

DOCKET NO. 626272

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
and	§	
	§	
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, Protestant	§	
	§	
VS.	§	
	§	
R.B.H. MANAGEMENT INC. D/B/A MIA BELLA TRATTORIA, Respondent/Applicant	§	ALCOHOLIC
	§	
PERMIT MB742254, FB	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-15-0226)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 17 day of April, 2015, 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 Lindy Hendricks presiding. The hearing convened on October 17, 2014, and the SOAH record closed that same day. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 27, 2014. 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. No exceptions were filed.

After review and due consideration of the Proposal for Decision, and with the following exception only to Conclusion of Law No. 4, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

Conclusion of Law No. 4 is modified to read:

4. Respondent violated Code §§11.61(c)(2) and 11.46(a)(5).

The change to Conclusion of Law No. 4 is made to correct an error of law in the citation of applicable provisions of the Alcoholic Beverage Code and the rules of the Commission.

All 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 are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that Respondent's application for renewal of Permit MB742254 and the associated Food and Beverage Certificate, is hereby **DENIED**.

This Order will become final and enforceable on the 12 day of May, 2015, unless a Motion for Rehearing is filed by the 11 day of May, 2015.

SIGNED this the 17 day of April, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 17 day of April, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Lindy Hendricks
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-2061

R.B.H. Management Inc.
d/b/a Mia Bella Trattoria
RESPONDENT
320 Main
Houston, TX 77002
VIA REGULAR MAIL, CMRRR # 7012 0470 0001 3300 9764

Monique Parker
Texas Comptroller of Public Accounts
PROTESTANT
1919 North Loop West, Suite 311
Houston, TX 77008
VIA REGULAR MAIL, CMRRR # 7012 0470 0001 3300 9856

Ramona Perry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: Ramona.perry@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 27, 2014

RECEIVED
OCT 29 2014
ADMINISTRATIVE
HEARINGS

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: SOAH Docket No. 458-15-0226; Texas Alcoholic Beverage Commission vs. R.B.H. Management Inc. d/b/a Mia Bella Trattoria

Dear Ms. Cook:

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 that reads "Lindy Hendricks".

Lindy Hendricks
Administrative Law Judge

LH/mr
Enclosure

xc Ramona Perry, 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**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731 - **VIA REGULAR MAIL**
R.B.H. Management Inc. d/b/a Mia Bella Trattoria, 320 Main, Houston, TX 77002 - **VIA REGULAR MAIL**
Monique Parker, Texas Comptroller of Public Accounts, 1919 North Loop West, Suite 311, Houston, TX
77008 - **VIA REGULAR MAIL**

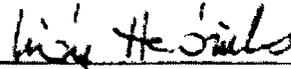
2. On September 18, 2014, Staff of the TABC issued a notice of hearing by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known mailing address setting the hearing on the merits for October 17, 2014. It was also sent to Respondent's residential address. The notices to the last known mailing address were "returned to sender; attempted – not known; unable to forward." The notice to the residential address was not returned and presumed received.
3. The notice of hearing informed Respondent of the time, date, and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
4. The notice of hearing also contained language in 12-point, bold-face type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice might be granted by default.
5. The hearing convened on October 17, 2014, before Administrative Law Judge Lindy Hendricks at the State Office of Administrative Hearings (SOAH) office in Houston, Texas. TABC was represented by Staff Attorney, Ramona M. Perry. Respondent did not appear and was not represented at the hearing.
6. Staff moved for a default, which was granted.
7. The allegations contained in the notice are deemed admitted as true.
8. Respondent is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable and is delinquent in mixed beverage gross receipts taxes in violation of the Texas Alcoholic Beverage Code.

II. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Chapter 5 and §11.61.
2. SOAH has jurisdiction over all matters related 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 Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided as required by Texas Government Code §§ 2001.051 and 2001.052.
4. Respondent violated Code §§ 11.61(c)(2), 11.46(b)(5), and 16 Texas Administrative Code § 41.50.

5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's renewal application should be denied.

SIGNED October 27, 2014.



LINDY HENDRICKS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS