

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 12, 2011

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

VIA REGULAR MAIL

**RE: Docket No. 458-11-6854
Carlos Rivera Mata d/b/a J.B. Restaurant and Sports Grill**

Dear Mr. Steen:

Please find enclosed a Default Proposal for Decision in this case.

The exhibits and the audio recording are also included.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera".

Veronica S. Najera
Administrative Law Judge

Enclosure

xc Sandra K. Patton, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - **VIA REGULAR MAIL**

Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA REGULAR MAIL**

Carlos R. Mata, 6733 Morningside Circle, El Paso, Tx. 79914 - **VIA REGULAR MAIL**

RECEIVED

AUG 16 2011

**TABC HOUSTON
LEGAL**

DOCKET NO. 458-11-6854

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
CARLOS RIVERA MATA d/b/a J.B. RESTAURANT AND SPORTS GRILL Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff at the Texas Alcoholic Beverage Commission (Petitioner) brought this action against Carlos Rivera Mata d/b/a J.B. Restaurant and Sports Grill (Respondent), alleging Respondent engaged in conduct prohibited by and in violation of, the Texas Alcoholic Beverage Code by allowing an unauthorized person to use Respondent’s permit to conduct business. As Respondent did not appear and was not represented at the hearing, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) deems TABC’s allegation to be true and recommends cancellation of Respondent’s permit.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On June 30, 2011, Petitioner issued sent a notice of hearing to Respondent’s address of record at 6733 Morningside Circle, El Paso, Texas 79914. The notice of hearing was sent by U.S. regular mail and by certified mail, return receipt requested. Both envelopes were returned and marked “return to sender – attempted not known – unable to forward.” Petitioner further sent via regular mail the notice of hearing to Respondent’s business address at 5019 Alabama Street, El Paso, Texas 79914. The mailing was also returned and was marked “moved left no address – unable to forward – return to sender.” The three envelopes are part of the evidentiary record.

There are no contested issues of jurisdiction. The hearing convened before ALJ Veronica S. Najera at the SOAH El Paso Regional Office, on August 9, 2011. Staff was represented by Sandra

K. Patton. Respondent did not appear and was not represented. During the hearing, Staff offered evidence to support a default decision against Respondent. The hearing concluded and the record closed on that same day.

II. ANALYSIS

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.501 be invoked. The notice of hearing complies with 1 TAC §155.401 and 155.501, and TEX. ALCO. BEV. CODE. ANN. (CODE) §11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below. Further, Staff seeks cancellation of Respondent's permit number MB-740779. The relief sought should be granted.

III. FINDINGS OF FACT

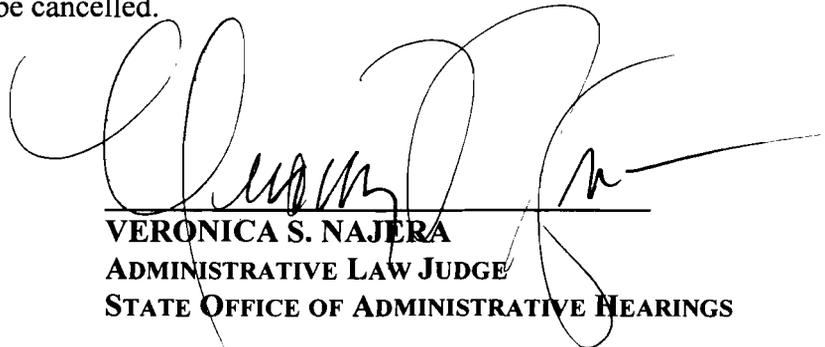
1. Carlos Rivera Mata d/b/a J.B. Restaurant and Sports Grill (Respondent) holds a Mixed Beverage Permit, MB-740779, which includes a Mixed Beverage Late Hours Permit and a Food and Beverage Certificate, issued by the Texas Alcoholic Beverage Commission (Commission), for the premises located at 5019 Alabama Street, El Paso, Texas.
2. On June 30, 2011, the Commission's Staff (Petitioner) issued a notice of hearing to Respondent at its mailing address of record reflected on Respondent's permits at 6733 Morningside Circle, El Paso, Texas, 79914-1539. The notice of hearing was sent by U.S. regular mail and by certified mail, return receipt requested.
3. Both envelopes were returned to sender as "return to sender – attempted not known – unable to forward."
4. On June 30, 2011, Petitioner issued a notice of hearing to Respondent at its business address: 5019 Alabama Street, El Paso, Texas 79914.
5. The envelope was returned to sender as "moved left no address – unable to forward – return to sender."
6. 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 statement of the matters asserted.

7. The notice of hearing properly disclosed in at least 12-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed to be admitted as true, and the relief sought may be granted by default.
8. The hearing convened before Administrative Law Judge Veronica S. Najera at the State Office of Administrative Hearings (SOAH) El Paso Regional Office, on August 9, 2011. Staff was represented by Sandra K. Patton. Respondent did not appear and was not represented.
9. The record closed on August 9, 2011.
10. On or about August 18, 2010, Respondent permitted an unauthorized person to use permit MB-740779 to conduct business.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2001 and Code. § 5.43.
3. Based upon the Findings of Fact, notice of hearing was issued in compliance with 1 TEX. ADMIN. CODE (TAC) §§ 155.401 and 155.501 and Code § 11.63.
4. Based upon Findings of Fact, the hearing proceeded on a default basis as authorized by 1 TAC § 155.501.
5. Based upon Findings of Fact, Respondent violated Code §§ 11.05. 11.61(b)(2) and 109.53.
6. Respondent's permit should be cancelled.

SIGNED: August 12, 2011.



VERÓNICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SIGNED this the 12th day of April, 2012, 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 12th day of April, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Veronica S. Najera
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
401 East Franklin Avenue, Suite 580
El Paso, Texas 79901
VIA FACSIMILE: (512) 322-0472

Carlos Rivera Mata
d/b/a Captain J.B. restaurant & Sports Grill
RESPONDENT
3733 Morningside Cr.
El Paso, TX 79914
VIA REGULAR & CERTIFIED MAIL: 7006 2760 0004 7904 2244

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA ELECTRONIC MAIL: SANDRA.PATTON@TABC.STATE.TX.US

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Sandy Higdon
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