

DOCKET NO. 612287

IN RE JOSUE DOMITILLO GARCIA	§	BEFORE THE TEXAS
D/B/A ARTEMIS SPORTS BAR	§	
PERMIT NOS.MB522040, LB522041	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1985)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 4th day of February, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on December 3, 2004 and adjourned on December 17, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 20, 2005. This 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, Transcripts, 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.

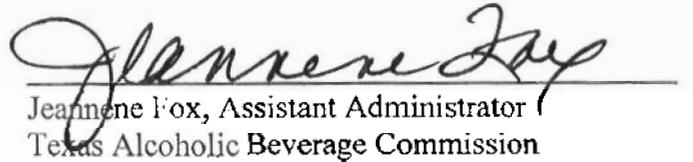
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surty bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on FEBRUARY 25, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this the 4th day of February, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

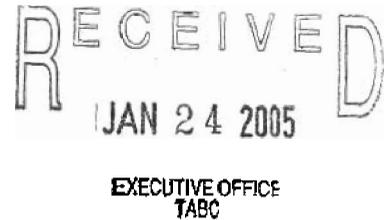
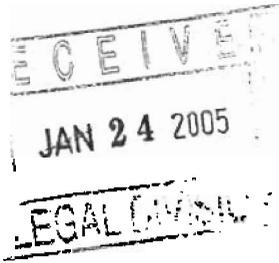
The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Josue Domitilo Garcia
d/b/a Artemis Sports Bar
RESPONDENT
2300 Old Spanish Tr. #1043
Houston, Tx. 77054
CERTIFIED MAIL RRR #7000 1530 0003 1930 0800

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

January 20, 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA REGULAR MAIL

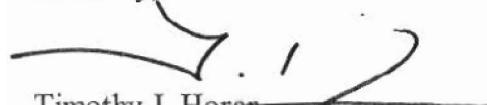
RE: Docket No. 458-05-1985; TABC v. Josue Domitilo Garcia d/b/a Artemis Sports Bar

Dear Ms. Fox:

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,



Timothy J. Horan
Administrative Law Judge

TJH/mc

Enclosure

xc: Gayle Gordon, TABC, P.O. Box 13127, Austin, Texas 78711 - VIA REGULAR MAIL
Josue Domitilo Garcia d/b/a Artemis Sports Bar, 2300 Old Spanish Tr. #1043, Houston, Texas 77054 - VIA REGULAR MAIL

DOCKET NO. 458-05-1985

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**JOSUE DOMITILLO GARCIA
D/B/A ARTEMIS SPORTS BAR
HARRIS COUNTY, TEXAS
(TABC CASE NO. 612287)**

§
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Josue Domitilo Garcia d/b/a Artemis Sports Bar (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permits were canceled for cause. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE (TAC) §§ 33.24 and 37.3. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of jurisdiction in this proceeding.

On November 10, 2004, Petitioner issued its Notice of Hearing to Respondent, Josue Domitilo Garcia d/b/a Artemis Sports Bar, at Respondent's last known address as reflected in the commission's records, 2300 Old Spanish Tr. # 1043, Houston, Texas 77054 via certified mail, return receipt requested.

On December 3, 2004, a hearing convened before ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Texas . Petitioner was represented at the hearing by Gayle Gordon, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on December 17, 2004.

II. DISCUSSION

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

III. PROPOSED FINDINGS OF FACT

1. Respondent, Josue Domitilo Garcia d/b/a Artemis Sports Bar, was issued a Mixed Beverage Permit, MB-522040 and Mixed Beverage Late Hours Permit, LB-522041, on September 3, 2002, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permits were issued for the premises located at 5326 N. Freeway, Houston, Harris County, Texas.
3. Respondent has posted Texas Alcoholic Beverage Commission Surety Bond Number MB913500306, dated June 16, 2002, in the amount of \$5,000.
4. On July 13, 2004, Respondent's permits were canceled for cause.
5. On November 10, 2004, Petitioner issued its Notice of Hearing to Respondent for a hearing that was held on December 3, 2004.
6. The 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 short, plain statement of the matters asserted.

7. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
8. On December 3, 2004, a hearing convened before ALJ Timothy J. Horan at 2020 North Loop West, Suite # 111, Houston, Harris County, Texas. Respondent did not appear and was not represented at the hearing.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TAC §§ 33.24 and 37.3.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 7, Petitioner issued its notice of hearing in compliance with 1 TAC §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Proposed Findings of Fact Nos. 5 - 8, the hearing proceeded on a default basis as authorized by 1 TAC § 155.55.
5. Based upon Proposed Finding of Fact No. 8 and TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TAC §§ 33.24 and 37.3, Respondent's conduct surety bond should be forfeited.

SIGNED January 20, 2005.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS