1999).

The hearing convened on November 20, 1998, at SOAH's Houston, Texas office (2020 North West Loop, Suite 111). Staff was represented by Clyde Burleson, Assistant Attorney General. Because the Permittee did not appear for the hearing, Staff requested a default decision, pursuant to 1 TEX. ADMIN. CODE §155.55. The notice of hearing contained the warning required by that rule. Agreeing with Staff that such action is appropriate, the ALJ recommends the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Patricia E. Martinez d/b/a Tortillas Cantina (Permittee) holds permits MB-227811 and LB-227812 issued by the Texas Alcoholic Beverage Commission (Commission).
2. The Permittee's mailing address of record is 9518 Spencer Highway, LaPorte, Texas 77571.
3. On October 21, 1998, the Commission's Staff sent notice of the hearing to be held November 23, 1998, based on an alleged violation of the TEX. ALCO. BEV. CODE ANN. (Vernon 1995 and Vernon Supp. 1998) (Code) to the Permittee by certified mail, return receipt requested.
4. The notice was sent to the Permittee's mailing address of record (Ex. 1).
5. By order dated November 9, 1998, and sent by certified mail, return receipt requested, the Administrative Law Judge changed the date of the hearing to November 20, 1998.
6. The order referred to in Finding 5 was returned to the State Office of Administrative Hearings (SOAH) on November 17, 1998, with the typed address marked through and another address written on the envelope.
7. The hearing on the merits convened November 20, 1998, at SOAH's Houston, Texas, office (2020 North West Loop, Suite 111). The Commission's Staff was represented by its counsel, Clyde Burleson. The Permittee did not appear and was not represented at the hearing.
8. The Permittee has not paid her Harris County 1998-1999 local permits fee.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code §§6.01 and 11.61.
2. SOAH has jurisdiction to conduct the 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 (Vernon 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1998).
4. Based upon Finding 8, the Permittee violated Code §11.38(a).
5. Based on the foregoing Findings and Conclusions, Permits MB-227811 and LB-227812, issued to the Permittee, should be cancelled.

SIGNED this 5th day of January, 1999.



SARAH G. RAMOS
Senior ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS