

DOCKET NO. 589078

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
ALFRED EARL MARTIN	§	ALCOHOLIC
D/B/A AL'S PLACE,	§	
Respondent	§	
	§	
PERMIT NO. BG244039	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-4327)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of January, 2011, the above-styled and numbered cause.

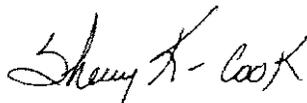
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Brenda Coleman presiding. The hearing convened on August 26, 2010 and the SOAH record closed on that date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 18, 2010. The 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, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 other motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED that Respondent's Wine and Beer Retailer's On-Premise Permit No. BG244039 is cancelled.

This Order will become final and enforceable on the 8th day of February, 2011, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 13th day of January, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 13th day of January, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE: (512) 322-0471

Alfred Earl Martin
d/b/a Al's Place
RESPONDENT
4720 Myrtle
Dallas, Texas 75215
VIA REGULAR MAIL

John W. Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Section

TABC Licensing Division

Lt. Jeff Gladden
TABC Dallas District Office

SOAH DOCKET NO. 458-10-4327

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	OF
	§	
ALFRED EARL MARTIN	§	
D/B/A AL'S PLACE,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Commission) staff (Staff) brought this enforcement action against Alfred Earl Martin d/b/a Al's Place (Respondent). Staff sought cancellation of Respondent's Wine and Beer Retailer's On Premise Permit, alleging that Respondent has failed to pay taxes, fees, or penalties due to the State of Texas, and Respondent no longer holds a sales tax permit for the premises covered by the alcoholic beverage permit. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

On June 29, 2010, Staff issued its notice of hearing, directed to Alfred Earl Martin d/b/a Al's Place, and scheduling the hearing on the merits for July 16, 2010. At Respondent's request, the matter was continued to August 26, 2010. On August 26, 2010, the hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Staff was represented at the hearing by John W. Sedberry, an attorney with the Commission. Respondent appeared *pro se*. Evidence was received and the record closed on August 26, 2010.

SOAH DOCKET NO. 458-10-4327

PROPOSAL FOR DECISION

PAGE 2

II. DISCUSSION AND ANALYSIS

A. Applicable Law

As provided in TEX. ALCO. BEV. CODE ANN. (Code) § 11.61(b)(5), the Commission may cancel or suspend a permit if it finds the permittee is indebted to the state for taxes, fees, or payment of penalties. Pursuant to Code § 11.61(c)(1), the Commission may refuse to renew, suspend, or cancel a permit if it finds the permittee no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit.

B. The Evidence

Staff's two exhibits were admitted at the hearing without objection. Exhibit No. 2 includes a copy of the permit and violation history. The Commission issued Wine and Beer Retailer's On Premise Permit BG244039 to Respondent on May 3, 1989, for the premises is located at 4720 Myrtle, Dallas, Dallas County, Texas. The permit has been continuously renewed.

Reginald Reynolds, a Program Specialist employed by the Texas State Comptroller's Office, testified that Respondent has failed to pay sales taxes to the state, and at the time of the hearing, Respondent owed \$49,102.93 for unpaid taxes, fees, and penalties, in addition to associated costs payable to the Office of the Attorney General. According to Mr. Reynolds, the Comptroller's Office sent notices regarding the debt to Respondent as late as March 2010, and also tried to contact Respondent prior to referring the matter to the Office of the Attorney General. Mr. Reynolds said Respondent's sales tax permit was suspended on June 4, 1996, as a result of Respondent's delinquent account.

During his testimony at the hearing, Alfred Earl Martin merely indicated that he would like the opportunity to work out a payment plan with the Comptroller's Office and the Office of the

SOAH DOCKET NO. 458-10-4327

PROPOSAL FOR DECISION

PAGE 3

Attorney General regarding his outstanding debt. The evidence offered by Staff was not controverted by the testimony of Mr. Martin, and Respondent offered no other evidence.

C. Analysis and Recommendation

Respondent was under a duty to pay sales taxes to the State of Texas. The evidence clearly demonstrates that it did not. Respondent has operated without a sales tax permit since 1996. The ALJ recommends cancellation of Respondent's alcoholic beverage permit.

IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission) issued Wine and Beer Retailer's On Premise Permit BG244039 to Alfred Earl Martin d/b/a Al's Place (Respondent) on May 3, 1989.
2. Respondent's premises are located at 4720 Myrtle, Dallas, Dallas County, Texas.
3. On or about June 4, 1996, Respondent failed to pay sales taxes due to the State of Texas for the premises covered by the alcoholic beverage permit.
4. On or about June 4, 1996, Respondent's state sales tax permit was suspended due to Respondent's delinquent account.
5. Respondent owes \$49,102.93 to the state for unpaid taxes, fees, and penalties.
6. Respondent had been sent notices that the amount was due.
7. On June 29, 2010, the staff of the Commission (Staff) issued its notice of hearing to Respondent.
8. The notice of hearing 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 particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The hearing was convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge, Brenda Coleman, on August 26, 2010. Staff was represented by John W. Sedberry, an attorney with the Commission. Respondent appeared *pro se*. The record closed the same day.

SOAH DOCKET NO. 458-10-4327

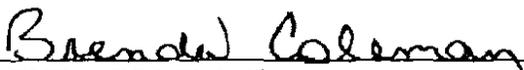
PROPOSAL FOR DECISION

PAGE 4

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) ch. 5 and §§ 11.61, 61.71, 25.04, and 61.712.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of 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. Based on the foregoing findings, Respondent failed to pay a debt for taxes, fees, or penalties imposed by the Code, and by TEX. TAX. CODE ANN. ch. 183.
5. Based on the foregoing findings and conclusions, Respondent no longer holds the sales tax permit required by TEX. TAX. CODE ANN. ch. 151.
6. Based on the foregoing findings and conclusions, Respondent's Wine and Beer Retailer's On Premise Permit BG244039 should be canceled.

SIGNED October 18, 2010.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
