

DOCKET NO. 458-03-2472

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	OF
Z. EDWARD OSWALT D/B/A FREEDOM LOUNGE, Respondent GARZA COUNTY, TEXAS (TABC NO. 602969)	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Z. Edward Oswald d/b/a Freedom Lounge (Respondent), alleging that Respondent was found to have committed three violations of the Alcoholic Beverage Code (the Code) since September 1, 1995. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that Staff's allegations are true and recommends that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

On March 13, 2003, the TABC Staff issued a notice of hearing to Respondent at its mailing address of record reflected on Respondent's permits: 116 S. Ave. F, Post, Texas 79356-3319. The Notice was sent by certified mail (7001 2510 0003 8688 6964), return receipt requested.

A hearing was convened before ALJ B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas, on April 4, 2003. Staff was represented at the hearing by Gail Gordon, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. The hearing concluded and the record closed on the same day.

II. REASONS FOR PROPOSED DECISION

Based on Respondent's failure to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Staff issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and § 11.63 of the Code. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated those allegations into the Proposed Findings of Fact below.

TABC Staff requested that the ALJ recommend a penalty in this case of forfeiture of the full amount of Respondent's conduct surety bond.

III. PROPOSED FINDINGS OF FACT

1. Z. Edward Oswalt, d/b/a Freedom Lounge (Respondent) holds a Wine and Beer Retailers Permit, BG514355, and a Retail Dealer's On Premise Late Hours License, BL514356, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 116 S. Ave. F, Post, Garza County, Texas.
2. On March 13, 2003, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 116 S. Ave. F, Post, Texas 79356-3319. The Notice was sent by certified mail (7001 2510 0003 8688 6964), return receipt requested.
3. 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.
4. The Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the Notice will be deemed as true, and the relief sought may be granted by default.
5. On April 4, 2003, a hearing was convened before ALJ B. L. Phillips at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. TABC Staff was represented at the hearing by Gail Gordon, a TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On October 24, 2002, Respondent signed an Agreement and Waiver of Hearing which described administrative violations of permitting an intoxicated employee on the licensed premises; selling, serving, or delivering during prohibited hours; and permitting consumption during prohibited hours, each of which occurred on August 9, 2002.
7. The Agreement and Waiver of Hearing contained the following statement: "The signing of this waiver may result in the forfeiture of any related conduct surety bond."
8. On October 31, 2002, the TABC Administrator entered an order finding Respondent had committed three violations of the Code consistent with Respondent's admissions found in Finding of Fact No. 6.
9. Respondent was found to have committed three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, and 61.71.
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 2 - 4, Staff issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated three provisions of the Code: permitting an intoxicated employee of the licensed premises; selling, serving or delivering during prohibited hours; and permitting consumption during prohibited hours.
6. Based upon Proposed Conclusion of Law No. 5, Respondent's conduct surety bond should be forfeited.

SIGNED on this the 10th day of April, 2003.



B. L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 602969

IN RE EDWARD Z. OSWALT	§	BEFORE THE
D/B/A FREEDOM LOUNGE	§	
PERMIT NO. BG514355	§	
LICENSE NO. BL514356	§	TEXAS ALCOHOLIC
	§	
GARZA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-2472)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 8th day of May, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on April 4, 2003 and adjourned on April 4, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 10, 2003. This 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, 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.

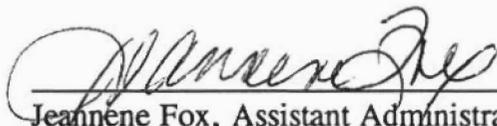
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on MAY 29, 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 and by mail as indicated below.

SIGNED this the 8th day of May, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (806) 692-0149

Z. Edward Oswalt
d/b/a Freedom Lounge
RESPONDENT
116 S Ave F
Post Tx 79356-3319
VIA CERTIFIED MAIL RRR #7001 2510 0003 8688 9125

Gayle Gordon
ATTORNEY FOR PETITIONER
TABAC Legal Section

Regulatory Division

Lubbock District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

April 10, 2003



Mr. Rolando Garza, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

RE: Docket No. 458-03-2472; TABC vs. Z. EDWARD OSWALT D/B/A FREEDOM LOUNGE, PERMIT NO. BG-514355 & LICENSE NO. BL-514356, GARZA COUNTY, TEXAS

Dear Mr. Garza:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Z. Edward Oswalt d/b/a Freedom Lounge (Respondent). For reasons discussed in the Proposal for Decision, I recommend that Respondent's conduct surety bond should be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062, each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink that reads "B. L. Phillips".

B. L. Phillips
Administrative Law Judge

BLP/blp
Enclosure

xc: ✓ Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA REGULAR U.S. MAIL
Z. Edward Oswalt d/b/a Freedom Lounge, 116 S. Avenue F, Post, Texas 79356-3319 - VIA REGULAR U.S. MAIL