

**DOCKET NO. 622856**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
	§	
<b>OSVALDO ARTURO GONZALEZ D/B/A CLUB 830, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT/LICENSE BG705968, BL</b>	§	
	§	
<b>MAVERICK COUNTY, TEXAS (SOAH DOCKET NO. 458-14-2771)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 18th 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 Donald B. Dailey presiding. The hearing convened on May 13, 2014 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on May 19, 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.

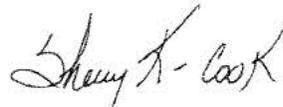
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained therein and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated 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 Wine and Beer Retailer's On Premise Permit BG705968, and the associated Retailer's On Premise Late Hours License, 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 18th 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 18th day of December, 2014.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Donald B. Dailey  
**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**

Oswaldo Arturo Gonzalez

d/b/a Club 830

**RESPONDENT**

P.O. Box 1613

Eagle Pass, TX 78852

*VIA FIRST CLASS MAIL, CMRRR #70050390000575497186*

Judith L. Kennison

**ATTORNEY FOR PETITIONER**

TABC Legal Division

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

**SOAH DOCKET NUMBER 458-14-2771**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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**BEFORE THE STATE OFFICE**

**v.**

**OSVALDO ARTURO GONZALEZ,  
D/B/A CLUB 830, Respondent**

**OF**

**PERMIT/LICENSE NUMBER  
BG705968 BL**

**MAVERICK COUNTY, TEXAS  
(TABC CASE NUMBER 622856)**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (the Commission) staff (Staff) brought this action against Osvaldo Arturo Gonzalez, doing business as Club 830 (Club 830), seeking cancellation of Club 830's license because Club 830 is indebted to the State of Texas for unpaid sales taxes. The Administrative Law Judge (ALJ) finds that Staff has proved the allegations. The ALJ concludes that cancellation of Club 830's license is proper.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Jurisdiction and notice are not contested. The hearing in this matter convened on May 13, 2014, before ALJ Donald B. Dailey at the San Antonio hearing facility of the State Office of Administrative Hearings (SOAH). Judith Kennison, a Commission Legal Services Attorney, appeared by telephone and represented Staff. Mr. Gonzalez appeared by telephone and represented Club 830.

**II. APPLICABLE LAW**

Pursuant to Texas Alcoholic Beverage Code § 61.712, the Commission may cancel a license if the Commission finds, after notice and hearing, that the licensee either no longer holds a sales tax permit, if required, for the place of business covered by the license or is shown on the

records of the Comptroller of Public Accounts (Comptroller) 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).

### III. SUMMARY OF THE EVIDENCE

The Commission's records indicate that Club 830 holds a wine and beer retailer's on premises permit and a retailer's on premises late hours license under number BG705968 for the premises at 2762 East Main Street, Eagle Pass, Texas. Stephen Bushover, an employee of the Comptroller, testified as follows. He is familiar with the sales tax records for Club 830. At the time of the hearing, Club 830 owed \$954.30 in sales taxes for the fourth quarter of 2013 and the first quarter of 2014. Also, Club 830's sales tax permit has been suspended since August 22, 2012. Testifying on his own behalf, Mr. Gonzalez admitted that Club 830 owes the sales tax. He explained the circumstances that caused him to fall behind on the taxes and expressed his hope to catch up on the taxes by the end of the month.

### IV. ANALYSIS

The evidence is undisputed that Club 830 owes sales tax and that its sales tax permit has been cancelled. Therefore, the ALJ concludes that Staff's decision to cancel Club 830's license is proper.

### V. FINDINGS OF FACT

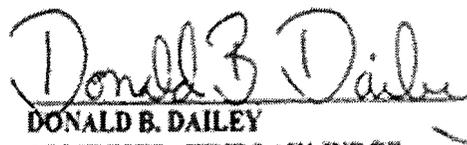
1. On April 17, 2014, the Texas Alcoholic Beverage Commission (the Commission) staff (Staff) mailed a hearing notice to Osvaldo Arturo Gonzalez, doing business as Club 830 (Club 830), notifying Club 830 that a hearing would be held in this matter at the State Office of Administrative Hearings (SOAH) hearing facility in San Antonio, Texas, on May 13, 2014.
2. The hearing notice contained a statement of the legal authority and jurisdiction for the hearing, a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.

3. On May 13, 2014, the hearing convened before Administrative Law Judge Donald B. Dailey at the SOAH hearing facility in San Antonio, Texas. Judith Kennison, a Commission Legal Services Attorney, appeared by telephone and represented Staff. Mr. Gonzalez appeared by telephone and represented Club 830.
4. Club 830 holds a wine and beer retailer's on premises permit and a retailer's on premises late hours license number BG705968 for a premises at 2762 East Main Street, Eagle Pass, Texas.
5. At the time of the hearing, Club 830 owed \$954.30 in sales taxes for the fourth quarter of 2013 and the first quarter of 2014.
6. Club 830's sales tax permit has been suspended since August 22, 2012.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code §§ 5.31, 5.33, and 5.35.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to Tex. Alco. Bev. Code §§ 5.43 and 11.015 and Tex. Gov't Code ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedures Act and Tex. Gov't Code §§ 2001.051 and 2001.052.
4. Club 830 violated Tex. Alco. Bev. Code § 61.712 by being indebted to the State of Texas for sales tax and for not holding a current sales tax permit.
5. Cancellation of Club 830's license is proper pursuant to Tex. Alco. Bev. Code § 61.712.

**SIGNED May 19, 2014.**



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