

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
CHAD DARRELL TINNEY	§	
D/B/A TERLINGUA STARLIGHT THEATRE	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB499325, PE &	§	
CB	§	
BREWSTER COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-3149)	§	BEVERAGE COMMISSION

**ORDER ADOPTING THE PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 2<sup>nd</sup> day of September, 2010, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on the 3<sup>rd</sup> day of May, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 1<sup>st</sup> day of July, 2010. 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.

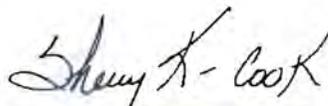
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those 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.

**IT IS THEREFORE ORDERED**, by the Assistant 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 permits are hereby **CANCELLED**.

This Order will become final and enforceable on the 27<sup>th</sup> day of September, 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** on September 2, 2010, at Austin, Texas.



Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

Certificate of Service

By copy of this Order, service shall be made upon all parties by in the manner indicated below on this the 2<sup>nd</sup> day of September, 2010.



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Joan C. Bates, Assistant General Counsel  
Legal Services Division

Honorable Judge Veronica S. Najera  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
El Paso, Texas  
**VIA FACSIMILE: (915) 834-5657**

Chad Darrell Tinney  
d/b/a Terlingua Starlight Theatre  
**RESPONDENT**  
P.O. Box 287  
Terlingua, TX 79852-0287  
**VIA REGULAR MAIL**

Judith L. Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Lt. Salvador Morales  
El Paso District Office  
**VIA E-MAIL**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 1, 2010

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

VIA FACSIMILE NO. 512-206-3203

RE: Docket No. 458-10-3149  
*TABC v. Chad Darrell Tinney d/b/a Terlingua Starlight Theatre*

Dear Mr. Steen:

Please find enclosed a default Proposal for Decision in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera".

Veronica S. Najera  
Administrative Law Judge

Enclosure

xo Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA FACSIMILE NO. 512-206-3226  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, VIA FACSIMILE NO. 512-206-3498  
Chad D. Tinney, VIA REGULAR MAIL  
SOAR-Austin-Docketing- VIA DOCKET CHANGE FORM

SOAH DOCKET NO. 458-10-3149

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner

BEFORE THE STATE OFFICE

v.

CHAD DARRELL TINNEY d/b/a  
TERLINGUA STARLIGHT THEATER,  
Respondent

OF

EL PASO COUNTY, TEXAS  
TABC CASE NO. 589077

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff at the Texas Alcoholic Beverage Commission (Petitioner) seeks cancellation of the permit issued to Chad Darrell Tinney d/b/a Terlingua Starlight Theater based on violations of §11.61(b)(5)<sup>1</sup> and §11.61(c)<sup>2</sup> of the Texas Alcoholic Beverage Code. As Respondent did not appear, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends cancellation.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice and jurisdiction. The procedural history includes an agreed motion for continuance. The order granting the continuance motion was mailed to Respondent on March 30, 2010, to his address of record. On May 3, 2010, ALJ Veronica S. Najera convened the hearing on the merits. Judith Kennison, attorney for the TABC's staff, appeared telephonically. Respondent did not appear. During the hearing, TABC staff offered evidence to support a default decision against Respondent. The record closed on that date.

<sup>1</sup> TEX. ALCO. BEV. CODE ANN. (Code) § 11.61(b)(5)[Cancellation or Suspension of Permit]. The permit may be cancelled if the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this Code, by a rule of the Commission, or by Chapter 183, Tax Code.

<sup>2</sup> Code at § 11.61(c) states the permit may cancelled if the permittee is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Chapter 321, Tax Code.

On March 19, 2010, Staff sent Respondent a Notice of Hearing.<sup>3</sup> The Notice of Hearing was sent through the U.S. Post Office by certified mail, return receipt requested to Respondent's address of record. Staff offered into evidence the U.S. Post Office's return receipt "green card" number 7007 7007 0710 0005 4782 8824, which indicates it was delivered on March 22, 2010. Furthermore, the Notice of Hearing is presumed to have been received.<sup>4</sup>

Thereafter, the parties engaged in settlement negotiations and requested a continuance. As stated above, the continuance was granted. The parties were informed of the continuance date via Order No. 2. The order was mailed to Respondent's address of record at P.O. Box 287, Terlingua, Texas 79852. None of the mailings were returned and a change of address has not been filed.

**II. ANALYSIS**

Based on Respondent's failure to appear at the hearing, the Staff requested that the default provisions of 1 TAC § 155.501 be invoked. The Notice of Hearing complies with 1 TAC §§ 155.401 and 155.501 and Code § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below. The findings support the requested permit cancellation.

**III. FINDINGS OF FACT**

1. Chad Darrell Tinney d/b/a Terlingua Starlight Theater (Respondent) holds a mixed beverage permit, which includes a beverage cartage permit and a caterer's permit, issued by the Texas Alcoholic Beverage Commission for the premises known as Terlingua Starlight Theater located at 631 Ivey Road, in Brewster County, Texas.
2. On September 10, 2009, Respondent failed to pay a debt for taxes, fees, or penalties imposed by the Texas Alcoholic Beverage Code, by a rule of the Commission, or by Chapter 183 of the Tax Code.

<sup>3</sup> Petitioner's Exhibit No. 1.

<sup>4</sup> 1 TEX. ADMIN. CODE (TAC) § 155.25(d) provides that if a document was sent by regular mail, certified mail, or registered mail, the Judge shall presume that it was received no later than three days after mailing.

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3. On September 10, 2009, Respondent was shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 151 of the Tax Code.
4. On March 19, 2010, the TABC's staff issued a Notice of Hearing to Respondent at his mailing address of record.
5. The U.S. Post Office's return receipt "green card" number 7007 0710 0005 4782 8824 indicates it was delivered on March 22, 2010.
6. The notice 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.
7. The notice properly disclosed in at least 12-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought may be granted by default.
8. An Order granting an agreed motion for continuance was mailed to Respondent to his address of record on March 30, 2010.
9. The hearing convened on May 3, 2010, at the El Paso State Office of Administrative Hearings. Judith Kennison, attorney for the TABC's staff, appeared telephonically. Respondent failed to appear. On that date, the hearing was held and the record closed.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) §§ 5.31 and 5.35.
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 with proposed findings of fact and conclusions of law, pursuant to Code § 5.43 and TEX. GOV'T CODE ANN. §§ 2003.021(b) and 2003.042(6).
3. Based upon Findings of Fact, the TABC issued its Notice of Hearing in compliance with 1 TAC §§ 155.401 and 155.501, and Code § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TAC § 155.501.

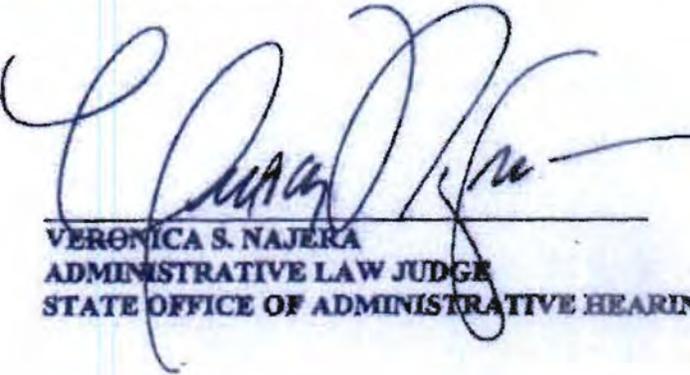
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5. Based upon the Findings of Fact, Respondent failed to pay a debt for taxes, fees, or penalties imposed by the Code, by a rule of the Commission, or by Chapter 183 of the Tax Code, in violation of Code § 11.61(b)(5).
6. Based upon the Findings of Fact, Respondent was shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Chapter 151 of the Tax Code, in violation of Code § 11.61(c).
7. Therefore, Respondent's permit should be cancelled.

Signed July 1, 2010.



VERONICA S. NAJERA  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS