

**DOCKET NO. 597675**

IN RE HECTOR ESTEBAN GONZALEZ	§	BEFORE THE
D/B/A TEXAS JEFE DE JEFES BAR	§	
PERMIT NO. BG448497	§	
LICENSE NO. BL448498	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2717)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 8th day of July 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened and adjourned on May 17, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 4, 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.

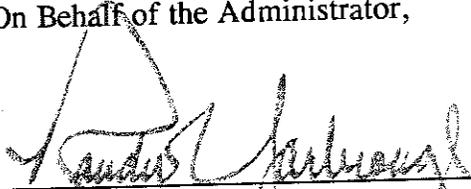
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on July 29, 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 8th day of July 2002.

On Behalf of the Administrator,



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Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Carrie L. McLarty  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001

Hector Esteban Gonzalez  
d/b/a Texas Jefe de Jefes Bar  
**RESPONDENT**  
9020 Jensen Dr.  
Houston, TX 77093  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 8091**

Lindy To  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Houston District Office

**DOCKET NO. 458-02-2717**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>HECTOR ESTEBAN GONZALEZ D/B/A TEXAS JEFE DE JEFES BAR</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Hector Esteban Gonzalez (Respondent) d/b/a Texas Jefe de Jefes Bar. Petitioner failed to appear at the May 17, 2002, hearing held in this case, and Respondent moved for a default judgment. The Administrative Law Judge (ALJ) recommends Petitioner's proposed action be sustained and Respondent's conduct surety bond be forfeited.

**Procedural History, Notice, and Jurisdiction**

The hearing in this case was convened on May 17, 2002, at the State Office of Administrative Hearings (SOAH) in Houston, Texas, before Carrie L. McLarty, ALJ. Petitioner appeared through Lindy To, staff attorney. Respondent did not appear at the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued based on Respondent's default.

Petitioner has jurisdiction over the subject matter of this appeal pursuant to TEX. ALCO. BEV. CODE §§6.01 and 61.13. SOAH has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with proposed findings of fact and proposed conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.

Petitioner sent a Notice of Hearing to Respondent on April 24, 2002. The Notice was mailed to Respondent's last known address by certified mail return receipt requested, and was received by Petitioner on May 2, 2002, as evidenced by Petitioner's signature on the green card. The Notice complied with all requirements of 1 TEX. ADMIN. CODE §155.55; accordingly, all of the allegations in Respondent's pleadings were deemed true without need of any testimony or additional evidence by Respondent.

## Reasons For Decision

### 1. Legal Standard

Upon final adjudication that a licensee or permittee has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.

The applicable statutory provision at TEX. ALCO. BEV. CODE § 11.11(b)(2) states "... the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code . . . ."

Petitioner's rule at 16 TEX. ADMIN. CODE §33.24(j) is more lenient, and provides, "(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the license or permittee, in writing, of its intent to seek forfeiture of the bond."

### 2. Respondent's Pleadings

Respondent's pleadings allege that it has made a final adjudication that Petitioner committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995, and that Respondent's conduct surety bond should be forfeited.

## Proposed Findings of Fact

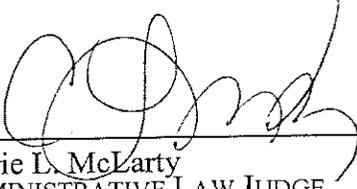
1. The hearing in Docket No. 458-02-2717 was convened on May 17, 2002, before Administrative Law Judge Carrie L. McLarty at the State Office of Administrative Hearings in Houston, Texas. The Texas Alcoholic Beverage Commission (Petitioner) appeared through Lindy To, staff attorney. Hector Esteban Gonzalez (Respondent) d/b/a Texas Jefe de Jefes Bar did not appear at the hearing.
2. Respondent was notified of the date, time, and location of the scheduled hearing by Petitioner's Notice of Hearing of April 24, 2002.
3. Petitioner sent a Notice of Hearing to Respondent on April 24, 2002. The Notice was mailed to Respondent's last known address by certified mail return receipt requested, and was received by Petitioner on May 2, 2002, as evidenced by Petitioner's signature on the green card. The Notice complied with all requirements of 1 TEXAS ADMINISTRATIVE CODE §155.55.

4. The Notice of Hearing contained a disclosure, in 10-point, bold-faced type, that upon failure of 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. Respondent holds Permit No. BG448497 and License No. BL448498, issued by Petitioner.
6. Petitioner had made a final adjudication that Respondent committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.

**Proposed Conclusions of Law**

1. Petitioner has jurisdiction over the subject matter of this appeal pursuant to TEX. ALCO. BEV. CODE §§6.01 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with proposed findings of fact and proposed conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Respondent received proper and timely notice of the hearing in this case.
4. Based on the above Findings of Fact, Petitioner is entitled to a default judgment.
5. Based on the above Findings of Fact, Respondent's conduct surety bond should be forfeited, as authorized by TEX. ALCO. BEV. CODE §§6.01 and 61.13 and 16 TEX. ADMIN. CODE §33.24(j).

**SIGNED** this 4<sup>th</sup> day of June, 2002.

  
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Carrie L. McLarty  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS