

DOCKET NO. 458-98-2320

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
RAFAEL CHAVEZ JR. D/B/A L-TOWN (TABC NO. 578259)	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission ("the Commission") requested the revocation of the Wine and Beer Retailer's Permit BG-425454 and the Retail Dealer's On-Premise Late Hours License BL-425455, issued by the Commission to Rafael Chavez Jr. d/b/a L-Town Club, Respondent, because Respondent refused inspection by a Texas Alcoholic Beverage agent, in violation of §61.71(a)(14), and permitted consumption of alcoholic beverages during prohibited hours, in violation of §§105.06 and 61.71(a)(18), TEX. ALCO. BEV. CODE ("the Code"). Following a hearing that Respondent failed to attend, the Administrative Law Judge ("ALJ") agrees with the requested forty day suspension.

I.

Jurisdiction, Notice, and Procedural History

On February 11, 1999, Edel P. Ruiseco, ALJ, convened a hearing on this matter at the State Office of Administrative Hearing ("SOAH") office, 1225 N. Agnes Street, Suite 102, Corpus Christi, Texas. Andrew del Cueto, Assistant Attorney General, represented the Commission's staff ("Petitioner"), and Respondent, Rafael Chavez, Jr., did not appear although duly notified. Notice of the hearing, dated January 15, 1999, and an order setting the hearing date and location, dated February 2, 1999, were properly addressed and sent by certified mail to Respondent at Respondent's mailing address as listed in the Commission records, pursuant to TEX. GOV'T CODE ANN. §§2001.051 and 2001.054(c). Respondent was sent notice of the matters asserted against it; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was held; and a reference to the statutes and rules involved. Evidence was admitted and argument heard, and the hearing was closed on February 11, 1999.

The issues were whether the Respondent, his servant and/or agents, refused to permit inspection by the Commission's agent, in violation of §61.71(a)(14), and permitted consumption of alcoholic beverages during prohibited hours, in violation of §§105.06 and 61.71(a)(18), and pursuant to §25.04, of the Code. The Petitioner offered the allegations as proof, and Respondent did not contest such allegations. Petitioner had witnesses to support the allegations from the TABC and the Corpus Christi Police Department, but because the allegations were not contested, the witnesses did not testify. Respondent did not appear and made no contest to any allegation of Petitioner.

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II.
Reasons for Proposed Decision

On February 28 and June 27th, 1998, Respondent held both a Wine and Beer and an On-Premises Late Hours permit for the premises known as L-Town Club, located at 3419 N. Ayers, Suite 12, Corpus Christi, Nueces County, Texas. On December 30, 1998, Prehearing Order No. 1 was served on Respondent, ordering a prehearing conference on January 12, 1999. On January 12, 1999, Petitioner appeared, but Respondent did not appear or contact either Petitioner or the tribunal in any manner to advise that he could not appear. By Prehearing Order No. 2, Respondent was ordered to "forward to this tribunal and to Petitioner's counsel, the prehearing witness statement on or before February 1, 1999, or be subject to a motion compel or for sanctions." No communication was received from Respondent, and Respondent did not forward the required statement. On February 2, 1999, by Prehearing Order No. 3, Respondent was ordered to appear on February 11, 1999, and show cause why Respondent's license and permits should not be canceled. On February 11, 1999, Respondent failed to appear. Respondent did not offer any evidence in response to the allegations of Petitioner.

III.
Proposed Findings of Fact

1. Rafael Chavez, Jr. doing business at L-Town Club, Respondent, was issued Wine and Beer, and On-Premises Late Hours permits by the Commission on January 27, 1998, for the premises known as L-Town Club, located at 3419 Ayers, Suite 12, Corpus Christi, Nueces County, Texas.
2. Respondent received proper and timely notice of the hearing from the Staff in a notice of hearing dated January 15, 1999, and from the Administrative Law Judge in an order setting the hearing dated December 30, 1998 and February 2, 1999.
3. The hearing was convened on February 11, 1999, at the State Office of Administrative Hearings, 1225 N. Agnes Street, Suite 102, Corpus Christi, Nueces County, Texas. Andrew del Cueto, Assistant Attorney General, represented the Staff. Although he received proper notice of the hearing, Respondent failed to appear and was not represented at the hearing. The hearing closed on February 11, 1999.
4. Respondent, on February 28, 1998, refused inspection by a Texas Alcoholic Beverage agent, who properly requested to inspect the premises.
5. Respondent, on June 27, 1998, permitted on the licensed premises, the consumption of alcoholic beverage during prohibited hours.

IV.
Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission ("the Commission") has jurisdiction of this matter pursuant to Subchapter B of Chapter 5 and §61.73(b), TEX. ALCO. BEV. CODE.
2. The State Office of Administrative Hearings has jurisdiction over the 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. §§2003.021(B) and 2003.042(5).
3. As referenced in Findings of Fact Nos. 2 and 3, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. §2001.051.
4. Based upon Findings of Fact Nos. 1 and 4, Respondent violated the TEX. ALCO. BEV. CODE §§61.71(a)(14), by refusing an inspection by a Commission agent.
5. Based upon Findings of Fact Nos. 1 and 5, Respondent violated the TEX. ALCO. BEV. CODE §§61.71(a)(18) and 105.06, by permitting consumption of alcoholic beverages during prohibited hours.
6. Based on the foregoing, Respondent's permits should be suspended for forty days.

SIGNED this 4th day of March, 1999.


Edel P. Ruiseco,
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS