

DOCKET NO. 567683

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
	§	
ARMANDO E. GUTIERREZ JR.	§	
D/B/A ARMANDO'S BAR-B-Q INN	§	
PERMIT/LICENSE NO(s). BG510087	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO.458-08-3801)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this day the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Donald B. Dailey. The hearing convened on the 19th day of August, 2008 and adjourned that same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 26th day of August, 2008. 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 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.

I. FINDINGS OF FACT

On May 14, 2007, Respondent conducted its business in a manner that warrants the cancellation of the permit by engaging in organized crime and illegal gambling, contrary to Texas Alcoholic Beverage Code § 11.61(b) (7) and Texas Alcoholic Beverage Commission Rules, § 35.31(a), (b), (c)(14)

II. CONCLUSIONS OF LAW

Based on Conclusions of Law Numbers 1 through 5 contained in the Proposal for Decision the permit should be **CANCELLED**.

IT IS THEREFORE ORDERED, by the 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 your permit(s) and/or license(s) is/are hereby CANCELLED.

This Order will become final and enforceable on October 17, 2008, 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 the 23rd day of September, 2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

The Honorable Donald B. Dailey
Administrative Law Judge
SOAH- San Antonio
VIA FACSIMILE: (210) 308-6854

Adam Zarate
ATTORNEY FOR RESPONDENT
VIA FACSIMILE: (210) 921-9927

Armando E. Gutierrez, Jr.
RESPONDENT
d/b/a ARMANDO'S BAR-B-Q INN
2019 Mission Rd.
San Antonio, TX 78214

Emily E. Helm
ATTORNEY FOR PETITIONER
TABC Legal Section

EH/cj

Licensing Division
District Office

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 26, 2008

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

VIA MAIL DELIVERY

**RE: Docket No. 458-08-3801 – TABC vs Armando E. Gutierrez, Jr.
d/b/a Armando's Bar-B-Q Inn**

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,


Donald B. Dailey
Administrative Law Judge

DBD/llap
Enclosure

xc Emily Echlin, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 **VIA MAIL DELIVERY**
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 **VIA MAIL DELIVERY**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 **VIA MAIL DELIVERY**
Adam Zarate, d/b/a Armando's Bar-B-Q Inn, 2019 Mission Road, San Antonio, Texas 78214 **VIA REGULAR MAIL**

SEP - 5 2008

**SOAH DOCKET NO. 458-08-3801
TABC CASE NO. 567683**

TEXAS ALCOHOLIC BEVERAGE	*	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	*	
	*	
VS.	*	
	*	OF
ARMANDO E. GUTIERREZ, JR., D/B/A	*	
ARMANDO'S BAR-B-Q INN,	*	
PERMIT/LICENSE NUMBER	*	
BG510087, BEXAR COUNTY, TEXAS,	*	ADMINISTRATIVE HEARINGS
Respondent	*	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Petitioner) requested that the permit of Armando E. Gutierrez, Jr., (Respondent), doing business as Armando's Bar-B-Q Inn, be cancelled based on Respondent having engaged in organized crime and illegal gambling. Respondent failed to appear at the hearing. Petitioner moved for a default judgment. The Administrative Law Judge (ALJ) agrees with Petitioner's proposed cancellation of Respondent's permit.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on August 19, 2008, at the State Office of Administrative Hearings (SOAH), Suite 250, 10300 Heritage Boulevard, San Antonio, Texas 78213, before ALJ Donald B. Dailey. Petitioner was represented by its staff attorney Emily Helm. Respondent did not appear. Petitioner requested a default judgment based on Respondent's failure to appear.

Petitioner has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61. SOAH has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision, pursuant to TEX. GOV'T CODE ANN. § 2003.021.

Petitioner sent a notice letter addressed to Respondent at Respondent's premises' address on July 24, 2008, by certified mail, return receipt requested, article number 7006 0100 0002 2009 3617. The notice letter was returned by the postal service with the notation, "Attempted – Not Known, Unable to Forward."

Petitioner's notice letter complied with all requirements of 1 TEX. ADMIN. CODE § 155.55. Accordingly, all of the allegations in Petitioner's pleadings were deemed true without the need of any testimony or additional evidence by Petitioner. As deemed admitted, the findings support the conclusion that Respondent's permit should be cancelled.

II. PROPOSED FINDINGS OF FACT

1. The hearing in Docket Number 458-08-3801 was held on August 19, 2008, before Administrative Law Judge Donald B. Dailey in San Antonio, Texas. The Texas Alcoholic Beverage Commission (Petitioner) appeared through Staff Attorney Emily Helm. Armando E. Gutierrez, Jr., (Respondent), doing business as Armando's Bar-B-Q Inn, did not appear.
2. Petitioner sent a notice letter to Respondent on July 24, 2008. The letter provided the date, time, and location of the hearing, stated the legal authority under which the Petitioner was proceeding, stated the legal basis for Petitioner's determination, and gave a short, plain statement of the matters asserted. The letter also stated that, if Respondent failed to appear, the factual allegations in the notice would be deemed admitted as true and the relief sought may be granted by default.
3. The notice letter was addressed to Respondent at Respondent's premises' address and sent by certified mail, return receipt requested, article number 7006 0100 0002 2009 3617. The notice letter was returned by the postal service with the notation, "Attempted – Not Known, Unable to Forward."
4. Respondent holds Wine and Beer Retailer's Permit BG510087 from Petitioner.
5. On May 14, 2007, Respondent conducted its business in a manner that warrants the cancellation of the permit by engaging in organized crime and illegal gambling, contrary to TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) and 16 TEX. ADMIN. CODE § 35.31(a), (b), and (c)(14).

III. PROPOSED CONCLUSIONS OF LAW

1. Petitioner has jurisdiction over this case pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Petitioner was properly notified of the hearing as required by 1 TEX. ADMIN. CODE § 155.55 and TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on Conclusions of Law Nos. 1 through 3, entry of a default order is authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact No. 5, Petitioner failed to comply with TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) and 16 TEX. ADMIN. CODE § 35.31(a), (b), and (c)(14).
6. Based on Conclusion of Law No. 5, Respondent is authorized to cancel Respondent's permit.

SIGNED August 22, 2008.


DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING

**SOAH DOCKET NUMBER 458-08-3801
TABC CASE NUMBER 567683**

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	*	BEFORE THE STATE OFFICE
	*	
	*	
VERSUS	*	
	*	OF
ARMANDO E. GUTIERREZ, JR., D/B/A ARMANDO'S BAR-B-Q INN, PERMIT/LICENSE NUMBER BG510087, BEXAR COUNTY, TEXAS, Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Petitioner) requested that the permit of Armando E. Gutierrez, Jr., (Respondent), doing business as Armando's Bar-B-Q Inn, be cancelled based on Respondent having engaged in organized crime and illegal gambling. Respondent failed to appear at the hearing. Petitioner moved for a default judgment. The Administrative Law Judge (ALJ) agrees with Petitioner's proposed cancellation of Respondent's permit.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

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4. Respondent holds Wine and Beer Retailer's Permit BG510087 from Petitioner.
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3. Petitioner was properly notified of the hearing as required by 1 TEX. ADMIN. CODE §155.55 and TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on Conclusions of Law Numbers 1 through 3, entry of a default order is authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based on Finding of Fact Number 5, Petitioner failed to comply with TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) and Texas Alcoholic Beverage Commission Rules, § 35.31(a), (b), and (c)(14).
6. Based on Conclusion of Law Number 5, Respondent is authorized to cancel Respondent's permit.

SIGNED August 19, 2008.



DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING