

State Office of Administrative Hearings



DN. 601 353

Cathleen Parsley
Chief Administrative Law Judge

September 21, 2011

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

VIA REGULAR MAIL

RE: Docket No. 458-11-8584; Texas Alcoholic Beverage Commission vs. Javier Guevara Belmontes d/b/a El Ranchero 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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

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TH/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** (with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Javier Guevara Belmontes d/b/a El Ranchero Bar, 7928 Buchanan Street, Houston, Texas 77029 -**VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

4. The hearing was held and the record closed on September 2, 2011.
5. The Respondent did not appear at the scheduled hearing and was not represented at the hearing.
6. The referring agency's staff moved for a default, which was granted.
7. The factual allegations set out in the notice of hearing are deemed admitted and are incorporated by reference into this Finding of Fact.

CONCLUSIONS OF LAW

1. 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 findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
2. The referring agency has jurisdiction over this matter.
3. Proper and timely notice was provided to the Respondent in accordance with TEX. GOV'T CODE ch. 2001 and 1 TEX. ADMIN. CODE ch. 155.
4. The allegations in the notice of hearing were properly deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. The referring agency staff has established the basis for sanction alleged in the notice of hearing, which is incorporated into this Conclusion of Law.
6. The referring agency is entitled to the relief requested and Respondent's Permit should be cancelled.

SIGNED September 21, 2011.


TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601353

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
JAVIER GUEVARA BELMONTES D/B/A EL RANCHERO BAR, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. MB705753, LB	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-8584)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of October, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Timothy Horan presiding. The hearing convened on September 2, 2011 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 21, 2011. 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.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, **with the following exceptions:**

Proposed Finding of Fact No. 7 is deleted and the following Findings of Fact are substituted in its stead:

7. Respondent is indebted to the State for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by rule of the Commission, or by Tax Code Chapter 183 (Mixed Beverage Gross Receipts Tax Act).
8. Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Tax Code Chapter 151

(Limited Sales, Excise and Use Tax Act) or Tax Code Chapter 321 (Municipal Sales and Use Tax Act).

Proposed Conclusion of Law No. 5 is deleted, the following Conclusions of Law are substituted in its stead, and Proposed Conclusion of Law No. 6 is renumbered as Conclusion of Law No. 7:

5. Being indebted to the State for taxes, fees or payment of penalties imposed by the Alcoholic Beverage Code, by rule of the Commission, or by Tax Code Chapter 183 (Mixed Beverage Gross Receipts Tax Act) is a violation of Alcoholic Beverage Code §§11.61(b)(5).
6. Being shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under Tax Code Chapter 151 (Limited Sales, Excise and Use Tax Act) or Tax Code Chapter 321 (Municipal Sales and Use Tax Act) is a violation of Alcoholic Beverage Code §11.61(c)(2).

With the exceptions stated above, I incorporate those Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, IT IS ORDERED that Respondent's Mixed Beverage Permit No. MB705753, and the accompanying Mixed Beverage Late Hours Permit, are hereby **CANCELLED**.

This Order will become final and enforceable on the 21st day of November, 2011, unless a Motion for Rehearing is filed **BEFORE** that date.

SIGNED this the 28th day of October, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 28th day of October, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
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