

DOCKET NO. 541856

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
	§	
DAVID S. CASTELAN	§	
D/B/A LA TAPATIA MEAT MARKET	§	
PERMIT/LICENSE NO(s). BF572561	§	
BELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-1112)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this day, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on January 29, 2007 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 15, 2007. 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. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your permit and/or license is hereby **SUSPENDED**.

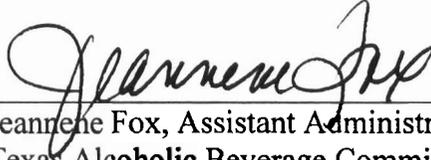
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$750.00** on or before the **23rd day of May, 2007**, all rights and privileges under the above described permit and/or license will be **SUSPENDED for a period of five (5) days, beginning at 12:01 A.M. on the 30th day of May, 2007.**

This Order will become final and enforceable on April 13th, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this 19th day of March, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

David S. Castelan
RESPONDENT
d/b/a La Tapatia Meat Market
516 W Rancier Ave
Killeen, TX 765413228
VIA REGULAR MAIL

Christopher G. Gee
TABC Legal Services

Licensing Division
Waco District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 541856

REGISTER NUMBER:

NAME: David S. Castellan

TRADENAME: La Tapatia Meat Market

ADDRESS: 516 W. Rancier, Killeen, Texas 765413228

DATE DUE: May 23, 2007

PERMITS OR LICENSES: BF572561

AMOUNT OF PENALTY: \$750.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 23rd DAY OF MAY, 2007, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P.O. Box 13127

Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 15, 2007

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**RE: Docket No. 458-07-1112; Texas Alcoholic Beverage Commission vs David S. Castelan
d/b/a La Tapatia Meat Market, (TABC Case No. 541856)**

Dear Mr. Steen:

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 Christopher Gee, attorney for Texas Alcoholic Beverage Commission, and to David Castelan d/b/a La Tapatia Meat Market, the Respondent. The Texas Alcoholic Beverage Commission (TABC) (Staff brought this disciplinary action against David S. Castelan (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened; however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$750.00

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phyllis Cranz".

Phyllis Cranz
Administrative Law Judge

MG/dd

Christopher Gee, TABC Staff Attorney, VIA FACSIMILE 512/206-3498

David Castelan d/b/a La Tapatia Meat Market, 516 W. Rancier Avenue, Killeen, Texas 76541-3228

DOCKET NO. 458-07-1112

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
V.	§	
	§	OF
DAVID S. CASTELAN	§	
D/B/A LA TAPATIA MEAT MARKET	§	
Respondent	§	
BELL COUNTY, TEXAS	§	
(TABC No. 541856)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against David S. Castelan (Respondent), alleging that Respondent gave checks or drafts for the purchase of beer, which were dishonored when presented for payment. A hearing was scheduled and convened; however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permits be suspended for a period of five days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$750.00.

I. PROCEDURAL HISTORY

On December 12, 2006, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 516 W. Rancier Ave., Killeen, Texas 76541-3228. The Notice of Hearing was sent by certified mail (7005 3110 0000 0768 2767), return receipt requested. The Notice of Hearing was received at that address by Respondent's agent, Gerndial R. Germid¹, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on December 14, 2006.

¹ The signature that appears on the "green card" is difficult to read thus this name is presumed to be what was written.

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PROPOSAL FOR DECISION

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On January 18, 2007, due to inclement weather, the ALJ issued a continuance in Pre-Hearing Order No. 4 resetting the hearing for January 29, 2007 at the same location and time. On January 22, 2007, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to reflect the new hearing date. The First Amended Notice was sent by certified mail (7001 2510 0000 7274 2345), return receipt requested. As of the day of hearing, no mail had been returned nor certified mail signed for.

A hearing was convened as scheduled before ALJ Phyllis Crazz at the State Office of Administrative Hearings, at 801 Austin Avenue, Waco, Texas 76701 on January 29, 2007. TABC Staff was represented at the hearing by Christopher G. Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

During the hearing, documents were offered by Staff and admitted into evidence which would support a recommendation for default against Respondent. The hearing concluded on January 29, 2007, and the record closed on that same day. The ALJ will proceed with consideration of TABC Staff's request for a default recommendation and penalty, as discussed below.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE. ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the Notice of Hearing and the First Amended Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

TABC Staff requested that the ALJ recommend suspension of Respondent's permit for a period of five days, or in lieu of suspension, that Respondent be allowed to pay a civil penalty in

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PROPOSAL FOR DECISION

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the amount of \$750.00. TABC Staff provided a copy of Respondent's licensing history, which is maintained by TABC Staff, in support of its penalty request.

III. PROPOSED FINDINGS OF FACT

1. The La Tapatia Meat Market (Respondent) holds a beer retailer's off premise license, BF572561, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 208 West Rancier Avenue, Killeen, Bell County, Texas.
2. On December 12, 2006, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 516 West Rancier Avenue, Killeen, Texas 76541-3228. This notice was sent by certified mail (7005 3110 0000 0768 2767), return receipt requested, and was received at that address by Respondent's agent, Gerndial R. Germid, as evidenced by the "green card" returned to TABC Staff by the U.S. Postal Service on December 14, 2006.
3. On January 18, 2007, due to inclement weather, the ALJ issued a continuance in Pre-Hearing Order No. 4 resetting the hearing for January 29, 2007 at the same location and time.
4. On January 22, 2007, TABC Staff issued a First Amended Notice of Hearing to Respondent at its mailing address listed above. The First Amended Notice of Hearing was issued to inform Respondent of the hearing date. The First Amended Notice was sent by certified mail (7001 2510 0000 7274 2345), return receipt requested. As of the day of hearing, no mail had been returned nor certified mail signed for.
5. Both the Notice of Hearing, and the First Amended Notice of Hearing contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.
6. Both the Notice of Hearing and the First Amended Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought may be granted by default.
7. On January 29, 2007, a hearing was convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, at 801 Austin Avenue, Waco, Texas 76701. TABC Staff was

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PROPOSAL FOR DECISION

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represented at the hearing by Christopher G. Gee, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.

8. Respondent, through its agent, servant, or employee gave a check or a draft for the purchase of beer, which was dishonored when presented for payment as follows:

- On June 8, 2006, a check or draft for the purchase of beer to Jack Hilliard Distributing Company was given in the amount of \$317.65, and was dishonored when presented for payment;

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 6, Staff issued its Notice of Hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 7, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 8, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 61.73 and 102.31.
6. Based upon Proposed Findings of Fact No. 8, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 102.31, Respondent's permits should be suspended for a period of five days.

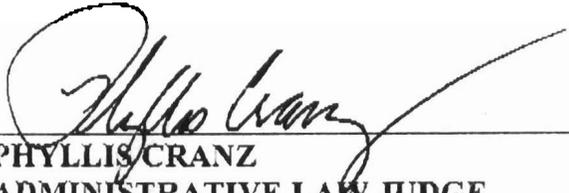
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PROPOSAL FOR DECISION

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7. Based upon Proposed Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty in the amount of \$750.00 in lieu of suspension of its permits.

SIGNED on February 15, 2007.



PHYLLIS CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: David S. Castelan d/b/a La Tapatia Meat Market
DOCKET NUMBER: 458-07-1112
AGENCY CASE NO: 541856

Christopher Gee
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 512/206-3498
Ph: 512/206-3490

AGENCY COUNSEL
BY FAX

David Castelan
d/b/a La Tapatia Meat Market
516 W. Rancier Avenue
Killeen, Texas 76541-3228

RESPONDENT
BY MAIL

as of December 12, 2006