

DOCKET NO. 580267

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

JOSE HUGO PENALOZA
D/B/A EL VAQUERO
PERMIT/LICENSE NO(s). BG654035, BL

HARRIS COUNTY, TEXAS
(SOAH DOCKET NO. 458-09-1242)

§
§
§
§
§
§
§
§
§
§

BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 23rd day of February, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy Horan. The hearing convened on December 12, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 2, 2009. 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 adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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.

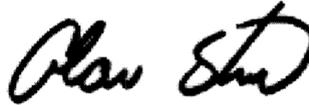
IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's licenses and permits be **CANCELED FOR CAUSE**.

IT IS FURTHER ORDERED that the Respondent's Performance Surety Bond in the amount of \$2,000.00 and Conduct Surety Bond in the amount of \$5,000.00 shall be **FORFEITED**.

This Order will become final and enforceable on March 19, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 23rd day of February, 2009,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Jose Hugo Penaloza
D/B/A El Vaquero
RESPONDENT
10601 Duncum St.
Houston, TX 77013
VIA REGULAR MAIL

Jose Hugo Penaloza
d/b/a El Vaquero
RESPONDENT
8714 La Porte Road
Houston, Texas 77012
VIA REGULAR MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston Enforcement Division

RMP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 2, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-1242; Texas Alcoholic Beverage Commission vs. Jose Hugo Penaloza d/b/a El Vaquero

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,


Timothy Horan
Administrative Law Judge

TJH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th 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**
Jose Hugo Penaloza d/b/a El Vaquero, 10601 Duncum Street, Houston, Texas 77013 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-09-1242

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

V.

OF

JOSE HUGO PENALOZA
D/B/A EL VAQUERO
HARRIS COUNTY, TEXAS
(TABC CASE NO. 580267)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Jose Hugo Penaloza d/b/a El Vaquero (Respondent), alleging that Respondent has been finally convicted of a felony while holding an original or renewal license and that Respondent is in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permits/licenses be cancelled. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested issues in this proceeding. Therefore, those matters are addressed only in the Findings of Fact and Conclusions of Law.

On November 26, 2008, Petitioner issued a notice of hearing, directed to Jose Hugo Penaloza d/b/a El Vaquero, 8714 La Porte Road, Houston, Texas 77012, and also to Jose Hugo Penaloza d/b/a El Vaquero, 10601 Duncum St., Houston, Texas 77013, via certified mail, return receipt requested as evidenced by the signature on the green card. On December 12, 2008, a hearing convened before ALJ Timothy Horan at the State Office of Administrative Hearings (SOAH), 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding

notice and jurisdiction, the record was closed

II. DISCUSSION

Based on the failure of the Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

- 1 Jose Hugo Penalzoza d/b/a El Vaquero (Respondent) holds a Wine and Beer Retailer's On Premise Permit BG-654035, which includes the Retailer's On Premise Late Hours License, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 8714 La Porte Road, Houston, Harris County, Texas.
2. On November 26, 2008, Petitioner issued a notice of hearing to Respondent, for a hearing that was held on December 12, 2008. The notice of hearing was sent via certified mail to Respondent's last known mailing address as evidenced by the signature on the green card.
- 3 The notice of hearing contained a statement of the time, place, 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 matters asserted.
4. The notice of hearing also contained the following language in 12-point or larger bold face type. If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. A hearing convened before Timothy Horan, an Administrative Law Judge with the State

Office of Administrative Hearings (SOAH), on December 12, 2008. Respondent did not appear and was not represented at the hearing and the record was closed.

6. On or about August 8, 2008, Respondent received a judgment of conviction for a felony of manufacture or delivery of a controlled substance and was sentenced to 15 years in the Texas Department of Corrections.

IV. CONCLUSIONS OF LAW

TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).

2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued its notice of hearing in compliance with 1 TEX ADMIN. CODE § 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by TEX ADMIN. CODE § 155.501.
5. Respondent violated TEX ALCO. BEV CODE ANN. §§ 61.71(a)(1), 61.7 (b)(3) and 25.04 (b).
6. Based upon Conclusion of Law No. 5, Respondent's permits/licenses should be cancelled.

SIGNED February 2, 2009.

7

**TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**