

DOCKET NO. 592434

IN RE LEONARDO ADEMYRK MENDOZA	§	BEFORE THE
D/B/A EL CONQUISTADOR	§	
PERMIT NO. BG320519	§	
LICENSE NO. BL320520	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-2141)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened and adjourned on March 22, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 11, 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 Permit No. BG320519 and License No. BL320520 shall be **SUSPENDED**.

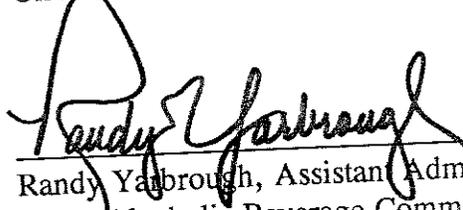
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$4,500.00** on or before the **5th** day of **September, 2001**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of **thirty (30) days**, beginning at **12:01 A.M. on the 12th day of September, 2001**.

This Order will become final and enforceable on June 26, 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 5th day of June, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE (713) 812-1001

Jonathan Lewis Munier
ATTORNEY FOR RESPONDENT
3700 N. Main
Houston, Texas 77009
CERTIFIED MAIL NO. 7000 1530 0002 0152 6929

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 592434

REGISTER NUMBER:

NAME: LEONARDO ADEMYRK MENDOZA

TRADENAME: EL CONQUISTADOR

ADDRESS: 3907 1/2 Canal, Houston, Texas 77003

DATE DUE: September 5, 2001

PERMITS OR LICENSES: BG320519, BL320520

AMOUNT OF PENALTY: \$4,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 5TH DAY OF SEPTEMBER 2001, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No.

DOCKET NO. 458-01-2141

**TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

V.

**LEONARDO ADEMYRK MENDOZA
D/B/A EL CONQUISTADOR
PERMIT NO. BG-320519
LICENSE NO. BL-320520
HARRIS COUNTY, TEXAS
(TABC CASE NO. 592434)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Leonardo Ademyrk Mendoza d/b/a/ El Conquistador (Respondent) because the Respondent sold or delivered an alcoholic beverage to an intoxicated person. The Respondent did not attend and was not represented at the March 22, 2001 hearing. This Proposal for Decision finds the allegation proven and agrees with Staff's recommended sanction of a thirty day suspension of the license or, in lieu of suspension, payment of a \$4,500.00 penalty.

I. REASONS FOR PROPOSED DECISION

There were no contested issues of notice or jurisdiction in this proceeding. Because the Respondent did not appear for the hearing, Staff requested a default decision, pursuant to 1 TEX. ADMIN. CODE §155.55. The notice of hearing contained a statement of the matters asserted against Respondent; the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a reference to the statutes and rules involved. Additionally, it contained the language in a 10-point bold-face type required by the State Office of Administrative Hearings default rule. Agreeing with Staff that such action is appropriate, the ALJ recommends the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

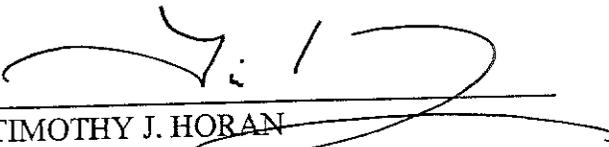
1. Leonardo Ademyrk Mendoza d/b/a/ El Conquistador, Harris County, Texas, holds Permit No. BG-320519 and License No. BL-320520, issued by the Texas Alcoholic Beverage Commission (the Commission).
2. On February 28, 2001, the Commission's Staff sent notice of the hearing to be held March 22, 2001, based on an alleged violation of the TEXAS ALCOHOLIC BEVERAGE CODE (Code) to the Respondent by certified mail.

3. The notice was sent to the Respondent's attorney of record, Jonathan Lewis Munier, 3700 N. Main, Houston, Texas 77009.
4. The notice of hearing included the following language in ten point bold-face type, "If you fail to appear at the hearing, the allegations in this notice will be deemed admitted as true, and the relief requested sought may be granted by default."
5. The hearing on the merits convened March 22, 2001, at the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The Commission's Staff was represented by its attorney, Christopher Burnett. The Respondent did not appear and was not represented at the hearing. The record was closed on Friday, March 30, 2001.
6. On or about November 4, 2000, the Respondent sold or delivered an alcoholic beverage to an intoxicated person.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code §§6.01, 11.61, and 61.71.
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.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Finding of Fact No. 6, the Respondent violated Code § 11.61(b)(14).
5. Based on the foregoing findings and conclusions, a thirty day suspension of Permit No. BG-320519 and License No. BL-320520 is warranted.
6. Pursuant to Code §11.64, the Respondent should be allowed to pay a \$4,500.00 civil penalty in lieu of suspension of its license.

SIGNED this 11th day of May, 2001.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS