

SOAH DOCKET NO. 458-01-1022

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
EDUARDO HERNANDEZ, ET AL	§	
D/B/A THE REVERB LOUNGE	§	
PERMIT NOS. BG-435901 & BL-435902	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 588895)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 22nd day of March, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened on January 16, 2001, 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 February 21, 2001. 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.

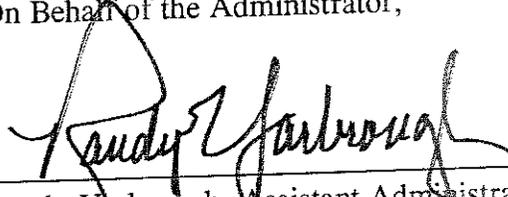
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on April 12, 2001, 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 22nd day of March, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings - San Antonio
VIA FACSIMILE (210) 308-6854

Eduardo Hernandez
RESPONDENT
1033 Avenue B., Bldg. #2
San Antonio, Texas 78215
CERTIFIED MAIL NO. 7000 0520 0024 8846 7700

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

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PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking forfeiture of the conduct surety bond of Eduardo Hernandez, et.al., d/b/a The Reverb Lounge (Respondent) because Respondent's Wine and Beer Retailer's Permit and Retail Dealer's On-Premise Late Hours License have been canceled by the Commission following final adjudication of three violations by Respondent since September 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing on the complaint convened January 16, 2001, via telephone conference call initiated by Administrative Law Judge (ALJ) Sharon Cloninger from the State Office of Administrative Hearings, 300 West 15th Street, Suite 502, Austin, Texas, and concluded the same day. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Gayle Gordon. After the taking of evidence, Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, and the ALJ recommends that it be granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

1. Eduardo Hernandez, et.al., d/b/a The Reverb Lounge (Respondent) held a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License issued by the Texas Alcoholic Beverage Commission (Commission).
2. The Commission canceled Respondent's permit and license referenced in Finding of Fact No. 1 because Respondent committed three Alcoholic Beverage Code violations beginning in September 1995.
3. On May 30, 2000, the Commission sent a notice to Respondent by certified mail at his address as listed in the Commission's records, alleging that because of the violations referenced in Finding of Fact No. 2, he had forfeited the full amount of his conduct surety bond.

4. Notice of the hearing in this matter, dated November 27, 2000, was properly addressed and sent by certified mail to Respondent at his San Antonio, Texas, mailing address as listed in Commission records.
5. Respondent did not claim the notice of hearing referenced in Finding of Fact No. 4, and it was returned to the Commission.
6. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
7. Although the notice of hearing notified Respondent that the hearing would be held at 9:30 a.m. January 16, 2001, at the State Office of Administrative Hearings (SOAH) site in San Antonio, the hearing was held via telephone conference call.
8. At 9:30 a.m. January 16, 2001, Administrative Law Judge Sharon Cloninger contacted SOAH staff at SOAH's San Antonio site and was informed that Respondent was not present.
9. The notice of hearing also contained language in 10-point type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
10. Respondent did not attend and was not represented at the hearing in this matter held January 16, 2001.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
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.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos. 4 through 10, and Conclusion of Law No. 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.

6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited.

SIGNED this 21st day of February 2001.


SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS