

DOCKET NO. 458-07-1431

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**SAN JUANITA TAGLE D/B/A
EL CENTENARIO BAR
PERMIT/LICENSE NOS. BG625278,
CAMERON COUNTY, TEXAS
(TABC CASE NO. 540072)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against San Juanita Tagle d/b/a El Centenario Bar (Permittee) for offenses committed in violation of various TEX. ALCO. BEV. CODE ANN provisions . The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that a ten day suspension of the permit should be imposed.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on April 4, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by Melissa M. Ricard, Administrative Law Judge (ALJ). TABC's Staff was represented by its counsel, Sandra K. Patton. The Permittee did not make an appearance at the hearing. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact.

The Commission and SOAH 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. (Code) § 11.61 authorizes the Commission to cancel a license or permit if it is found, after notice and hearing, that the Permittee violated a provision of the Code or the Commission's rules. As described in the findings of fact, the Permittee violated CODE §§ 11.61 (b)(2), 61.71(a)(20), 69.09 and/or 71.05.

The staff attorney introduced two exhibits into evidence. Exhibit 1 is a copy of the affidavit of Amy Harrison, Licensing Department Director, which shows that Permit BG625278 was issued to Permittee, whose mailing address is 2813 Fern Ave., McAllen, Texas. Exhibit 2 is the envelope containing the notice of hearing showing that delivery was attempted, but that the letter went unclaimed and was returned to the Commission.

III. RECOMMENDATION

The notice of hearing, dated February 6, 2007, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegations (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's address, as shown by the agency's records. The return receipt has a delivery date to Permittee of February 8, 2007, and it is stamped "unclaimed." The item was returned to the Commission on February 12, 2007. Therefore, the allegations are admitted as true. The relief sought should be granted, and a ten day suspension of the permit should be imposed.

IV. FINDINGS OF FACT

1. Permit BG625278 was issued to San Juanita Tagle d/b/a El Centenario Bar (Permittee) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Permittee is 2813 Fern Ave., McAllen, Texas.
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2. TABC's Staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified mail, return receipt requested, and mailed the notice to Permittee's address as shown in the agency's records.
3. The Notice of Hearing contained a statement of the time, location, date, 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 particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.
4. The Notice of Hearing was sent to the Permittee at the address of record on February 6, 2007, certified mail, return receipt requested. Delivery was attempted on February 8, 2007 and the letter was unclaimed. The letter was returned to the Commission on February 12, 2007.
5. The Notice of Hearing contained the following language in capital letters in 12-point boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.
6. The hearing on the merits was held on April 4, 2007, at the offices of the State Office of Administrative Hearings (SOAH), Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra K. Patton. The Permittee did not appear and was not represented at the hearing and the record was closed on the same day.
7. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
8. On or about July 21, 2007, Permittee, Permittee's agents, servant or employee, acquired an alcoholic beverage for the purpose of resale from another retail permittee or license holder.

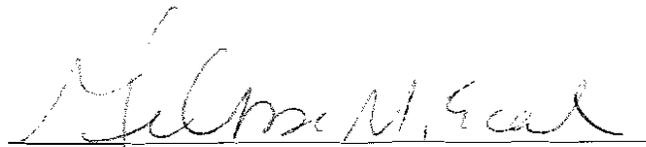
V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61.
2. SOAH 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. Based upon Finding of Fact No. 8, Permittee violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2), 61.71(a)(20), 69.09 and/or 71.05.
6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten day suspension of the permit is warranted. 16 TEX. ADMIN. CODE § 37.60.
7. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Respondent should be allowed to pay a \$1,500 civil penalty in lieu of suspension of its permit.

SIGNED this 1st day of June, 2007.



MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 1, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

RE: Docket No. 458-07-1431/TABC vs. San Juanita Tagle dba El Centenario Bar

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa M. Ricard", is written over the typed name.

Melissa M. Ricard
Administrative Law Judge

MMR/ mar
Enclosure

xc: Natalie Howard, State Office of Administrative Hearings- **REGULAR MAIL**
Sandra K. Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
San Juanita Tagle, Respondent, 7278 Western Rd. Mission, Tx 78572 - **VIA REGULAR MAIL**