

SOAH DOCKET NO. 458-03-2118

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

NBS BEVERAGE COMPANY, INC.  
D/B/A LOS COMPASS NIGHT CLUB  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 602965)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by NBS Beverage Company, Incorporated d/b/a Los Compass Night Club (Respondent). Staff recommended that the conduct surety bond be forfeited because Respondent has committed three violations of the Texas Alcoholic Beverage Code (the Code) or Commission's rules since September 1, 1995. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that the Respondent's conduct surety bond be forfeited.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

There are no contested issues of jurisdiction, notice or venue in this proceeding. Those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On February 12, 2003, Staff issued its Notice of Hearing. The notice was directed to NBS Beverage Company, Incorporated d/b/a Los Compass Night Club at 1514 Chapman Street, Cedar Hill, Texas 75014. On March 20, 2003, a hearing convened before ALJ Brenda Coleman at the State Office of Administrative Hearings (SOAH), 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent's president and owner, Nellie Santillana, appeared in person and by counsel, Robert M. Burns, Attorney at Law. Evidence was received and the record was closed on that date.

**II. THE ALLEGATIONS AND APPLICABLE LAW**

Staff alleges that (1) Respondent has been issued a permit and license; (2) Respondent has committed three violations of the Code or Commission's rules since September 1, 1995; (3) the



violations have been finally adjudicated; and (4) Respondent has forfeited the full amount of the conduct surety bond.

The Commission's rule, found at 16 TEX. ADMIN. CODE § 33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or when there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

### III. EVIDENCE

Staff sent Respondent written notice of Staff's intent to seek forfeiture of Respondent's conduct surety bond by letter dated November 20, 2002. Respondent requested a hearing to determine if its bond should be forfeited by signing the letter and returning it to Staff. At the hearing, the following evidence was undisputed by the parties. Respondent's licensed premise is located at 2829 West Northwest Highway No. 216, Dallas, Dallas County, Texas. The Commission issued Wine and Beer Retailer's Permit, BG 456068, and Retail Dealer's On-Premise Late Hours License, BL 456069, to Respondent on August 6, 1999. The permit and license have been continuously renewed.

On August 4, 1999, Respondent posted conduct surety bond number XTL02993. Respondent, acting through Nelly Santillana, executed the bond as Principal. First Indemnity of America Insurance Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.

On February 12, 2003, Staff served Respondent with Requests for Admissions (the Requests), a copy of which (along with proof of service) was admitted into evidence. Respondent failed to either admit or deny the Requests. The Requests are deemed admitted and the matters are outlined below.

On May 23, 2001, Respondent signed an Agreement and Waiver of Hearing in Docket Number 594574 regarding a violation of the Code. On April 27, 2001, Respondent was intoxicated on the licensed premises, in violation of § 104.01(5) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(13) of the Code. The waiver agreement states that Nelly Colin Santillana, President, without admitting the violation occurred, waived hearing in the matter and agreed that Respondent's permit and license be suspended for a period of seven days, unless a civil penalty in the amount of \$1,050.00 was paid.

As a result of this waiver agreement, the Commission Administrator entered an order on May 29, 2001. The order stated Respondent violated the Code as stated in the Agreement and Waiver of Hearing. The order further provided that Respondent's permits were suspended for seven days, effective July 4, 2001, unless Respondent paid a civil penalty in the amount of \$1,050.00.

On September 26, 2002, Respondent signed an Agreement and Waiver of Hearing in Docket

Number 601663 regarding two violations of the Code. On April 27, 2002, Respondent permitted the consumption of an alcoholic beverage on the licensed premises at a time when the consumption of alcoholic beverages is prohibited, in violation of § 61.71(a)(18) of the Code, which warrants suspension or cancellation of the license under § 11.61(b)(2) of the Code; additionally, on April 27, 2002, Respondent's employee sold or delivered drugs on the licensed premises, in violation of § 104.01(9) of the Code, which warrants suspension or cancellation of the license under the Commission's rule, found at 16 TEX. ADMIN. CODE § 35.31(c)(15). The waiver agreement states that Nelly Colin Santillana, President, without admitting the two violations occurred, waived hearing in the matter and agreed that Respondent's permit and license be suspended for a period of sixty days, unless a civil penalty in the amount of \$9,000.00 was paid.

As a result of this waiver agreement, the Commission Administrator entered an order on October 8, 2002. The order stated Respondent violated the Code as stated in the Agreement and Waiver of Hearing. The order further provided that Respondent's permits were suspended for sixty days, effective November 13, 2002, unless Respondent paid a civil penalty in the amount of \$9,000.00.

#### **IV. ANALYSIS, CONCLUSION AND RECOMMENDATION**

Conduct surety bonds are posted in favor of the Commission by license and permit holders to encourage compliance with provisions of the Code and Rules. At the hearing, Respondent did not dispute Staff's evidence. Respondent argued that Staff's evidence does not indicate the period of time in which the bond was to remain in effect and that any liability under the bond ceased three years after the initial date of the bond, August 4, 1999. Therefore, Respondent argued the Commission is not authorized to seek forfeiture of the bond. In response, Staff argued that the time period is not relevant and that the bond is not released until it is released by the Commission.

Respondent states no legal authority which supports its argument. Respondent failed to make any response to Staff's discovery requests as required by 1 TEX. ADMIN. CODE § 155.31. Therefore, the elements required to be established by Staff in this case should be deemed as admitted by Respondent. Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Respondent was finally adjudicated of three violations of the Code or Rules between September 27, 2001, and September 27, 2002, by its execution of Agreements and Waivers of Hearing on those violations. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN. CODE § 33.24(j). Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

#### **V. PROPOSED FINDINGS OF FACT**

1. On August 4, 1999, Respondent posted conduct surety bond number XTL02993, in the amount of \$5,000.00.
2. On August 6, 1999, the Texas Alcoholic Beverage Commission (Staff or Commission)

issued Wine and Beer Retailer's Permit, BG456068, and Retail Dealer's On-Premise Late Hours License, BL456069, to Respondent for the premises known as NBS Beverage Company, Incorporated d/b/a Los Compass Night Club at 2829 West Northwest Highway, No. 216, Dallas, Dallas County, Texas.

3. On May 23, 2001, Respondent signed an Agreement and Waiver of Hearing in Docket Number 594574 regarding a violation of the Code. The violation occurred on April 27, 2001.
4. On May 29, 2001, the Commission issued an order finding Respondent had violated the Code on April 27, 2001, and assessing an administrative penalty against Respondent.
5. On September 26, 2002, Respondent signed an Agreement and Waiver of Hearing in Docket Number 601663 regarding two violations of the Code and Commission's rules. The violations occurred on April 27, 2002.
6. On October 8, 2002, the Commission issued an order finding Respondent had committed the violations of Code and Commission's rules on April 27, 2002, and assessing an administrative penalty against Respondent.

By signing the waiver agreements in each instance, Respondent acknowledged that its permit and license would be suspended by the Commission unless Respondent paid a civil penalty. Respondent further agreed and acknowledged that the signing of the waiver agreements may result in the forfeiture of any related conduct surety bond.

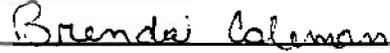
8. Respondent has committed three violations of the Code since September 1, 1995, which resulted in a final adjudication by the Commission against Respondent.
9. Staff sent Respondent written notice of Staff's intent to seek forfeiture of Respondent's conduct surety bond by letter dated November 20, 2002. Respondent requested a hearing on this matter.
10. On February 12, 2003, Staff issued its Notice of Hearing to Respondent at 1514 Chapman Street, Cedar Hill, Texas 75104. It informed Respondent the hearing would be held on March 20, 2003, at 10:00 a.m., at 6333 Forest Park Road, Suite 150A, Dallas, Texas.
11. The notice alleged Respondent had committed three violations of the Code and Commission rules. The notice made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved and included a short, plain statement of the matters asserted.
12. On March 20, 2003, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings. Staff was represented at the hearing by Timothy

E. Griffith, an attorney with the Commission's Legal Division. Respondent was represented at the hearing by Robert M. Burns, Attorney at Law. Evidence was received and the record was closed on that date.

## VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code.
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 facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE §§ 155.25 and 155.27.
4. Based on Findings of Fact Nos. 3 through 8, Respondent's conduct surety bond should be forfeited. TEX. ALCO BEV. CODE §§ 11.11 and 61.13; 16 TEX. ADMIN. CODE § 33.24.

ISSUED this 20th day of May, 2003.

  
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Brenda Coleman  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 602965**

IN RE NBS BEVERAGE COMPANY INC.	§	BEFORE THE
D/B/A LOS COMPASS NIGHT CLUB	§	
PERMIT NO. BG456068	§	
LICENSE NO. BL456069	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2118)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 16th day of June 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on March 20, 2003, and adjourned on March 20, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 20, 2003. This Proposal For Decision (attached hereto as Exhibit "A"), 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, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

**This Order will become final and enforceable on July 7, 2003**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 16th day of June, 2003.

On Behalf of the Administrator,



Jeanere Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/bc

The Honorable Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FAX (214) 956-8611

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NBS BEVERAGE COMPANY INC.  
D/B/A LOS COMPASS NIGHT CLUB  
RESPONDENT  
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CERTIFIED MAIL NO. 7001 2510 0003 8687 0147

Timothy E. Griffith  
ATTORNEY FOR PETITIONER  
TABC Legal Section

Regulatory Division

Dallas District Office