

DOCKET NO. 586893

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|------------------------------------|---|---------------------|
| IN RE A & G LUNA INC. | § | BEFORE THE |
| D/B/A LAS LOMAS MEXICAN RESTAURANT | § | |
| PERMIT NOS. MB437302, LB437303, | § | |
| PE437304 & FB437305 | § | TEXAS ALCOHOLIC |
| | § | |
| DALLAS COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-00-0420) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 12th day of June 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on March 14, 2000 and adjourned March 14, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 11, 2000. 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 Permit Nos. MB MB437302, LB437303, PE437304 & FB437305 are herein **CANCELED FOR CAUSE**.

This Order will become final and enforceable on July 3, 2000, 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 12th day of June, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

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

Juan A. Marquez
ATTORNEY FOR RESPONDENT
3508 Greenville Ave. #26
Dallas, Texas 75206
CERTIFIED MAIL/RRR NO. Z 473 040 296

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

State Office of Administrative Hearings



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MAY 15

Shelia Bailey Taylor
Chief Administrative Law Judge

May 11, 2000



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

VIA CERTIFIED MAIL Z 269 601 869

RE: Docket No.458-00-0420; Texas Alcoholic Beverage Commission vs. A & G Luna, Inc.,
(TABC Case No. 586893)

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 Tim Griffith, attorney for Texas Alcoholic Beverage Commission, and to Respondent's Attorney, Juan Marquez. For reasons discussed in the proposal, I recommend cancellation of Respondent's Mixed Beverage Permit No. MB-437302, Mixed Beverage Late Hours Permit No. LB-437303, Beverage Cartage Permit No. PE-437304, and Food and Beverage Certificate No. FB-437305.

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,

A handwritten signature in black ink, appearing to read "Jerry Van Hamme".

Jerry Van Hamme
Administrative Law Judge

JVH:fg
Enclosure

xc: Docket Clerk, State Office of Administrative Hearing
Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission
Juan Marquez, 3508 Greenville Ave., #26, Dallas, Texas 75206

Regular Mail
Fax 972/547-5093
Certified Mail Z 269-601-870

Mixed Beverage Late Hours Permit No. LB-437303, Beverage Cartage Permit No. PE-437304, and Food and Beverage Certificate No. FB-437305, issued by the Commission on August 14, 1998.

2. On January 5, 2000, the Commission sent Respondent notice of its intention to institute enforcement action. The notice was sent by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records.
3. On February 16, 2000, the Commission sent Respondent notice of the hearing in this matter. The notice was sent by certified mail, return receipt requested, to Respondent's counsel of record. The notice of hearing notified Respondent of the statutes and rules involved, the legal authorities under which the hearing is to be held, and the date, time, and place of the hearing.
4. The notice of hearing also contained language in 10-point type informing Respondent that if Respondent failed to appear at the hearing, the Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. On March 14, 2000, Respondent filed Respondent's Notice of Withdrawal of Request for Rehearing, requesting that its motion for rehearing of the determination of violations be withdrawn, and stating that Respondent was withdrawing all opposition to the motion by Staff to suspend Respondent's licenses.
6. The hearing on the merits convened March 14, 2000, at the offices of the State Office of Administrative Hearings, Dallas, Texas, 6300 Forest Park Rd., Suite B-230. Staff was represented by attorney, Timothy E. Griffith. Respondent did not appear and was not represented at the hearing. The record closed on the same day.
7. More than fifty percent of the legal and/or beneficial ownership of the stock of A & G Luna, Inc., has changed since the original mixed beverage permit was issued.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN Subchapter B of Chapter 5, §§ 6.01 & 11.61 (Vernon 2000).
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 (Vernon 2000).
3. Based on Finding of Fact Nos. 3 & 4, proper and timely notice of the hearing was effected on Respondent pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1999).

4. Based on Findings of Fact No. 6, the ALJ may enter a default judgment against Respondent pursuant to 1 TAC § 155.55 (1999).
5. Based on Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN § 28.04 (Vernon 1995).
6. Based on Conclusion of Law No. 5, Respondent's Mixed Beverage Permit renewal may be denied pursuant to TEX. ALCO. BEV. CODE ANN § 28.04 (Vernon 2000).
7. Based on Conclusion of Law No. 5, Respondent's Mixed Beverage Late Hours Permit renewal may be denied pursuant to TEX. ALCO. BEV. CODE ANN § 29.03 (Vernon 2000).
8. Based on Conclusion of Law No. 5, Respondent's Beverage Cartage Permit renewal may be denied pursuant to TEX. ALCO. BEV. CODE ANN §§ 44.03 & 11.09(c) (Vernon 2000).
9. Based on Conclusion of Law No. 5, Respondent's Food and Beverage Certificate renewal may be denied pursuant to TEX. ALCO. BEV. CODE ANN §§ 28.18(f) & 11.09(c) (Vernon 2000).
10. Based on the foregoing findings and conclusions, cancellation of Respondent's Mixed Beverage Permit No. MB-437302, Mixed Beverage Late Hours Permit No. LB-437303, Beverage Cartage Permit No. PE-437304, and Food and Beverage Certificate No. FB-437305 is warranted.

SIGNED this 11 day of May, 2000.


JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS