

**DOCKET NO. 624738**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>FREDONIA ENTERPRISES INC. D/B/A ELVIA'S CANTINA, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMITS MB218467, LB</b>	§	
	§	
	§	
<b>HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3802)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 19th day of December, 2014, 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 Lindy Hendricks presiding. The hearing convened on June 26, 2014 and the SOAH record closed on July 7, 2014. Proper and timely notice was mailed to Respondent at the mailing address on the permit, but was returned because it was unclaimed and the U.S. Postal Service was unable to forward it. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 10, 2014. The Proposal for Decision was properly mailed to all parties, who were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were 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 therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

**IT IS THEREFORE ORDERED** that Respondent's Mixed Beverage Permit MB218467, and the associated Mixed Beverage Late Hours Permit, are hereby **CANCELLED**.

**This Order will become final and enforceable on the 13th day of January, 2015, unless a Motion for Rehearing is filed by the 12th day of January, 2015.**

**SIGNED** this the 19th day of December, 2014, at Austin, Texas.



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Sherry K-Cook, Executive Director  
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 19th day of December, 2014.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Lindy Hendricks  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, TX 77018  
**VIA FACSIMILE: (512) 322-2061**

Fredonia Enterprises Inc..  
d/b/a Elvia's Cantina

**RESPONDENT**

2727 Fondren, Suite 2A  
Houston, TX 77063-4114

***VIA FIRST CLASS MAIL, CMRRR # 70120470000133006275***

Sandra Patton

**ATTORNEY FOR PETITIONER**

TABC Legal Division

***VIA E-MAIL: [Sandra.patton@tabc.texas.gov](mailto:Sandra.patton@tabc.texas.gov)***

# State Office of Administrative Hearings



RECEIVED

JUL 14 2014

ABC HOUSTON  
LEGAL

Cathleen Parsley  
Chief Administrative Law Judge

July 10, 2014

Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-14-3802; Texas Alcoholic Beverage Commission vs. Fredonia Enterprises Inc. d/b/a Elvia's Cantina**

Dear Ms. Cook:

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 that reads "Lindy Hendricks".

Lindy Hendricks  
Administrative Law Judge

LH/mr  
Enclosure

- xc Sandra Patton, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008  
- VIA REGULAR MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL  
Fredonia Enterprises Inc. d/b/a Elvia's Cantina, 2727 Fondren, Suite 2A, Houston, TX 77038 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-14-3802

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
	§	
v.	§	
	§	
	§	OF
FREDONIA ENTERPRISES INC.	§	
D/B/A ELVIA'S CANTINA	§	
PERMIT/LICENSE NO(s):	§	
MB218467, LB	§	
Respondent	§	
	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 6247385)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Fredonia Enterprises Inc. d/b/a Elvia's Cantina (Respondent), alleging that Respondent engaged in conduct prohibited by or in violation of the Texas Alcoholic Beverage Code (Code). Respondent did not appear and was not represented at the hearing. Staff's motion for default was granted. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge (ALJ) finds that the relief requested by Staff of the TABC should be granted on a default basis.

**I. FINDINGS OF FACT**

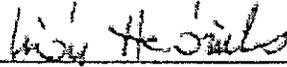
1. Fredonia Enterprises Inc. d/b/a Elvia's Cantina (Respondent) holds a Mixed Beverage Permit and a Mixed Late Hours Permit issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 2727 Fondren, Suite 2A, Houston, Harris County, Texas 77063 and whose mailing address is the same.

2. On May 28, 2014, Staff of the TABC issued a notice of hearing by certified mail, return receipt requested, to Respondent at Respondent's last known mailing address setting the hearing on the merits for June 26, 2014. The notice was returned and marked "return to sender unclaimed unable to forward."
3. The notice of hearing informed Respondent of the time, date, and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
4. The notice of hearing also contained language in 12-point, bold-face 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 might be granted by default.
5. The hearing convened on June 26, 2014, before Administrative Law Judge Lindy Hendricks at the State Office of Administrative Hearings (SOAH) office in Houston, Texas. TABC was represented by Staff Attorney, Sandra K. Patton. Respondent did not appear and was not represented at the hearing.
6. Staff moved for a default, which was granted, and the record was kept open until July 7, 2014, for Staff to submit the returned certified mail notice of hearing.
7. The allegations contained in the notice are deemed admitted as true.
8. On or about January 1, 2013, Respondent or Respondent's agent, servant, or employee allowed or consented to an unauthorized person using or displaying the permit in violation of the Texas Alcoholic Beverage Code.

## II. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Chapter 5 and § 11.61.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided as required by Texas Government Code §§ 2001.051 and 2001.052.
4. Respondent violated Code §§ 11.05, 11.61, and 109.53.
5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should be cancelled, pursuant to Code § 11.61.

SIGNED July 10, 2014.



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LINDY HENDRICKS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS