

DOCKET NO. 620477

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
	§	
HARBOR HEAVEN LLC D/B/A AGAVE TAPAS RESTAURANT AND BAR, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS RM778763, FB, PE	§	
	§	
	§	
ROCKWALL COUNTY, TEXAS (SOAH DOCKET NO. 458-14-4235)	§	BEVERAGE COMMISSION

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 Michelle Kallas presiding. The hearing convened on August 28, 2014 and the SOAH record closed on that same date. Proper and timely notice was mailed to Respondent at the address of record with the Commission but was returned marked "undeliverable as addressed" and "unable to forward". 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 September 25, 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. Respondent's copy of the Proposal for Decision was mailed to Respondent at the address of record with the Commission but was returned marked "undeliverable as addressed" and "unable to forward". No exceptions were filed.

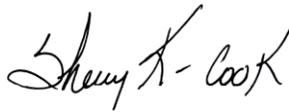
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated 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 Restaurant Permit RM778763, and the associated Food and Beverage Certificate and Beverage Cartage 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.



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.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Michelle Kallas
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, TX 75235
VIA FACSIMILE: (512) 322-2061

Harbor Heaven LLC
d/b/a Agave Tapas Restaurant and Bar
RESPONDENT
2067 Summer Lee Drive, Suite 105
Rockwall, TX 75032
VIA FIRST CLASS MAIL, CMRRR # 70120470000133006565

Shelia Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: Shelia.lindsey@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED
SEP 29 2014
TABC HOUSTON
LEGAL

September 25, 2014

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

VIA INTRAGENCY MAIL

RE: SOAH Docket No. 458-14-4235; *In the Matter of Harbor Heaven LLC d/b/a Agave Tapas Restaurant & Bar*

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.

Sincerely,

A handwritten signature in black ink that reads "Michelle Kallas".

Michelle Kallas
Administrative Law Judge

MK/me
Enclosure

Xc: Sheila Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, Texas 78731-VIA REGULAR MAIL
Harbor Heaven LLC, d/b/a Agave Tapas Restaurant & Bar, 2067 Summer Lee Drive, Suite 105, Rockwall, Texas 75032-VIA REGULAR MAIL

DOCKET NO. 458-14-4235

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	OF
HARBOR HEAVEN LLC	§	
D/B/A AGAVE TAPAS RESTAURANT	§	
AND BAR,	§	
Respondent	§	
	§	
ROCKWALL COUNTY, TEXAS	§	
TABC NO. 620477	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Petitioner) of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Harbor Heaven LLC d/b/a Agave Tapas Restaurant and Bar (Respondent), alleging that Respondent engaged in conduct prohibited by or in violation of the Texas Alcoholic Beverage Code. Respondent did not appear and was not represented at the hearing. Petitioner’s motion for default was granted. For the reasons set out in the Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the relief requested by Petitioner should be granted on a default basis.

I. FINDINGS OF FACT

1. Harbor Heaven LLC d/b/a Agave Tapas Restaurant and Bar (Respondent), holds a Mixed Beverage Restaurant Permit with Food and Beverage Certificate and a Beverage Cartage Permit issued by Texas Alcoholic Beverage Commission (TABC) for the premises located at 2067 Summer Lee Drive, Suite 105, Rockwall, Rockwall County, Texas.
2. On June 25, 2014, TABC Staff (Petitioner) issued its notice of hearing by certified mail, return receipt requested, to Respondent at Respondent’s last known mailing address of 2067 Summer Lee Drive, Suite 105, Rockwall, Rockwall County, Texas, 75032, setting the hearing on the merits for August 28, 2014. The notice was received as evidenced by the

signed green card.

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 the matters asserted.
4. The notice 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 on the merits convened August 28, 2014, at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas, before Administrative Law Judge (ALJ) Michelle Kallas. Petitioner was represented at the hearing by Shelia Lindsey, Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. Petitioner moved for a default, which was granted, and the record closed at the conclusion of the hearing.
7. The allegations contained in the notice of hearing are deemed admitted as true.
8. On or about September 11, 2013, Respondent, or Respondent's agent, servant, or employee failed to qualify to hold a mixed beverage permit as the gross receipts of mixed beverages sold exceeded 50 percent of the total gross receipts from the premises 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 ch. 5 and §§ 11.61 and 28.18.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to Texas Government Code ch. 2003.
3. Respondent received proper and timely notice of the hearing pursuant to the Administrative Procedure Act, Texas Government Code ch. 2001, and 1 Texas Administrative Code ch. 155.
4. Respondent violated Texas Alcoholic Beverage Code §§ 11.61 (b)(2) and 28.18 (a) and (d).

5. Respondent's permits should be cancelled. Tex. Alco. Bev. Code § 11.61.

SIGNED September 25, 2014.



Michelle Kallas
Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings