

TABC DOCKET NO. 588060

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ARNULFO ESCOBEDO CARLOS	§	
D/B/A BAR MI TENAMPA	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG678314	§	
	§	
WASHINGTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-1398)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 21st day of April, 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on January 29, 2010, and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on March 30, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

It is further Ordered that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

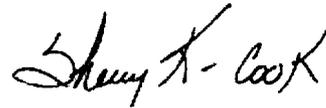
IT IS THEREFORE ORDERED that Respondent's conduct surety bond in the amount of \$5,000.00 be FORFEITED.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on May 17, 2010, 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 21st day of April, 2010, at Austin, Texas.

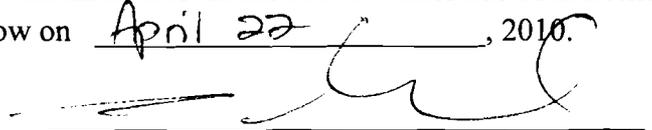
On Behalf of the Administrator,



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on April 22, 2010.



Alejandra Argueta, Paralegal
Texas Alcoholic Beverage Commission
Legal Division

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 N. Loop West, Suite 111
Houston, Texas 777018
VIA FACSIMILE: (713) 812-1001

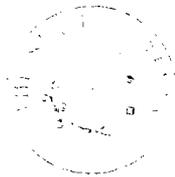
Arnulfo Carlos
d/b/a Bar Mi Tenampa
RESPONDENT
P. O. Box 92
Brenham, Texas 77834
VIA U.S. FIRST-CLASS MAIL

Arnulfo Carlos
d/b/a Bar Mi Tenampa
RESPONDENT
1702 E. Alamo
Brenham, Texas 77833
VIA U. S. FIRST-CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 30, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-10-1398; Arnulfo Carlos d/b/a Bar Mi Tenampa

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 § 155.507, a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "S. Burger".

Stephen Burger
Administrative Law Judge

SB:rlm
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and cd)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Arnulfo Carlos d/b/a Bar Mi Tenampa, P.O. Box 92, Brenham, TX 77834 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-10-1398

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
V.	§	OF
ARNULFO E. CARLOS	§	
D/B/A BAR MI TENAMPA	§	
PERMIT NO. BG-678314	§	
(TABC CASE NO. 588060),	§	ADMINISTRATIVE HEARINGS
 Respondent	§	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC or Staff) initiated this action against Arnulfo E. Carlos d/b/a Bar Mi Tenampa (Respondent), seeking the forfeiture of the conduct surety bond posted by the Respondent. The Staff recommended that the bond be forfeited because the Respondent's license was canceled for cause.

The Respondent did not attend the January 29, 2010 hearing. The Administrative Law Judge (ALJ) finds the allegations deemed admitted and agrees with the Staff's recommendation that Respondent's conduct surety bond is forfeited.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

A hearing on the merits convened and the record closed on January 29, 2010, before Stephen J. Burger, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 2020 North Loop West, Suite 111, Houston, Texas. The TABC appeared through its attorney Sandra Patton. Respondent did not appear. Pursuant to 1 TEX. ADMIN. CODE § 155.501 the Staff requested a default decision. On November 24, 2009, Staff sent a notice of hearing via certified and

regular mail to Respondent's address of record and its premises address. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. The notice also contained the language in 12-point type required by the SOAH default rule.

At the hearing the Staff presented Exhibit 1, the records and files of the TABC regarding Respondent; and Exhibit 2, the returned envelopes containing the Notice of Hearing sent to Respondent.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN (Code) §11.11, an applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with Texas alcoholic beverage law. Pursuant to TEX. ALCO. BEV. CODE RULES (Rules) § 33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond as established by Code §11.11 and Rule § 33.24 have been satisfied.

III. FINDINGS OF FACT

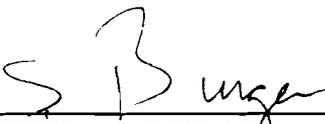
1. Arnulfo E. Carlos d/b/a Bar Mi Tenampa (Respondent), is the holder of a Wine and Beer Retailer's On Premise Permit, BG-678314, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 1702 E. Alamo, Brenham, Washington County, Texas 77833.
2. On November 24, 2009, the TABC's Staff sent a Notice of Hearing to Respondent.
3. The November 24, 2009 Notice of Hearing contained a statement of the time, date, location 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. On January 29, 2010, a public hearing was held in Houston, Texas, before Administrative Law Judge Stephen J. Burger. The TABC was represented by its staff attorney Sandra Patton. Respondent did not appear. The record was closed the same day.
5. On July 14, 2009, an Order was signed by the TABC canceling Respondent's license for cause.
6. The Respondent did not appeal the Commission's Order of July 14, 2009.
7. On July 27, 2009, the TABC notified the Respondent of its intent to seek forfeiture of the full amount of the Respondent's conduct surety bond.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01, 11.46, 11.61, 61.71, and 61.73.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedures Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE § 155.401.
4. Based on the above finding of fact, the TABC canceled for cause Respondent's permit BG 678314 on July 14, 2009. TEX. ALCO. BEV. CODE ANN. §§ 11.61 and 61.71.
5. Based on the Findings of Facts and Conclusions of Law, the TABC is entitled to a default judgment against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.501.
6. Based on the foregoing Finding of Fact and Conclusions of Law, the Respondent's conduct surety bond should be forfeited. TEX. ALCO. BEV. CODE RULES § 33.24.

SIGNED March 30, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS