

DOCKET NO. 586191

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
VALENTINA RESTAURANT & PATIO BAR	§	
D/B/A VALENTINA RESTAURANT & PATIO BAR	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB715047, LB & PE	§	
	§	
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-5152)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 13th day of November, 2009, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Melissa M. Ricard, presiding. The hearing convened on August 19, 2009, and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on October 16, 2009. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

It is Ordered that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

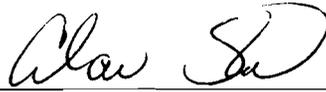
It is further Ordered that the sanctions and penalties found to be warranted by the Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

IT IS THEREFORE ORDERED that Respondent's conduct surety bond in the amount of \$5,000.00 be forfeited.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on December 7, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 13th day of November, 2009, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
5155 Flynn Parkway, Suite 200
Corpus Christi, TX 78411
VIA FACSIMILE TO: (361) 884-5427

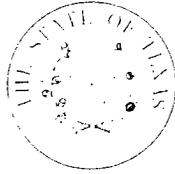
Valentina Restaurant & Patio Bar
d/b/a Valentina Restaurant & Patio Bar
RESPONDENT
2005 W Nolana
McAllen, TX 78504
VIA U.S. FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 16, 2009

RECEIVED

OCT 21 2009

ABC HOUSTON
LEGAL

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

VIA REGULAR MAIL

**RE: Docket No. 458-09-5152 / TEXAS ALCOHOLIC BEVERAGE COMMISSION
vs. VALENTINA RESTAURANT & PATIO BAR d/b/a VALENTINA
RESTAURANT & PATIO 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 § 155.507(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".

MELISSA M. RICARD
Administrative Law Judge

MMR/MAR
Enclosure

cc SANDRA PATTON, STAFF ATTORNEY, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Tx 77008- **VIA INTERAGENCY MAIL**
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA MAIL INTERAGENCY MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with exhibits Nos. _____ and _____ hearing CDs)
VALENTINA REST. & PATIO BAR, 2005 W. NOLANA, MCALLEN, TX 78504
VIA REGULAR MAIL

5155 Flynn Parkway, Suite 200 ♦ Corpus Christi, Texas 78411-4139
(361) 884-5023 Fax (361) 884-5427
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-09-5152

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	
VALENTINA RESTAURANT & PATIO BAR	§	
d/b/a VALENTINA RESTAURANT & PATIO BAR	§	OF
PERMIT NOS. 715047 LB & PE	§	
HIDALGO COUNTY, TEXAS	§	
(TABC CASE NO. 586191)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Valentina Restaurant & Patio Bar d/b/a Valentina Restaurant & Patio Bar (Respondent). The Respondent's permits have been cancelled for cause by the TABC. The TABC requests the Respondent's conduct surety bond be forfeited in accordance with Texas Alcoholic Beverage Code (Code) § 11.11. The Administrative Law Judge (ALJ) grants this request.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on August 19, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces, County, Texas. The staff of the Commission (Staff) was represented by its counsel, Sandra Patton, by telephone. Respondent did not appear. 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 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

CODE § 11.11(b)(2) and 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24 provides that the holder of a permit must provide a conduct surety bond with an application for a permit and that the permittee agrees that the amount of the surety bond shall be paid to the state if the permit is revoked.

Staff introduced Exhibit 1 into evidence which is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Permit No. MB-715047, which includes the Beverage Carthage Permit and the Mixed Beverage Late Hours Permit, was issued to Valentina Restaurant & Patio Bar, doing business as Valentina Restaurant & Patio Bar, 2005 W. Nolana Loop, McAllen, Hidalgo County, Texas, by the Commission. The mailing address is the same as the business address. The affidavit states that the permit was cancelled for cause on March 16, 2009. Exhibit 1 further shows that Respondent posted Conduct Surety Bond Number 5039040, dated February 5, 2009, in the amount of \$5,000, payable to the State of Texas.

Staff introduced Exhibit 2 into evidence which is the US Postal Service Track & Confirm letter showing that the notice of hearing sent to Respondent by certified mail 7006 0810 0000 2143 1830 was unclaimed and returned to the TABC on July 31, 2009. The Notice of Hearing was also sent by regular mail and was not returned to the TABC.

III. RECOMMENDATION

The notice of hearing, in bold lettering, states: If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default. The notice of hearing contains the following language in bold face, all caps type: “According to 1 TEXAS ADMINISTRATIVE CODE §155.55, if any

party fails to appear at the hearing, any evidence presented and accepted by the court at the hearing will be considered as being true, and the relief sought may be granted by default.”

Because Respondent failed to attend the hearing, the allegations in the Notice of Hearing are deemed true and the conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. Permit No. MB-715047 was issued to Valentina Restaurant & Patio Bar, doing business as Valentina Restaurant & Patio Bar (Respondent), by the Texas Alcoholic Beverage Commission (TABC).
2. The mailing address of Respondent is 2005 W. Nolana Loop, McAllen, Hidalgo County, Texas.
3. Respondent posted Staff Conduct Surety Bond Number 5039040, dated February 5, 2009, in the amount of \$5,000, payable to the State of Texas.
4. Respondent's permit history shows that the permit was cancelled for cause on March 16, 2009.
5. TABC staff sent a notice of hearing regarding its intention to enforce the Texas Alcoholic Beverage Code to the Respondent on January 10, 2009 at its address of record via certified mail. The notice of hearing was returned to sender on March 6, 2009, because it was unclaimed. The notice of hearing was also sent regular mail and not returned to the TABC.
6. The notice of hearing also contained the following language in capital letters in 12-point or larger boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegation (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.
7. The hearing on the merits was held on August 19, 2009, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra Patton by telephone. Respondent did not appear and was not represented at the hearing.
8. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 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 Rule, 1 TEX. ADMIN. CODE (TAC) § 155.55.
5. Based upon the Findings of Fact, TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2), and 16 TAC § 33.24, Conduct Surety Bond Number 5039040, dated February 5, 2009, in the amount of \$5,000, should be forfeited.

SIGNED October 16, 2009.



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