

**TABC DOCKET NO. 588956**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ANDRES DELEON	§	
D/B/A MATTY'S NITE BAR	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB723482, LB & PE	§	
	§	
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-2287)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

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

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Melissa M. Ricard, presiding. The hearing convened on February 23, 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 April 21, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

**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.

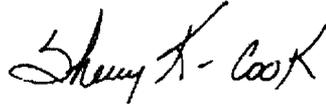
**It is further Ordered** that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that Respondent shall pay a civil penalty in the amount of **\$3,900.00** on or before August 24, 2010. If the civil penalty is not paid when due, the privileges granted by the Commission and activities authorized under the above license or permit by the Code will be **SUSPENDED** beginning at **12:01 A.M. on September 1, 2010 and shall remain suspended for thirteen (13) days.**

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on August 20, 2010, 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 27th day of July, 2010, at  
Austin, Texas.



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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

**CERTIFICATE OF SERVICE**

A copy of this Order has been served upon all parties in the manner indicated below on July 27, 2010.



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Joan C. Bates,  
Assistant General Counsel  
Texas Alcoholic Beverage Commission

Administrative Law Judge  
State Office of Administrative Hearings  
5155 Flynn Parkway, Suite 200  
Corpus Christi, Texas 78411  
**VIA FACSIMILE: (361) 884-5427**

Andres DeLeon  
d/b/a Matty's Nite Bar  
**RESPONDENT**  
2540 Mona Street  
McAllen, Texas 78501  
**VIA U.S. FIRST CLASS MAIL**

Andres DeLeon  
d/b/a Matty's Nite Bar  
**RESPONDENT**  
910 Redwood  
McAllen, Texas 78501  
**VIA U. S. FIRST CLASS MAIL**

Shelia A. Lindsey  
TABC Attorney

Licensing Division

McAllen Enforcement Office

SAL/aa

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 588956**

**REGISTER NUMBER:**

**NAME: ANDRES DELEON**

**TRADENAME: MATTY'S NITE BAR**

**ADDRESS: 2540 MONA STREET**

**DUE DATE: AUGUST 24, 2010**

**PERMITS OR LICENSES: MB723482, LB & PE**

**AMOUNT OF PENALTY: \$3,900.00**

Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

**YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.**

**Mail this form with your payment to:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
P.O. Box 13127  
Austin, Texas 78711  
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731**

**You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.**

**Attach this form and please make certain to include the Docket # on your payment.**

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address                      P.O. Box No.

\_\_\_\_\_  
City                      State                      Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 21, 2010

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-10-2287/Texas Alcoholic Beverage Commission vs. Andres Deleon d/b/a Matty's Nite 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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa M. Ricard", is written over a circular stamp or mark.

Melissa M. Ricard  
Administrative Law Judge

MNR/MAR  
Enclosure

cc SHELLALINDSEY, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL**  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA INTERAGENCY MAIL**  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with Certified Evidentiary Record and \_ Hearing CD/s)  
ANDRES DELEON, 2540 Mona Street, McAllen, Tx 78501 - **VIA REGULAR MAIL**



as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH 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 ANN. § 11.61(b)(2) provides that, Petitioner may suspend or cancel a permit for violation of a provision of the Code or of Petitioner's rules. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.61 (b) (22), Petitioner may suspend or cancel a retail dealer's license for permitting the consumption of alcoholic beverages on the licensed premises at a time when the consumption of alcoholic beverages is prohibited.

Staff introduced four exhibits into evidence: Exhibit 1 is a copy of the Notice of Hearing mailed to Respondent at 2540 Mona St., McAllen, Texas 78501 on January 25, 2010 by certified mail return receipt requested, article number 7006 0810 0000 2143 6934 advising that the hearing was set for February 23, 2010 at 11:00 a.m. at the offices SOAH in Corpus Christi, Nueces County, Texas.

Exhibit 2 is the Postal Service return receipt bearing US Postal Service certified mail article number 7006 0810 0000 6934 showing that the item was delivered and signed for on January 28, 2010.

Exhibit 3 is the affidavit of Amy Harrison, TABC Licensing Department Director stating that Mixed Beverage Permit, MB-723482, which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, was issued to Andes Deleon d/b/a Matty's Nite Bar, 910 Redwood,

McAllen, Hidalgo County, Texas, by the Commission. The record states that the mailing address of the permit holder is 2540 Mona St., McAllen, Texas 78501.

Exhibit 4 is an interoffice memorandum from TABC Agent Juan I. Ramirez which states that Agent Ramirez attempted personal service of SOAH's Order Granting Motion to Appear by Telephone at the his permitted location. The agent stated that he found establishment is no longer in business and attempts to reach the Respondent through the location's real estate agent were unsuccessful.

### III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, staff requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that staff issued notice in compliance with 1 TAC §§ 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 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 Texas Alcoholic Beverage Code as mentioned in the notice and that the penalty is appropriate.

### IV. FINDINGS OF FACT

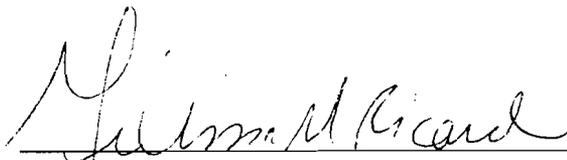
1. Andes Deleon d/b/a Matty's Nite Bar (Respondent) was issued Mixed Beverage Permit MB-723482 which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, by the Texas Alcoholic Beverage Commission (TABC or Commission) for a location at 910 Redwood, McAllen, Hidalgo County, Texas.
2. On or about August 30, 2009, Respondent or Respondent's agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.
3. The Notice of Hearing sent by the Staff of the TABC notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.

4. On February 23, 2010, a hearing convened before ALJ Melissa M. Ricard at the State Office of Administrative Hearings (SOAH), 5155 Flynn Parkway, Suite 200, Corpus Christi, Texas.
5. The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. TABC appeared and was represented by Shelia Lindsey, Staff Attorney. Respondent did not appear.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE ANN. (the Code).
2. 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. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.
4. Based on Findings of Fact No. 2, and Conclusion of Law Nos. 1 through 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
4. Based on the foregoing findings and conclusions, Respondent's licenses should be suspended for 13 days, or in the alternative, Respondent should be allowed to pay a civil penalty of \$3,900.00.

Signed on April 21, 2010.



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**MELISSA M. RICARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**