

DOCKET NO. 599171

IN RE SALVADOR ORTIZ ORTA  
D/B/A EL PREMIO MAYOR  
PERMIT NO. BG458650  
LICENSE NO. BL458651

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3304)

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on July 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 29, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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 **CANCELLED FOR CAUSE**.

**This Order will become final and enforceable on September 10, 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 or through the U.S. Mail, as indicated below.

**SIGNED** this the 20th day of August, 2002.

On Behalf of the Administrator,

  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (817) 377-3706

SALVADOR ORTIZ ORTA  
D/B/A EL PREMIO MAYOR  
RESPONDENT  
3722 Poinsettia  
Dallas, Texas 75211-8505  
CERTIFIED MAIL NO. 7001 2510 0000 7277 6142

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Licensing Division  
Dallas District Office

DOCKET NO. 458-02-3304

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner  
V.

§ BEFORE THE STATE OFFICE  
§ OF  
§ ADMINISTRATIVE HEARINGS

SALVADOR ORTIZ ORTA  
d/b/a EL PREMIO MAYOR, Respondent  
Tarrant County, Texas  
(TABC No. 599171)

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against its licensee, Salvador Ortiz Orta d/b/a El Premio Mayor (Respondent) because he allegedly paid for beer by checks that were dishonored for insufficient funds when presented for payment. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permit and license be canceled.

**I. PROCEDURAL HISTORY**

On July 11, 2002, a hearing was conducted by ALJ Tanya Cooper at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. TABC Staff was represented by Timothy Griffith. Respondent was not present and was not represented by counsel. The hearing was concluded and the record closed on the same day.

**II. REASONS FOR PROPOSED DECISION**

TABC Staff presented several exhibits which were admitted into evidence. Included in these exhibits were Respondent's licensing history, which reflected a number of prior cash law violations similar to the allegations under consideration in this matter. TABC Staff also presented a number of affidavits from beer distributors describing additional violations similar to the violations the subject of this proceeding. TABC Staff requested these factors be considered in any sanction to be recommended by the ALJ.

Because Respondent failed to appear at the hearing and TABC Staff proved that Respondent had received proper notice of the hearing, all matters relating to jurisdiction, notice, the violations and recommended punishment are addressed in the Proposed Findings of Facts and Conclusions of Law sections without discussion.

**III. PROPOSED FINDINGS OF FACT**

1. Salvador Ortiz Orta d/b/a El Premio Mayor (Respondent), holds a Wine and Beer Retailer's Permit, BG-458650, and Retailer's Dealer's On-Premise Late Hours License, BL-458651,



issued by TABC for the premises located at 2513 N. Fitzhugh, Dallas, Dallas County, Texas.

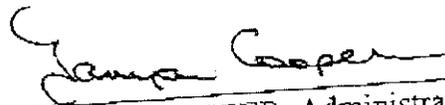
2. On June 12, 2002, the TABC Staff issued a Notice of Hearing, which contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the statutes and rules involved; and a statement of the matters asserted.
  - a. The Notice of Hearing was sent to Respondent at his mailing address of record reflected on his permit and license and in the records of the Texas Alcoholic Beverage Commission, 3722 Poissetia, Dallas, Texas 75211-8505, by certified mail (7001 2510 0000 7278 7131), return receipt requested. The Notice of Hearing was returned to Staff, with the notation "Forwarding Order Expired."
  - b. The Notice properly disclosed that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice would be deemed as true, and the relief sought could be granted by default.
3. The hearing convened July 11, 2002, at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas, before Tanya Cooper, Administrative Law Judge (ALJ). TABC Staff was represented by Timothy E. Griffith, but Respondent failed to appear and was not represented.
4. On or about March 22, 2001, Respondent gave a check or draft to Ben E. Keith Co. in the amount of \$218.40 for the purchase of beer. The check was dishonored for insufficient funds when presented for payment at Respondent's bank, Comerica Bank.
5. On or about May 2, 2002, Respondent gave a check or draft to Miller of Dallas, Inc. in the amount of \$199.30 for the purchase of beer. The check was dishonored for insufficient funds when presented for payment at Respondent's bank, Comerica Bank.
6. There is evidence of a large number of similar violations where Respondent gave checks or drafts for payment for the purchase of beer and the checks were dishonored for insufficient funds when presented for payment at Respondent's bank.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01 and 61.71.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction to conduct the hearing in the matter and to issue a proposal for decision containing proposed findings of facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. As referenced in Proposed Finding of Fact 2, proper and timely notice of the conduct alleged, statutes and rules governing the proceeding, and the hearing was provided to Respondent, pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71(a), TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE §§ 155.27 and 155.55.
4. Based on Proposed Findings of Fact Nos. 4 and 5, Respondent paid for beer by checks which were dishonored for insufficient funds in violation of TEX. ALCO. BEV. CODE ANN. § 61.73(b), and based on Proposed Finding of Fact No. 6, Respondent has had a large number of similar violations. This warrants the cancellation of Respondent's permit and license referenced in Proposed Finding of Fact No. 1.

SIGNED on this the 29<sup>th</sup> day of July 2002.



TANYA COOPER, Administrative Law Judge  
STATE OFFICE OF ADMINISTRATIVE HEARINGS