

DOCKET NO. 458-02-3506

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

V.S.

OF

HAROL ALBERTO CUBIDES  
D/B/A TURCO BILLIARDS  
PERMIT BG499600, LICENSE BL499601  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 599483)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Harol Alberto Cubides d/b/a Turco Billiards (the Permittee) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05. TABC alleged that Permittee, Harol Alberto Cubides, his agent, servant or employee, on or about March 30, 2002, acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder.

The Permittee did not make an appearance at the hearing on September 13, 2002. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of the staff that the license be suspended for a period of 6 days or that Permittee be allowed to pay a fine of \$900.00 in lieu of suspension.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on September 13, 2002, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Lindy To. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

**II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05 authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and



hearing, that the Permittee acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages. As described in the Findings of Fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05.

The staff attorney introduced two exhibits into evidence:

Exhibit TABC 1 is an affidavit of Brian L. Guenther, Licensing Department Director, that the Permit No. BG499600 and License No. BL499601 were issued to Harol Alberto Cubides, doing business as Turco Billiards, by the Texas Alcoholic Beverage Commission. The mailing address of Harol Alberto Cubides is 8226 Long Point, Houston, Texas 77055. Attached to the affidavit is the permit and violation history.

Exhibit TABC 2 is the green card attached to the Notice of Hearing showing Permittee received notice.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled for September 13, 2002. Notice was properly served on July 9, 2002, and received by Permittee on July 12, 2002. The Hearing convened on September 13, 2002, and Permittee did not appear.

### III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states **"if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default."** Because the Respondent failed to attend the hearing, the allegations that Permittee on or about March 30, 2002, acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder in violation of Sections 11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05 of the code are deemed admitted as true. The license should be suspended for a period of six days, or in lieu of suspension, Permittee should pay a fine of \$900.00.

### IV. FINDINGS OF FACT

1. Permit No. BG499600 and License No. BL499601 were issued to Harol Alberto Cubides, doing business as Turco Billiards, by the Texas Alcoholic Beverage Commission. The mailing address of Harol Alberto Cubides is 8226 Long Point, Houston, Texas 77055.
2. The staff sent a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee and Permittee received the Notice as shown by the attached green card.
3. The hearing on the merits was held on September 13, 2002, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Lindy To. The Permittee did not appear and was not represented at the hearing.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee on or about March 30, 2002, acquired an alcoholic beverage for the purpose of resale from another retail permit or license holder in violation of Sections 11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05 of the code.

### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. Permittee violated TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05 by Harol Alberto Cubides, his agent, servant or employee, acquiring an alcoholic beverage for the purpose of resale from another retail permit or license holder on or about March 30, 2002.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a six day suspension of the permit and license is warranted pursuant to TEX. ALCO. BEV. CODE ANN. §§11.61 (b)(2), 61.71 (a)(20), 69.09, and 71.05. The Permittee should be allowed to pay a \$900.00 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 18<sup>th</sup> day of October, 2002.

  
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Don Smith  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 599483**

IN RE HAROL ALBERTO CUBIDES	§	BEFORE THE
D/B/A TURCO BILLIARDS	§	
PERMIT NO. BG499600	§	
LICENSE NO. BL499601	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3506)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 15th day of November 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on September 13, 2002, and adjourned on September 13, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 18, 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. BG499600 and License No. BL499601 are hereby **SUSPENDED**.

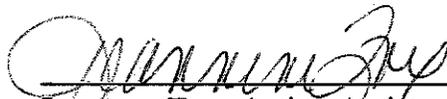
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$900.00** on or before the **27th** day of **December, 2002**, all rights and privileges under the above described permit and license will be **SUSPENDED** for a period of six (6) days, beginning at 12:01 A.M. on the **4th** day of **January, 2003**.

**This Order will become final and enforceable on December 6, 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 15th day of November, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

The Honorable Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FAX (713) 812-1001**

**HAROL ALBERTO CUBIDES**  
**D/B/A TURCO BILLIARDS**  
**RESPONDENT**  
8226 Long Pt.  
Houston, Texas 77055  
**CERTIFIED MAIL NO. 7001 2510 0000 7278 5557**

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

Regulatory Division  
Houston District Office

**TEXAS ALCOHOLIC BEVERAGE COMMISSION  
CIVIL PENALTY REMITTANCE**

**DOCKET NUMBER: 599483**

**REGISTER NUMBER:**

**NAME: HAROL ALBERTO CUBIDES    TRADENAME: TURCO BILLIARDS**

**ADDRESS: 8226 Long Pt., Houston, Texas 77055**

**DATE DUE: December 27, 2002**

**PERMITS OR LICENSES: BG499600, BL499601**

**AMOUNT OF PENALTY: \$900.00**

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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 27TH DAY OF DECEMBER, 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.