**DOCKET NO. 621115 & 621123**

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| **TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner** | § | **BEFORE THE TEXAS** |
| **VS.** | § | |
| **ALEC ROHLF BREITEN & ROXANNE ALEXANDER RIVERA D/B/A FANDANGOS, Respondent** | § | **ALCOHOLIC** |
| **PERMIT BQ754783** | § | |
| **JIM HOGG COUNTY, TEXAS (SOAH DOCKET NO. 458-14-1664)** | § | **BEVERAGE COMMISSION** |

## ORDER

**CAME ON FOR CONSIDERATION** this 3rd day of October, 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 Melissa M. Ricard presiding. The hearing convened on April 10, 2014 and the SOAH record closed on that same date. Although proper and timely notice was provided to Respondent, 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 April 23, 2014. 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, and with the following modifications to Finding of Fact No. 8 and to the Conclusions of Law, 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. The modifications to Finding of Fact No. 8 are made to clarify the language, and not to change the substance, of the Administrative Law Judge's finding. The Administrative Law Judge's Conclusion of Law No. 4 is renumbered as new Conclusion of Law No. 5 and the language is clarified. A new Conclusion of Law No. 4 is added, to make explicit the legal basis for new Conclusion of Law No. 5.

**Finding of Fact No. 8 is modified to read as follows:**

No. 8. On or about June 18, 2013 and on or about June 20, 2013, Respondent or Respondent's servant, agent or employee gave checks or drafts for the purchase of beer that were dishonored when presented for payment.

**Conclusion of Law No. 4 is modified to read as follows:**

No. 4. Based on Finding of Fact No. 8, Respondent violated Texas Alcoholic Beverage Code §§26.03, 61.71(a)(1), 61.73 and 102.31, and 16 Tex. Admin. Code §45.131.

**Conclusion of Law No. 5 is added to read as follows.:**

No. 5. Respondent's permit should be cancelled.

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 Wine and Beer Retailer's Off Premise Permit BQ754783 is hereby **CANCELLED.**

**This Order will become final and enforceable on the 28th day of October, 2014, unless a Motion for Rehearing is filed by the 27th day of October, 2014.**

**SIGNED** this the 3rd day of October, 2014, at Austin, Texas.

Sherry K-Cook

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 3rd day of October, 2014.

Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Melissa M. Ricard
**ADMINISTRATIVE LAW JUDGE**
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, TX 78701
***VIA FACSIMILE: (512) 322-2061***

Alec Rohlf Breiten & Roxanne Alexander Rivera
d/b/a Fandangos
**RESPONDENT**
PO Box 86
Hebbronville, TX 78361
***VIA FIRST CLASS MAIL, CMRRR # 70120470000133008644***

Judith L. Kennison
**ATTORNEY FOR PETITIONER**
TABC Legal Division
***VIA E-MAIL: judith.kennison@tabc.texas.gov***

DOCKET NO. 458-14-1664

| | | |
|---|---|---|
| TEXAS ALCOHOLIC BEVERAGE COMISSION | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| ALEC ROHLF BREITEN<br>ROXANNE ALEXANDER RIVERA<br>D/B/A FANDANGOS | §<br>§ | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

LICENSE NO. BQ754783
JIM HOGG COUNTY, TEXAS
(TABC CASE NOS. 621115 & 621123)

## PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Alec Rohlf Breiten and Roxanne Alexander Rivera d/b/a Fandangos (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. 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. Alec Rohlf Breiten and Roxanne Alexander Rivera d/b/a Fandangos (Respondent) held a Wine and Beer Retailer's Off Premise Permit BQ-754783 issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 313 S. Smith, Hebbronville, Jim Hogg County, Texas, and whose mailing address is P.O. Box 86, Hebbronville, Texas, 78361.

2. On December 5, 2013, 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 February 6, 2014.

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. An Order on Motion for Continuance, setting the hearing for April 10, 2014 at 10:00 a.m., was mailed to the Defendant at Respondent's address of record on March 11, 2014.

6. The hearing convened on April 10, 2014, before Administrative Law Judge Melissa M. Ricard at the State Office of Administrative Hearings (SOAH) office in Corpus Christi, Texas. TABC was represented by Staff Attorney, Judith Kennison, who appeared by phone. Respondent did not appear and was not represented at the hearing.

7. Staff moved for a default, which was granted, and the record closed at the conclusion of the hearing.

8. The allegations contained in the notice are deemed admitted as true.

## II. CONCLUSIONS OF LAW

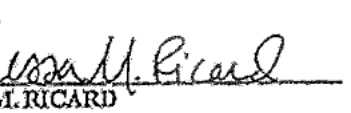
1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Chapter 5 and § 11.11.

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. Based on Findings of Fact No. 8, of Respondent's above-referenced permit issued by the TABC may be cancelled.

**SIGNED this 23rd day of April, 2014.**



MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS