

**DOCKET NO. 593128**

IN RE SALVADOR ORTIZ ORTA	§	BEFORE THE
D/B/A EL PREMIO MAYOR	§	
PERMIT NO. BG458650	§	
LICENSE NO. BL458651	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-0954)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 1st day of March 2002, 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 and on adjourned January 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 6, 2002. 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. BG458650 and License No. BL458651 are hereby **SUSPENDED for ten (10) days**.

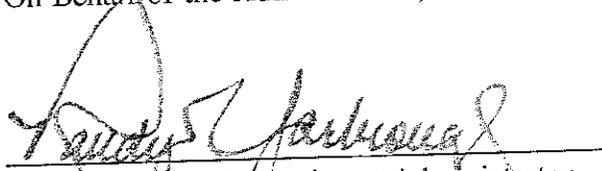
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$1,500.00 on or before the 1<sup>st</sup> day of **May 2002**, all rights and privileges under the above described permit and license will be **SUSPENDED for a period of ten (10) days, beginning at 12:01 A.M. on the 8<sup>th</sup> day of May 2002.**

This Order will become final and enforceable on March 22, 2002, 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 1<sup>st</sup> day of March 2002.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (817) 377-3706**

Salvador Ortiz Orta  
d/b/a El Premio Mayor  
**RESPONDENT**  
3722 Poinsettia  
Dallas, Texas 75211-8505  
**CERTIFIED MAIL/RRR NO. 7001 2510 0000 7279 0612**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 593128

REGISTER NUMBER:

NAME: SALVADOR ORTIZ ORTA

TRADENAME: EL PREMIO MAYOR

ADDRESS: 2513 N. Fitzhugh, Dallas, Texas 75204-3315

DATE DUE: May 1, 2002

PERMITS OR LICENSES: BG458650, BL458651

AMOUNT OF PENALTY: \$1,500.00

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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 1ST DAY OF MAY 2002, 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. 458-02-0954

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

SALVADOR ORTIZ ORTA  
D/B/A EL PREMIO MAYOR  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 593128)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of Salvador Ortiz Orta's d/b/a El Premio Mayor (Respondent) permit and license, or in the alternative payment of a penalty. The Staff alleged Respondent had paid for beer with checks which were dishonored. This proposal finds that the Staff's allegations are true. The Administrative Law Judge (ALJ) recommends that Respondent's permit and license be suspended, or that Respondent pay a penalty.

**I. PROCEDURAL HISTORY**

On January 11, 2002, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on January 11, 2002.

**II. DISCUSSION**

**A. Notice**

The Staff served its Notice of Hearing (the NOH) on Respondent on November 28, 2001. The NOH was mailed to Respondent at 3722 Poinsettia, Dallas, Dallas County, Texas, its last known mailing address according to TABC's records. It was filed with SOAH by facsimile transmission on the same day. The NOH contains a "disclosure, in 10-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." 1 TEX. ADMIN. CODE § 155.55(c).

The NOH alleged Respondent had violated the Texas Alcoholic Beverage Code (the Code) in several specified instances. It informed the Respondent of the time, place, and nature of the hearing on the allegations. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2002).

B. Jurisdictional Facts

Respondent's licensed premises are located at 2513 North Fitzhugh, Dallas, Dallas County, Texas. The TABC has issued wine and beer retailer's permit BG 458650 and retail dealer's on premise late hours license BL 458651 to Respondent.

The Staff recommended that Respondent's permit and license be suspended for 10 days, or in the alternative Respondent pay a penalty of \$1,500.

The ALJ recommends Respondent's permit and license either be suspended for 10 days, or that Respondent pay a penalty of \$1,500.

III. PROPOSED FINDINGS OF FACT

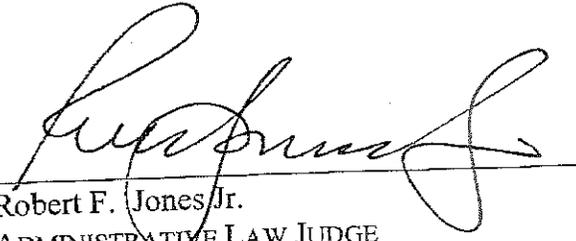
1. Salvador Ortiz Orta's d/b/a El Premio Mayor (Respondent) licensed premise is located at 2513 North Fitzhugh, Dallas, Dallas County, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) has issued wine and beer retailer's permit BG 458650 and retail dealer's on premise late hours license BL 458651 to Respondent.
3. On November 28, 2001, the Staff served its Notice of Hearing (the NOH) by mailing it to Respondent at 3722 Poinsettia, Dallas, Dallas County, Texas, its last known mailing address according to TABC's records.
4. The NOH contained a disclosure, in 10-point, bold-faced type, of the fact that upon failure of the Respondent to appear at the hearing, "the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
5. The NOH alleged Respondent had violated the Texas Alcoholic Beverage Code (the Code) in several specified instances. It informed the Respondent the hearing would be held on January 11, 2002, at 2:00 p.m. at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
6. On January 11, 2002, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on January 11, 2002.
7. On March 24, 2000, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.

8. On March 25, 2000, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.
9. On November 24, 2000, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.
10. On February 8, 2001, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.
11. On September 14, 2001, Respondent gave a check as payment for beer and the check was dishonored when presented for payment.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Code.
2. SOAH has jurisdiction over all matters relating to the conduct of 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. ch. 2003 (Vernon 2002).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2002).
4. The factual allegations in the NOH are deemed admitted. 1 TEX. ADMIN. CODE § 155.55(c).
5. Based on Findings of Fact Nos. 7 - 11, Respondent has violated §61.73(b) of the Code.
6. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for 10 days, or in the alternative Respondent should pay a penalty of \$1,500.

SIGNED February 6, 2002.

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