

DOCKET NO(s). 612348 & 615172

IN RE ABRAHAM TORRES	§	BEFORE THE TEXAS
D/B/A CRUCERO DEL AMOR	§	
PERMIT/LICENSE NO(s). BG504095	§	
BL504096	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1441)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on April 7, 2006 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 4, 2006. The Proposal For Decision, attached as Exhibit "A", 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 Respondent's permit and license be **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on 26th day of June 2006, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this the 5th day of June 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/aa

Hon. Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Abraham Torres
RESPONDENT
d/b/a Crucero Del Amor
2830 Hohl
Houston, TX 77093
CERTIFIED MAIL NO. 7005 3110 0000 6409 2400

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

State Office of Administrative Hearings

SP +
D



Shelia Bailey Taylor
Chief Administrative Law Judge

May 4, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-1441; Texas Alcoholic Beverage Commission v. Abraham Torres d/b/a Crucero Del Amor

Dear Mr. Steen:

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.

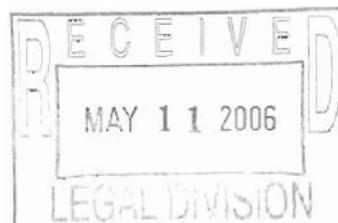
Sincerely,

A handwritten signature in black ink that reads "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS/mc
Enclosure

xc: **Sandra Patton**, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Abraham Torres d/b/a Crucero Del Amor, 2830 Hohl, Houston, Texas 77093 - VIA REGULAR MAIL



North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

cancellation of both the Wine and Beer Retailer's Permit, BG-504095 and Retail Dealer's On-Premise Late Hours License, BL-504096.

I. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Respondent did not appear at the hearing, TABC requested a default decision, pursuant to 1 TAC §155.55. The notice of hearing contained a statement of the matters asserted against Respondent; 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. Additionally, it contained the language in 12-point type required by the State Office of Administrative Hearings ("SOAH") default rule.

At the hearing, the TABC presented Exhibit No.1, the TABC file on Respondent, and Exhibit No.2, the certified mail envelope containing the notice of this hearing which was sent to the Respondent's mailing and was returned to TABC marked "UNCLAIMED".

II. FINDINGS OF FACT

1. Respondent, Abraham Torres d/b/a Crucero Del Amor, with premises at 8425 Jensen Drive, Houston, Texas, 77093 holds Permit Nos. BG-504095 and BL-504096 issued by the TABC.
2. On February 17, 2006, the TABC sent notice of the hearing to be held April 7, 2006, at 9:00 a.m., at 2020 N. Loop West, Suite 111, Houston, Texas 77018 to Respondent at its mailing address, 2830 Hohl, Houston, TX 77093 by certified mail, return receipt requested, alleging that the Respondent was in violation of the Code in that:
 - 1) On or about September 12, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of TABC Code §§61.71(a)(1) and 105.04.
 - 2) On or about September 12, 2004, Respondent, his agent, servant, or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises in violation of TABC Code §§61.71 (a) (1) and 25.09.

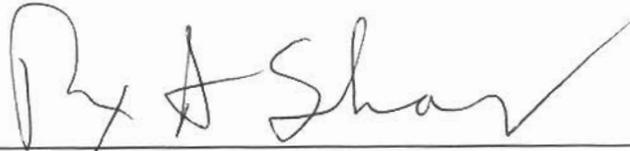
- 3) On or about March 12, 2005, Respondent, his agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours in violation of TABC Code §§61.71 (a)(18) and 105.06.
3. The hearing on the merits convened April 7, 2006, at 9:00 a.m., at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The TABC was represented by attorney Sandra Patton. The Respondent did not appear and was not represented at the hearing. The record closed the same day.
4. On or about September 12, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours.
5. On or about September 12, 2004, Respondent, his agent, servant, or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises.
6. On or about March 12, 2005, Respondent, his agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours.

III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to subchapter B of Chapter 5, §§6.01, 11.46, 11.61, 61.71 and 61.73 of the CODE.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 AND 2001.052.
4. Based upon Finding of Fact No.4 on or about September 12, 2004, Respondent, his agent, servant, or employee, sold or delivered, or offered to sell or deliver, wine or beer during prohibited hours in violation of the Code §§61.71(a)(1) and 105.04.
5. Based upon Finding of Fact No.5 on or about September 12, 2004, Respondent, his agent, servant, or employee possessed or permitted the possession of distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises in violation of the Code §§61.71 (a) (1) and 25.09.
6. Based upon Finding of Fact No.6 on or about March 12, 2005, Respondent, his agent, servant, or employee, consumed or permitted others to consume an alcoholic beverage on the licensed premises during prohibited hours in violation of the Code §§61.71 (a)(18) and 105.06.

7. Based on Findings of Fact Nos. 2-6, and Conclusions of Law 3-7 the TABC is entitled to a default decision against Respondent pursuant to 1 TAC § 155.55.
8. Based on the foregoing findings and conclusions both the Wine and Beer Retailer's Permit, BG-504095 and Retail Dealer's On-Premise Late Hours License, BL-504096 should be cancelled..

SIGNED May 4, 2006.



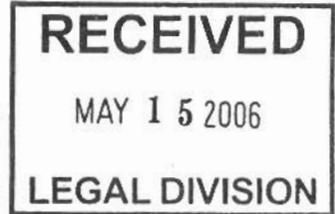
**REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings

SP +



Shelia Bailey Taylor
Chief Administrative Law Judge



May 4, 2006

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Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

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Rex A. Shaver
Administrative Law Judge

RAS/mc
Enclosure

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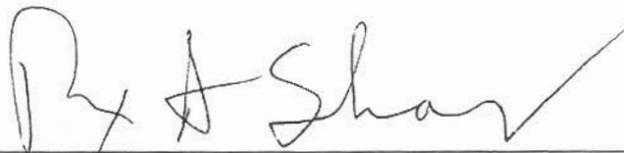
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REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS