

DOCKET NO. 591870

IN RE TEREZO DE JESUS GRIJALVA
D/B/A KARLA'S NITE CLUB
PERMIT NOS. MB437729, LB437730

EL PASO COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-1428)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of March 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis Lopez. The hearing convened and adjourned on February 1, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 13, 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.

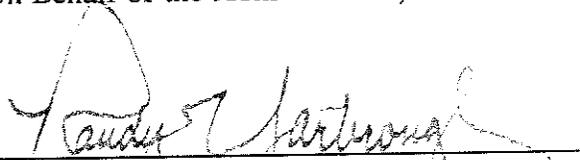
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on March 28, 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 7th day of March, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Louis Lopez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (915) 834-5657

Terezo de Jesus Grijalva
d/b/a Karla's Nite Club
RESPONDENT
14024 Lago Grande
Horizon City, Texas 79927-7056
VIA CERTIFIED MAIL NO. 7000 0520 0024 8846 9780

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

DOCKET NO. 458-01-1428

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

TEREZO DE JESUS GRIJALVA
dba KARLA'S NITE CLUB
PERMIT NOS. MB437729, LB437730
EL PASO COUNTY, TEXAS
TABC NO. 591870

§ BEFORE THE STATE OFFICE
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§ ADMINISTRATIVE HEARINGS
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PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Staff) brought this action against Terezo de Jesus Grivalva d/b/a Karla's Nite Club (Respondent) seeking forfeiture of Respondent's conduct surety bond. The Staff alleged that Respondent committed three violations of the Texas Alcoholic Beverage Code (the Code) since September 1, 1995. This proposal finds that the criteria for forfeiture of Respondent's conduct surety bond have been satisfied.

The hearing on the merits was convened as scheduled on February 1, 2001, at the State Office of Administrative Hearings, 401 East Franklin Avenue, Suite 580, El Paso, Texas. The Staff appeared by telephone through attorney Christopher Burnett. Respondent failed to appear. Administrative Law Judge Louis Lopez presided. The record was closed on the same day.

Jurisdiction and notice were sufficient, and the details are further set out below in the Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Terezo de Jesus Grivalva d/b/a Karla's Nite Club (Respondent) is the holder of Mixed Beverage Permit No. MB-437729 and Mixed Beverage Late Hours Permit No. MB-437730, issued by the Texas Alcoholic Beverage Commission (TABC) on September 4, 1998. The licenses have been continuously renewed.
2. On January 12, 2001, the staff of the Texas Alcoholic Beverage Commission (the Staff) sent a Notice of Hearing to Respondent at 14024 Lago Grande, El Paso, Texas 79927-7056 by certified mail, return receipt requested, Article Number Z 280 626 816, informing him that a hearing in this case was to be held on Thursday, February 1, 2001, at 10:00 a.m.
3. Before that on January 10, 2001, the State Office of Administrative Hearings (SOAH) had sent an Order Setting Prehearing Conference to Respondent at the same address as above. The Order stated that a hearing would be held on Thursday, February 1, 2001, at 10:00 a.m. at State Office Building, 401 East

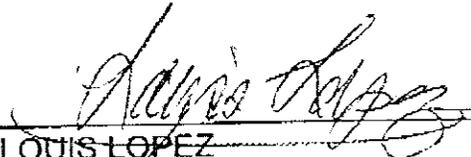
Franklin Avenue, Suite 580, El Paso, Texas 79901. To this date, the envelope has not come back to the SOAH office.

4. Both Petitioner's Notice of Hearing and the SOAH Order contained the statement in at least 10-point, bold-face type required by 1 TEX. ADMIN. CODE §155.55(c) regarding the consequences of failure of a party to appear at the hearing.
5. The hearing was convened on Thursday, February 1, 2001, at 10:00 a.m. at the SOAH office at 401 East Franklin Avenue, Suite 580, El Paso, Texas 79901. Respondent did not appear.
6. The Staff, through its attorney of record, appeared by telephone and announced ready. Respondent failed to appear and was not represented by counsel.
7. Respondent committed three violations of the Code since September 1, 1995.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. [CODE] §§5.31--5.44 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to CODE §5.43(a) and TEX. GOVT CODE ANN. §§2003.021 and 2003.042 (Vernon 2000).
3. Service of proper notice of the hearing was made on Respondent pursuant to CODE §11.63 and the Administrative Procedure Act, TEX. GOVT CODE ANN. §§2001.051 and 2001.052 (Vernon 2000).
4. TABC is permitted by CODE §§11.11 and 61.31 and by 16 TEX. ADMIN. CODE (TAC) §33.24(j) (2000) to forfeit the conduct surety bond of a permittee who commits three or more violations of the Code since September 1, 1995.
5. Under 1 TAC §155.55(b), when a respondent defaults, the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.
6. Respondent violated the rules of TABC found at 16 TAC §33.24(j) by committing three violations of the Code since September 1, 1995.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the criteria for forfeiture of the conduct surety bond have been satisfied.

SIGNED this 13th day of February, 2001.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS