

DOCKET NO. 578887

IN RE HUMBERTO RODELA
D/B/A NUEVO FLYING Y
PERMIT NO. BG-185180

EL PASO COUNTY, TEXAS

§
§
§
§
§

BEFORE THE TEXAS
ALCOHOLIC
BEVERAGE COMMISSION

DISMISSAL ORDER

On this day the Texas Alcoholic Beverage Commission moved to dismiss the above styled and numbered cause for the following reason:

The permit has expired.

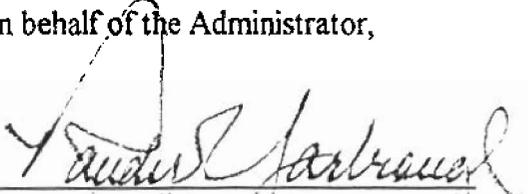
IT IS THEREFORE ORDERED that the complaint in Docket No. 578887 is **DISMISSED** without prejudice.

WITNESS MY HAND AND SEAL OF OFFICE on this 15th day of November, 1999, at Austin, Texas.



KGG\pah

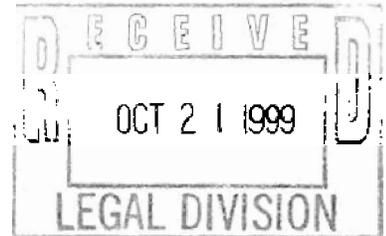
On behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

Humberto Rodela
d/b/a Nuevo Flying Y
RESPONDENT
2931 Pershing Drive
El Paso, Texas 79903

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Compliance Division
Comptroller of Public Accounts



DOCKET NO. 458-99-1510
(TABC NO. 578887)

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
VS.	§	
	§	OF
HUMBERTO RODELA	§	
dba NUEVO FLYING Y	§	
PERMIT NO. BG-185180	§	
EL PASO COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
	§	
Respondent	§	

PROPOSAL FOR DECISION

Petitioner, TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), brought this action against HUMBERTO RODELA dba NUEVO FLYING Y, Respondent, alleging Respondent no longer held a sales tax permit and owed state taxes, violations of the Texas Alcoholic Beverage Code [Code]. A hearing was scheduled and convened, but Respondent failed to appear and defaulted.

FINDINGS OF FACT

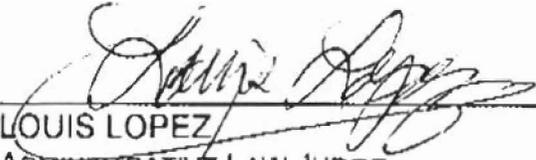
- 1 On August 10, 1999, TABC sent a Notice of Hearing to Respondent at 2931 Pershing Drive, El Paso, Texas 79903 by certified mail, return receipt requested, informing him that a hearing in his case was to be held at the SOAH office at 9434 Viscount, Suite 102, El Paso, Texas 79925 on Wednesday, September 8, 1999, at 11:00 a.m. The green return receipt came back with a date of delivery of August 12, 1999, and with a signature that reads, "Humberto Rodela."
- 2 Before that on August 2, 1999, SOAH had sent an Order Setting Prehearing Conference to Respondent at the same address which included the same information on the place and date of the hearing. To this date, the envelope has not come back to the SOAH office.
3. Both Petitioner's Notice of Hearing and the SOAH Order contained the statement in 10-point, bold-face type required by 1 Texas Administrative Code 155.55(c) regarding the consequences of failure of a party to appear at the hearing
4. On June 2, 1998, and on July 15, 1998, TABC had sent letters notifying Respondent at the above address of its intent to cancel Respondent's permits based on violations of the Code. A green return receipt for the first letter came back with date of delivery of June 4, 1998, and was signed by Humberto Rodela
5. The hearing was convened on Wednesday, September 8, 1999, at 11:00 a.m., as scheduled.

6. Neither TABC nor SOAH were contacted by Respondent regarding any desire for a continuance or any reason for not being able to attend the hearing.
7. Gayle Gordon, attorney for TABC, was present at the hearing, but Respondent failed to appear and defaulted.
8. Since Respondent did not appear, the factual allegations in the notice of hearing are deemed admitted and found to be true.
9. Based on the foregoing, Respondent no longer holds a sales tax permit and is subject to a final determination of taxes due and payable.

CONCLUSIONS OF LAW

- The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to any or all of the following: Code Sections 5.31--5.44, 6.01, 11.61, 61.71, and 32.01.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and the Administrative Procedure Act, Texas Government Code Chapter 2003.
 3. Service of the Notice of Hearing was made pursuant to Code Section 11.63 and Texas Government Code Sections 2001.051 and 2001.052.
 4. Under 1 Texas Administrative Code 155.55(b), when a respondent defaults, the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.
 5. Based on Respondent's no longer holding a sales tax permit, he is subject to cancellation or suspension of his permit under Code Sections 11.61(c) and 61.712(1).
 6. Respondent is subject to final determination of taxes due and payable under Texas Tax Code Chapters 151, 183, and 321.
 7. Based on Conclusion of Law No. 6, Respondent is subject to cancellation or suspension of his permit under Code Sections 11.61(b)(5), 11.61(c), and 61.712(1).
 8. It is recommended that Respondent's permit be suspended for 14 days and, in lieu of suspension, that there be a civil penalty of \$100 per day for a total of \$1,400.

SIGNED this 21st day of October, 1999.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS