

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

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AUG 10 2015

TABC HOUSTON  
LEGAL DEPT.

July 30, 2015

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

VIA REGULAR MAIL

**RE: SOAH Docket No. 458-15-2989; TABC Case No. 627437  
Texas Alcoholic Beverage Commission vs Mary Adeliade Elizondo  
D/B/A The Magic Carpet Club**

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, appearing to read "Robert F. Jones Jr.", written over a horizontal line.

ROBERT F. JONES JR.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

RJ/lal

Enclosure

xc ✓ Edgar M. Korzeniowski, Staff Attorney, 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 (with Certified Evidentiary Record and 1 Hearing CD/s)  
Mary Adeliade Elizondo, D/B/A The Magic Carpet Club, 2808 Clearmeadow, Mesquite TX. 75181 -VIA REGULAR MAIL

**DOCKET NO. 458-15-2989**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>MARY ADELIADÉ ELIZONDO D/B/A THE MAGIC CARPET CLUB, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC or Commission) sought a finding cancelling the license held by Mary Adeliade Elizondo d/b/a The Magic Carpet Club (Respondent). Respondent argued her license should be renewed. The Administrative Law Judge (ALJ) recommends that Respondent’s license be cancelled.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened before ALJ Robert F. Jones Jr. on July 24, 2015, at the State Office of Administrative Hearings, in Fort Worth, Texas. Edgar M. Koprzeniowski of the TABC Legal Services Division appeared via telephone and represented Staff. Respondent appeared via telephone. Reymundo Rodriguez, a program specialist with the Texas Comptroller of Public Accounts (CPA), and Jim Hatton, an investigator with the Texas Attorney General’s Office (AG), appeared and testified by telephone. Evidence was received and the record closed that day.

**II. DISCUSSION**

Respondent holds Beer Retailer’s On Premise License BE-287592, which includes a Beer Retailer’s On Premise Late Hours License. The licensed premises was located at 2323 West Jefferson, Grand Prairie, Tarrant County, Texas. Respondent’s license was to expire on July 24,

2014.<sup>1</sup> Respondent filed an application to renew her license with the TABC on July 25, 2014.<sup>2</sup> On July 30, 2014, Mr. Rodriguez, acting on behalf of the CPA, filed a written protest of the renewal of Respondent's license because Respondent was delinquent in paying sales taxes.<sup>3</sup> On August 5, 2014, Staff of the TABC informed Respondent of the protest.<sup>4</sup>

The basis for the protest was a judgment entered on October 6, 2011, by the judge of the 53rd Judicial District Court, Travis County, Texas, in Cause No. D-1-GV-11-001371, styled The State of Texas, The City of Grand Prairie, Texas, and The Special Purpose District of Grand Prairie Crime Con., Texas, versus Mary A. Elizondo a/k/a Mary Dean Elizondo. The judgment granted the plaintiffs the aggregate sum of \$39,264 for state, municipal, and special purpose district sales tax under Chapters 151 and 321 of the Texas Tax Code, together with penalties, interest, \$7,500 attorney's fees, and court costs.<sup>5</sup>

Mr. Hatton testified that Respondent made an agreement with the AG, which was responsible for collection of the judgment, to pay \$700 per month to liquidate the indebtedness. Mr. Hatton testified that Respondent had paid \$9,950 on the debt as of July 22, 2015. The AG allocated the payments as follows: \$259.40 to court costs, \$5,000 to attorney's fees, and \$4,690.60 to principal. Mr. Hatton noted that on July 23, 2014, the AG had received an additional payment of \$1,400 from Respondent by cashier's check.

Mr. Rodriguez testified that Respondent had made payments in the amount of \$4,690.60 to principal. According to Mr. Rodriguez, the amount of the judgment was \$47,612.79, due to the accrual of post judgment interest at the rate of \$9.31 per day. Mr. Rodriguez was not aware of the additional \$1,400 paid the day before, and did not testify that he took the \$5,000 paid attorney's fees into account. He did testify that the case had not been settled in any sense and that Respondent would not be current until the judgment was paid in full.

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<sup>1</sup> Pet. Ex. 1 at 4.

<sup>2</sup> Pet. Ex. 1 at 5.

<sup>3</sup> Pet. Ex. 1 at 7.

<sup>4</sup> Pet. Ex. 1 at 5.

<sup>5</sup> Pet. Ex. 2.

Mr. Rodriguez, and Mr. Hatton testified that after the judgment was rendered and Respondent began making monthly payments, an additional audit revealed an additional sum due for back sales taxes of \$7,585.89. Respondent ceased paying on the judgment to liquidate that debt, which was done successfully. Mr. Rodriguez and Mr. Hatton testified a third audit revealed a further sum of \$836 for back sales taxes which remains unpaid.

The Alcoholic Beverage Code states that the TABC may “refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:”

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 Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.<sup>6</sup>

Staff seeks cancellation of Respondent ‘s license on the basis that the judgment rendered against Respondent is a final determination of state, municipal, and special purpose district sales tax due and payable under Chapters 151 and 321 of the Texas Tax Code. Respondent does not dispute that the taxes are finally determined and that they are due. Respondent argues that if her license is cancelled she will have no resource to pay the debt.

The preponderance of the evidence establishes that Respondent is shown to be subject to a final determination of taxes due and payable pursuant to Chapters 151 and 321 of the Texas Tax Code. The judgment remains unpaid. Although Respondent argues her license is the only resource to pay the debt, Respondent has continued, after the judgment, to incur additional sales tax debts, the satisfaction of which further delayed payment of the tax judgment. The ALJ recommends that Respondent’s Beer Retailer’s On Premise License BE-287592, which includes a Beer Retailer’s On Premise Late Hours License, be cancelled.

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<sup>6</sup> Tex. Alco. Bev. Code § 61.712(2).

### III. FINDINGS OF FACT

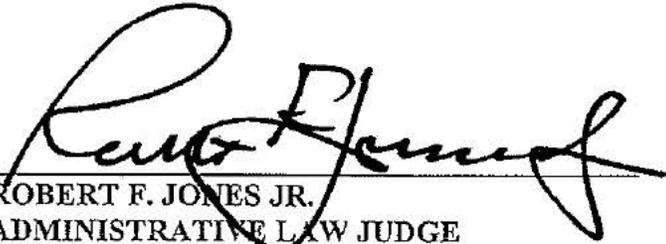
1. The Texas Alcoholic Beverage Commission (TABC) issued Beer Retailer's On Premise License BE-287592, which includes a Beer Retailer's On Premise Late Hours License, to Mary Adeliade Elizondo d/b/a The Magic Carpet Club (Respondent).
2. The licensed premises was located at 2323 West Jefferson, Grand Prairie, Tarrant County, Texas.
3. Respondent's license was to expire on July 24, 2014.
4. Respondent filed an application to renew her license with the TABC on July 25, 2014.
5. On July 30, 2014, Reymundo Rodriguez, a program specialist with the Texas Comptroller of Public Accounts (CPA), acting on behalf of the CPA, filed a written protest of the renewal of Respondent's license because Respondent was delinquent in paying sales taxes.
6. On August 5, 2014, Staff of the TABC informed Respondent of the protest.
7. On October 6, 2011, the 53rd Judicial District Court, Travis County, Texas, entered a judgment in Cause No. D-1-GV-11-001371, styled The State of Texas, The City of Grand Prairie, Texas, and The Special Purpose District of Grand Prairie Crime Con., Texas, versus Mary A. Elizondo a/k/a Mary Dean Elizondo.
8. The judgment granted the plaintiffs the aggregate sum of \$39,264 for state, municipal, and special purpose district sales tax under Chapters 151 and 321 of the Texas Tax Code, together with penalties, interest, \$7,500 attorney's fees, and court costs, against Respondent.
9. The judgment represents a final determination of state, municipal, and special purpose district sales tax due and payable under Chapters 151 and 321 of the Texas Tax Code.
10. Respondent has made payments to the Texas Attorney General's Office, which is responsible for collection of the judgment, in the amount of \$11,350.
11. Respondent's payments were allocated as follows: \$259.40 to court costs, \$5,000 to attorney's fees, and \$6,090.60 to principal.
12. Respondent continues to owe a balance of \$33,173.40 for principal, plus interest, on the judgment.
13. On March 31, 2015, Staff issued its Notice of Hearing, which contained information regarding the date, time, and place of the hearing; the matters asserted; the statutes and rules involved; and the legal authorities under which the hearing would be held.

14. The hearing in this matter convened before ALJ Robert F. Jones Jr. on July 24, 2015, at the State Office of Administrative Hearings, in Fort Worth, Texas. Edgar M. Koprzeniowski of the TABC Legal Services Division appeared via telephone and represented Staff. Respondent appeared via telephone. Evidence was received and the record closed that day.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. Tex. Alco. Bev. Code Chapter 5.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law. Tex. Gov't Code Chapter 2003.
3. Proper and timely notice of the hearing was provided to Respondent. Tex. Gov't Code § 2001.051.
4. Respondent's Beer Retailer's On Premise License BE-287592, which includes a Beer Retailer's On Premise Late Hours License, should be cancelled. Tex. Alco. Bev. Code § 61.712(2).

SIGNED July 30, 2015.



ROBERT F. JONES JR.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**FT. WORTH OFFICE**

6777 Camp Bowie Blvd Suite 400

Fort Worth, Texas 76116

Phone: (817) 731-1733

Fax: (512) 322-0473

**SERVICE LIST**

**AGENCY:** Alcoholic Beverage Commission, Texas (TABC)  
**STYLE/CASE:** MARY A. ELIZONDO dba THE MAGIC CARPET CLUB  
**SOAH DOCKET NUMBER:** 458-15-2989  
**REFERRING AGENCY CASE:** 627437

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ ROBERT JONES**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

EDGAR M. KORZENIOWSKI  
TEXAS ALCOHOLIC BEVERAGE COMMISSION  
427 W. 20TH STREET, SUITE 600  
HOUSTON, TX 77008  
(817) 652-5912 (PH)  
(713) 862-7478 (FAX)

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARY ADELIADÉ ELIZONDO  
D/B/A THE MAGIC CARPET CLUB  
2808 CLEARMEADOW  
MESQUITE, TX 75181  
(972) 222-6680 (PH)

D/B/A THE MAGIC CARPET CLUB

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xc: Docket Clerk, State Office of Administrative Hearings  
Emily Helm GENERAL COUNSEL, TABC, Fax No. 512-206-3226

**DOCKET NO. 627437**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>MARY ADELIADÉ ELIZONDO D/B/A THE MAGIC CARPET CLUB, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT BE287592, BL</b>	§	
	§	
	§	
<b>TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-15-2989)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of December, 2015, 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 Robert F. Jones Jr. presiding. The hearing convened on July 24, 2015 and the SOAH record closed the same day. The Administrative Law Judge filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 30, 2015. 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. 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 Retail Dealer's On-Premise License BE 287592, and the associated Retail Dealer's On-Premise Late Hours License, are hereby **CANCELLED**.

**This Order will become final and enforceable on the 12th day of January, 2016, unless a Motion for Rehearing is filed by the 11th day of January, 2016.**

**SIGNED** this the 17th day of December, 2015, 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 17th day of December, 2015.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Robert F. Jones, Jr.  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

Mary Adeliade Elizondo  
d/b/a The Magic Carpet Club

**RESPONDENT**

2808 Clearmeadow

Mesquite, TX 75181

***VIA FIRST CLASS MAIL, CMRRR #70150640000460343245***

Edgar Korzeniowski

**ATTORNEY FOR PETITIONER**

TABC Legal Division

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

**DOCKET NO. 627437**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>MARY ADELIADÉ ELIZONDO D/B/A THE MAGIC CARPET CLUB, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>LICENSE/PERMIT BE287592, BL</b>	§	
	§	
	§	
<b>TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-15-2989)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER DENYING MOTION FOR REHEARING**

**CAME ON FOR CONSIDERATION** this 29th day of January, 2016, 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 Robert F. Jones Jr. presiding. The hearing convened on July 24, 2015 and the SOAH record closed the same day. The Administrative Law Judge filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 30, 2015. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, on December 17, 2015 I issued an Order adopting the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and cancelling Respondent's Retail Dealer's On-Premise License BE 287592 and the associated Retail Dealer's On-Premise Late Hours License.

On January 8, 2016, Respondent filed a Motion for Reconsideration and Rehearing, for the purpose of presenting new information. The new information is not specifically identified, but the Motion for Rehearing states that "Respondent is in the process of finding a lender or an investor and/or evaluating the sale of the business to a new applicant in order to pay off the tax lien."

On January 11, 2016, Petitioner filed a Response to Respondent's Motion for Reconsideration and Rehearing. Petitioner notes that Respondent was aware of the protest since July 30, 2014 "and failed to make diligent efforts to resolve the delinquency". Furthermore, Petitioner notes that Respondent is a sole-proprietorship and the license/permit are not transferrable assets, so whether the Respondent is able to sell the business and pay off the tax lien is immaterial.

Having considered the Motion and Response, Respondent's Motion for Reconsideration and Rehearing is **DENIED**, and Respondent's Retail Dealer's On-Premise License BE 287592, and the associated Retail Dealer's On-Premise Late Hours License are **CANCELLED**.

**SIGNED** this the 29th day of January, 2016, 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 29th day of January, 2016.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Robert F. Jones, Jr.  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: (512) 322-2061**

Mary Adeliade Elizondo  
d/b/a The Magic Carpet Club

**RESPONDENT**

2808 Clearmeadow

Mesquite, TX 75181

***VIA FIRST CLASS MAIL, CMRRR # 70150640000460343498***

Joshua Dietz

**ATTORNEY FOR RESPONDENT**

Dietz Law Firm, PLLC

P.O. Box 92006

Southlake, TX 76092

***VIA FIRST CLASS MAIL, CMRRR # 70150640000460343504***

**AND**

***VIA E-MAIL: [jddietz@jddietz.com](mailto:jddietz@jddietz.com)***

Edgar Korzeniowski

**ATTORNEY FOR PETITIONER**

TABC Legal Division

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