

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

May 30, 2007

JUN 01 2007

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

VIA REGULAR MAIL

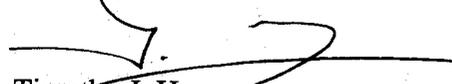
**RE: Docket No. 458-07-1994/Texas Alcoholic Beverage Commission vs. Maximo Flores d/b/a Sports Bar El Mexicano**

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 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

  
Timothy J. Horan  
Administrative Law Judge

TJH/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona Perry, Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008-  
VIA REGULAR MAIL  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
VIA REGULAR MAIL  
Maximo Flores d/b/a Sports Bar El Mexicano, Respondent, 4215 Mona Lee, Houston, Texas 77080 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-07-1994

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

V.

MAXIMO FLORES  
D/B/A SPORTS BAR EL MEXICANO  
HARRIS COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Maximo Flores d/b/a Sports Bar El Mexicano (Respondent), alleging that on or about April 29, 2006, Permittee applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premises consumption of beer exclusively or beer and wine exclusively and failed to file with the Commission an approved performance surety bond in the amount of \$2000.00, and that failure to post the required \$2000.00 performance surety bond is a violation of the TEX. ALCO BEV. CODE ANN. §§ 1 61 (b-1) and 61.71(j).

Staff recommended that Respondent's permits/licenses be canceled. The Administrative Law Judge (ALJ) agrees with this recommendation.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on April 13, 2007, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Timothy Horan presided.

On March 8, 2007, Petitioner issued its notice of hearing, directed to Maximo Flores d/b/a Sports Bar El Mexicano, 4215 Mona Lee, Houston, Texas 77080 via certified mail, return receipt requested, to Respondent's last known address. The mail was signed for as evidenced by the certified mail receipt. After the taking of evidence, Staff moved for a default judgment pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

## II. FINDINGS OF FACT

- 1 Maximo Flores d/b/a Sports Bar El Mexicano (Respondent), located at 14534 Old Humble Road, Humble, Harris County, Texas, holds Wine and Beer Retailer's Permit BG-534059 which includes the Retail Dealer's On-Premise Late Hours License
- 2 On March 8, 2007, TABC timely sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's last known mailing address at 4215 Mona Lee, Houston, Texas 77080. The notice of hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held.
3. The notice of hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
- 4 The hearing on the merits was held April 13, 2007. Respondent did not appear at the hearing and the record was closed on the same day

5. The hearing proceeded on a default basis, and the allegations contained in the notice of hearing were deemed admitted as true.
6. On or about April 2, 2006, Permittee applied for a renewal permit and/or license under Chapter 25 (Wine and Beer Retailer's Permit) or Chapter 69 (Beer Retailer's On-Premise License) for the on-premise consumption of beer exclusively or beer and wine exclusively and failed to file with the Commission an approved performance surety bond in the amount of \$2000.

### III. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § .01 *et seq.*

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55; and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. §§ 11.61 (b-1) and 11.71 (j).

6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55
  
7. Based on the foregoing Findings of Fact and Conclusions of Law, the cancellation of Respondent's permits/licenses is warranted.

**SIGNED May 30, 2007**



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