

SOAH DOCKET NO. 458-98-0623
TABC DOCKET NO. 577163

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| TEXAS ALCOHOLIC BEVERAGE | § | |
| COMMISSION | § | BEFORE THE STATE OFFICE |
| v. | § | |
| LOREDANA ENTERPRISES, INC., d/b/a | § | OF |
| BERTOLOTTI CUCINA ITALIANA; | § | |
| PERMIT NO. MB-192945; | § | ADMINISTRATIVE HEARINGS |
| HARRIS COUNTY, TEXAS | § | |

PROPOSAL FOR DECISION

I. Statement of the Case

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) brought this action seeking to cancel or suspend the Mixed Beverage Permit of Loredana Enterprises, Inc., d/b/a Bertolotti Cucina Italiana (Respondent). The Commission seeks this relief based on its allegation that Respondent violated Texas Alcoholic Beverage Code §1.01, *et. seq.*, (V.T.C.A. 1997) (the Code) by failing to pay a local permit fee levied by Harris County, authorized by §11.38(a) of the Code, for the permit year 1997-1998.

A hearing on Staff's allegations commenced on May 13, 1998, in the State Office of Administrative Hearing's (SOAH) office at 4101 N. Freeway, Suite 100, Houston, Texas, and concluded the same day. Gayle Gordon, an attorney with the Commission's legal section, represented the Commission. Respondent did not appear and was not represented at the hearing to contest the allegations. At the hearing the Commission tendered into evidence, evidence pertaining to notice to Respondent and evidence by affidavit in support of the allegations in the Commission's notice of hearing. Supplements to two exhibits were submitted by the Commission and admitted into the record on February 25, 1999, to clarify facts related to notice of the TABC allegations and notice of hearing. Based on the following findings of fact and conclusions of law, this proposal recommends the sanction proposed by the Commission.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter, as reflected in the conclusions of law. Notice to Respondent of the Commission's intent and notice to Respondent of the hearing met the notice requirements imposed by statute and by rule. The details of such notice are set forth in the findings of fact and conclusions of law without further discussion here.

II. Findings of Fact

1. On January 28, 1998, Texas Alcoholic Beverage Commission (Commission) issued a letter of complaint to Loredana Enterprises, Inc., d/b/a Bertolotti Cucina Italiana (Respondent)

advising Respondent that the Commission had filed reports with its Legal Division alleging that Respondent had failed to pay a local permit fee levied by Harris County, in violation of the Texas Alcoholic Beverage Code, §11.38.

2. The Commission sent the above letter to Respondent at its last known address of record by certified mail, return receipt requested on January 28, 1998, as evidenced by the receipt for certified mail attached to the Commission's letter.
3. Respondent received the Commission's letter of complaint on February 13, 1998, as evidenced by the green return receipt attached to the letter.
4. On April 6, 1998, the Commission issued a notice of hearing to Respondent advising it of a hearing on allegations that Respondent had violated §11.38 of the Code by failing to pay a local permit fee levied by Harris County.
5. The Commission sent the notice of hearing to Respondent at its last known address of record by certified mail, return receipt requested, number P 419 583 797 on April 6, 1998, as evidenced by the declaration of the Commission's Notice of Hearing and by the receipt for certified mail attached to the Commission's Notice of Hearing.
6. The letter of complaint and notice of hearing included the information and language required by TEX. GOV'T CODE ANN. §§2001.052 and 2001.054 (Vernon 1998).
7. Respondent received Commission's Notice of Hearing on April 27, 1998, as evidenced by the green return receipt attached to the letter.
8. On May 13, 1998, the hearing was convened in the offices of the State Office of Administrative Hearings at 4101 N. Freeway, Suite 100, Houston, Texas. Respondent did not appear in person or by counsel.
9. Respondent holds Mixed Beverage Permit Number MB-192945, issued on July 23, 1987, and continuously renewed, for the premises known as Bertolotti Cucina Italiana, located at 2300 Richton, Houston, Harris County, Texas.
10. At the time of the hearing, Respondent was delinquent in remitting payment to Harris County, Texas, for the local permit fee levied by Harris County for the permit year 1997-1998.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§11.38 and 11.61 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with

proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).

3. As referenced in Findings of Fact Nos. 1-7, service of proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was effected upon Respondent, pursuant to the Code §11.61, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE §§155.27.
4. Based on the foregoing, Respondent has failed to pay a local permit fee authorized by § 11.38(a) of the Code, and that failure warrants cancellation of the permit referenced in Finding of Fact No. 1, pursuant to §§11.38(b) and 61.36(b) of the Code.

SIGNED this 26th day of February, 1999.

A handwritten signature in black ink, appearing to read 'Elizabeth R. Todd', written over a horizontal line.

ELIZABETH R. TODD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS