

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 5, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

HAND DELIVERY

RE: Docket No. 458-99-0439; Texas Alcoholic Beverage Commission vs. Zenaida Castelan dba Mazatlan's Bar & Grille;(TABC Case No. 581559)

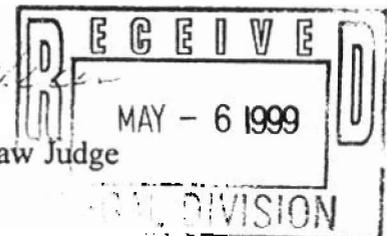
Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Zenaida Castelan, d/b/a Mazatlan's Bar & Grille, Respondent. For reasons discussed in the proposal, I recommend Respondent's permit be canceled.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Z. Landeros
Ann Landeros
Administrative Law Judge



AL:dc
Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - **HAND DELIVERY**
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - **HAND DELIVERY**
Zanaida Castelan, d/b/a Mazatlan's Bar & Grille, 9220 IH-35 North, Austin, Texas 78753 - **CERTIFIED MAIL NO. Z 567 739 451, RETURN RECEIPT REQUESTED**

DOCKET NO. 458-99-0439

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
ZENAIDA CASTELAN	§	
D/B/A MAZATLAN'S BAR & GRILLE	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 581559)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this action seeking a cancellation of Zenaida Castelan d/b/a Mazatlan's Bar & Grille's (Respondent) Wine and Beer Retailer's Permit for not paying a local license fee levied by the City of Austin, Texas, and due on or before July 2, 1998. Petitioner alleged non-payment of the tax violated TEX. ALCO. BEV. CODE ANN. (Code) §§ 11.38(b) and 61.36.(b). Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the permit be cancelled.

I.

Jurisdiction, Notice, and Procedural History

The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§11.38 and 61.71 of the Code. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. §§2003.021 and 2003.042.

The hearing in this matter was held April 14, 1999, in the Hearings Facility of the State Office of Administrative Hearings (SOAH), 1700 N. Congress Avenue, Suite 1100, Austin, Texas. Staff Attorney Dewey Brackin represented Staff. Respondent did not appear and was not represented at the hearing. Evidence and argument were heard, and the record closed on that date.

On March 11, 1999, Staff mailed Respondent a notice of hearing setting forth the date and location of the hearing along with references to the Code sections and Texas Alcoholic Beverage Commission (TABC) rules upon which this action was based and a plain statement of the facts alleged. Additionally, it contained the language in 10-point type required by the State Office of Administrative Hearings(SOAH) default rule. 1 TEX. ADMIN. CODE (TAC) § 155.55. The notice of hearing was mailed to Respondent's last known address and address of record with TABC, at 9220 IH 35 North, Austin, Texas, 78753. The notice was accepted at a neighboring business whose owner returned it to Staff with a note that Respondent's business was closed and Respondent's whereabouts unknown.. (Exhibit 2). Staff complied with its duty to contact Respondent pursuant to TEX. GOV'T CODE ANN. §§2001.051 and 2001.054(c).

II. Discussion

Respondent holds Wine and Beer Retailer's Permit BG-43-4224, Retail Dealer's On-Premise Late Hours License BL434225, and Food and Beverage Certificate FB434226 issued by the Commission on July 2, 1998, for the business known as Mazatlan's Bar & Grille, located at 9220 IH 35 North, Austin, Travis County, Texas. (Exhibit 1).

The Code, at §§ 11.38(a) and 61.36(a), authorizes the governing body of a city or town to levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. Staff introduced as evidence a certified record from the City of Austin showing that Respondent owed \$212.50 to the City for its fee. (Exhibit 3). Pursuant to the Code at §§ 11.38(b) and 61.36(b) the commission or administrator may cancel a permit or license if it finds that the permittee has not paid a fee levied under this section. Based on Respondent's failure to appear after being sent notice of the hearing, Staff was entitled to a default judgment pursuant to 1 TAC § 155.55.

At the hearing, Petitioner requested revocation but did not discuss whether that request covered Respondent's permit, license, or certificate, or a combination thereof. However, the Notice of Hearing only alleges an action against a Wine and Beer Retailer's Permit. The notice further advised the Respondent that if the allegations were found to be true, "... the above reference permit may be suspended or cancelled." Based on Petitioner's pleading in the notice of hearing, the ALJ believes only Respondent's permit is subject to a sanction in this proceeding. By failing to appear at the hearing, Respondent forfeited the opportunity to state why the permit should not be revoked. The ALJ recommends only that Respondent's Wine and Beer Retailer's permit be canceled.

IV. Proposed Findings of Fact

1. Notice of the hearing in this matter, dated March 11, 1999, as properly addressed and sent by certified mail to Zenaida Castelan d/b/a Mazatlan Bar & Grille (Respondent) at its Austin, Texas, mailing address as listed in Commission records. Respondent was sent notice of the matters asserted against it; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved.
2. Respondent failed to provide the Texas Alcoholic Beverage Commission (Commission) with her new mailing address after she ceased to operate the permitted premises.
3. Respondent did not attend and was not represented at the hearing in this matter held April 14, 1999.
4. Since July 2, 1998, Respondent has held Wine and Beer Retailer's Permit BG434224, Food and Beverage Certificate FB 434225 and Retail Dealer's On-Premise Late Hours License BL 434246 issued by the Commission.

5. Petitioner's notice of hearing sought sanctions only against Respondent's Wine and Beer Retailer's Permit.
6. Respondent owes the City of Austin \$212.50 for its local license fee for 1998.

V.

Proposed Conclusions of Law

1. Service of proper and timely notice of the hearing was effected upon Respondent, pursuant to TEX. ALCO. BEV. CODE (Code) § 11.63 and TEX. GOV'T CODE ANN. §§2001.051, 2001.052 and 2001.054(c).
2. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§11.38 and 61.36(b) of the Code. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusion of law, pursuant to TEX. GOV'T CODE ANN. §§2003.021(B) and 2003.042(5).
3. The Code, at §§ 11.38(a) and 61.36(a), authorizes the governing body of a city or town to levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town.
4. Pursuant to the Code at §§ 11.38(b) and 61.36(b) the commission or administrator may cancel a permit or license if it finds that the permittee has not paid a fee levied under this section.
5. Based on Findings of Fact Nos. 1-3 and Conclusion of Law No. 1, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
6. Based upon Finding of Fact No. 6, Respondent is in violation of the Code §§ 11.38(a) and 61.36(a).
7. Based upon the foregoing, Respondent's Wine and Beer Retailer's Permit BG 434224, should be canceled pursuant to TEX. ALCO. BEV. CODE §§11.38(b), and 11.61(b)(2).

SIGNED this 5 day of May 1999.



ANN LANDEROS
Administrative Law Judge
State Office of Administrative Hearings