

DOCKET NOS. 631450 AND 633543

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

BEFORE THE TEXAS

VS.

LUIS EDMUNDO BARRERA JR.
D/B/A LA ESKINA DE SANTA MARIA,
Respondent

ALCOHOLIC

PERMIT BF878752

WEBB COUNTY, TEXAS
(SOAH DOCKET NO. 458-16-1477)

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of August, 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 Donald B. Dailey presiding. The hearing convened on February 9, 2016 and the SOAH record closed the same date. Although proper notice was served, Respondent did not appear at the hearing. Respondent's Motion for Continuance was denied by the Administrative Law Judge. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 23, 2016. 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.

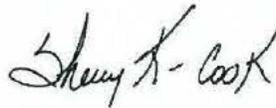
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set 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 the privileges granted by the Commission and the activities authorized under the above permit by the Code will be **SUSPENDED beginning at 12:01 a.m. on October 4th, 2016** and shall remain suspended for **TWENTY (20) DAYS, UNLESS** a civil penalty in the amount of **\$6,000.00** is paid **ON OR BEFORE September 27th, 2016**.

This Order will become final and enforceable on the 17th day of September, 2016, unless a Motion for Rehearing is filed by the 16th day of September, 2016.

SIGNED this the 22nd day of August, 2016, at Austin, Texas.



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 22nd day of August, 2016.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Donald B. Dailey
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
10300 Heritage Boulevard, Suite 250
San Antonio, TX 78216-3920
VIA FACSIMILE: (512) 322-2061

Luis Edmundo Barrera Jr.
d/b/a La Eskina de Santa Maria
RESPONDENT
2111 E. Anna Avenue
Laredo, TX 78040
VIA FIRST CLASS MAIL, CMRRR #9171082133393794385365

Silverio Martinez
ATTORNEY FOR RESPONDENT
1010 Juarez Avenue
Laredo, TX 78040
VIA FIRST CLASS MAIL, CMRRR#9171082133393794385358

David Duncan
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: david.duncan@tabc.texas.gov

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 631450, 633543

REGISTER NUMBER:

NAME: LUIS EDMUNDO BARRERRA JR.

TRADENAME: La Eskina de Santa Maria

ADDRESS: 2111 E. Anna Avenue, Laredo, Texas

DUE DATE: September 27, 2016

PERMITS OR LICENSES: BF878752

AMOUNT OF PENALTY: \$6,000.00

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.

**SOAH DOCKET NO. 458-16-1477
(TABC CASES NO. 631450 & 633543)**

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	*	BEFORE THE STATE OFFICE
	*	
	*	
	*	
v.	*	
	*	
LUIS EDMUNDO BARRERA JR., d/b/a LA ESKINA DE SANTA MARIA, LICENSE NUMBER BF-878752 Respondent	*	OF
	*	
	*	
WEBB COUNTY, TEXAS	*	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION - DEFAULT

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Luis Edmundo Barrera Jr. d/b/a La Eskina de Santa Maria (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. Luis Edmundo Barrera Jr. d/b/a La Eskina de Santa Maria (Respondent) holds a Beer Retailer's Off Premise License issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 4120 Santa Maria Avenue, Laredo, Webb County, Texas, and whose mailing address is 2111 East Anna Avenue, Laredo, Texas 78040.
2. On January 8, 2016, Staff of the TABC issued an Amended 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 February 9, 2016. The notice was received as evidenced by the signed green card.
3. The Amended 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.

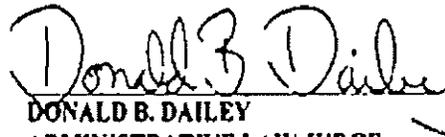
4. The Amended Notice of Hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice might be granted by default.
5. The hearing convened on February 9, 2016, before Administrative Law Judge Donald B. Dailey at the Texas Department of Transportation District Office in Laredo, Texas. TABC was represented by Staff Attorney David T. Duncan Jr. Respondent did not appear and was not represented at the hearing.
6. Staff moved for a default, which was granted.
7. The allegations contained in the notice are deemed admitted as true.
8. On or about January 29, 2015, Respondent or its agent, servant, or employee, possessed on the licenses premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises.
9. On or about July 10, 2015, Respondent or its agent, servant, or employee, possessed on the licenses premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises.

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. On or about January 29, 2015, Respondent violated Code §§ 61.71(a)(1) and 61.71(a)(9).
5. On or about July 10, 2015, Respondent violated Code §§ 61.71(a)(1) and 61.71(a)(9).
6. Based on the above Conclusions of Law, Respondent's permit should be suspended for a period of 10 days for the violation on or about January 29, 2015.

7. Based upon the above Conclusions of Law, Respondent should be permitted to pay a civil penalty of \$300 per day in lieu of suspension of the permits for the violation on or about January 29, 2015.
8. Based on the above Conclusions of Law, Respondent's permit should be suspended for a period of 10 days for the violation on or about July 10, 2015.
9. Based upon the above Conclusions of Law, Respondent should be permitted to pay a civil penalty of \$300 per day in lieu of suspension of the permits for the violation on or about July 10, 2015.

SIGNED February 23, 2016.



**DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

SAN ANTONIO OFFICE
10300 Heritage Suite 250
San Antonio, Texas 78216
Phone: (210) 308-6681
Fax: (512) 322-0476

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: LUIS E. BARRERA JR. DBA LA ESKINA DE SANTA MARIA
SOAH DOCKET NUMBER: 458-16-1477
REFERRING AGENCY CASE: 631450 & 633543

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ DONALD DAILEY

REPRESENTATIVE / ADDRESS

PARTIES

DAVID T. DUNCAN JR.
ATTORNEY
TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 MESA DRIVE
AUSTIN, TX 78731
(512) 206-3447 (PH)
(512) 206-3498 (FAX)

TEXAS ALCOHOLIC BEVERAGE COMMISSION

LUIS EDMUNDO BARRERA JR.
D/B/A LA ESKINA DE SANTA MARIA
2111 E. ANNA AVENUE
LAREDO, TX 78040

D/B/A LA ESKINA DE SANTA MARIA

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

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 23, 2016

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
Post Office Box 13127
Austin, Texas 78711-3127

BY FIRST CLASS MAIL

**Re: SOAH Docket No. 458-16-1477 (TABC Cases No. 631450 & 633543), TABC v.
Luis E. Barrera Jr. d/b/a La Eskina de Santa Maria**

Greetings Ms. Cook:

Enclosed is a Proposal for Decision in this case. It contains my recommendation and underlying rationale. Any party may file exceptions and replies in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.texas.gov.

Yours truly,

A handwritten signature in black ink that reads "Donald B. Dailey".

**DONALD B. DAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

DBD/dbd
Enclosure

- xc: Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, Texas 78731 - **BY FIRST CLASS MAIL**
- xc: David T. Duncan, Jr., Legal Services Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, Texas 78731 - **BY FIRST CLASS MAIL**
- xc: Silverio Martinez, Attorney-at-Law, 1010 Juarez Avenue, Laredo, Texas 78040 - **BY FIRST CLASS MAIL**

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