

DOCKET NO. 585135

IN RE IRMA HERNANDEZ
D/B/A LAS TRES PALMAS
PERMIT NO. BG-315388

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§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

DALLAS COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1566)

ORDER

CAME ON FOR CONSIDERATION this 7th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on October 5, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 5, 1999. 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 surety bond is hereby **FORFEITED**.

This Order will become final and enforceable on December 28, 1999, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 7th day of December, 1999.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/pah

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 626-7448

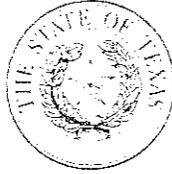
Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Irma Hernandez
d/b/a Las Tres Palmas
RESPONDENT
2001 S. Harwood
Dallas, Texas 75215
CERTIFIED MAIL/RRR NO. Z 473 039 159

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 5, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL z 283 051 845
Return Receipt Requested

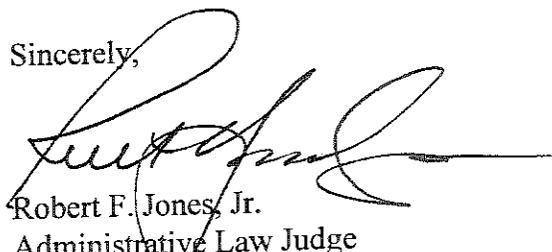
RE: Docket No. 458-98-1566; Texas Alcoholic Beverage Commission vs. Irma Hernandez d/b/a Las Tres Palmas (TABC Case No. 585135)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Irma Hernandez, Respondent, d/b/a Las Tres Palmas. For reasons discussed in the proposal, I recommend Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996, in the amount of \$5,000.00 should be forfeited. Tex. Alco. Bev. Code § 11.11(b)(2).

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Robert F. Jones, Jr.
Administrative Law Judge

RJ:ds

Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**
Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; Irma Hernandez,
Respondent, d/b/a Las Tres Palmas, 2001 S. Harwood, Dallas, Tx. 75215 - **CERTIFIED MAIL NO. Z 383 051**
847. RETURN RECEIPT REQUESTED

The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448

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notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13, and this rule have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act.

16 TEX. ADMIN. CODE § 33.24

FINDINGS OF FACT

1. Irma Hernandez d/b/a Las Tres Palmas (Respondent) was issued Wine and Beer Retailer's Permit BG-315388 on April 26, 1996.
2. Respondent's licensed premises were located at 2001 South Harwood, Dallas, Dallas County, Texas.
3. Respondent has Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996. The bond was executed by Irma Hernandez d/b/a Las Tres Palmas, as Principal, and Gramercy Insurance Company, 7616 L.B.J. Freeway, Dallas, Texas, as Surety. The bond is in the amount of \$ 5,000.00, and is payable to the State of Texas.
4. Defendant executed an Agreement and Waiver of Hearing in TABC Docket Number 569090, styled *Texas Alcoholic Beverage Commission versus Irma Hernandez d/b/a Las Tres Palmas*, on March 5, 1999. In the Agreement and Waiver of Hearing, Respondent agreed that Wine and Beer Retailer's Permit BG-315388 would be canceled for cause at 12:01 A.M. on April 15, 1999. The Waiver Order in that case, executed by Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, on March 16, 1999, ordered Beer Retailer's Permit BG-315388 canceled for cause at 12:01 A.M. on April 15, 1999.
5. Respondent's Wine and Beer Retailer's Permit BG-315388 was canceled for cause at 12:01 A.M. on April 15, 1999.
6. The Staff of the Texas Alcoholic Beverage Commission (Staff) sent Respondent written notice of Staff's intent to forfeit the bond by a letter dated July 7, 1999, addressed to Irma Hernandez d/b/a Las Tres Palmas at 2001 South Harwood, Dallas, Dallas County, Texas. Respondent's receipt of the letter was evidenced by Respondent's signature on page

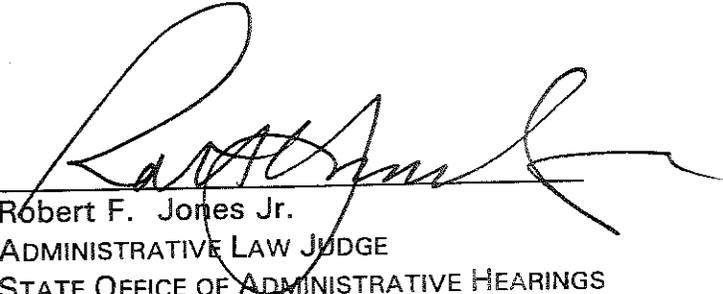
two of the letter.

7. On August 17, 1999, Staff issued its Notice of Hearing. The notice was directed to Irma Hernandez d/b/a Las Tres Palmas at her licensed premises located at 2001 South Harwood, Dallas, Dallas County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. The certified mail return receipt was signed on August 26, 1999.
8. On October 5, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999).
2. The State Office of Administrative Hearings 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, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 1999).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE. § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 6, Texas Alcoholic Beverage Commission Conduct Surety Bond Number 421440356, dated March 27, 1996, in the amount of \$ 5,000.00 should be forfeited. TEX. ALCO. BEV. CODE § 11.11(b)(2).

SIGNED this 5th day of November, 1999.


Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS