

DOCKET NO. 458-03-3064

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

VS.

TECHEN-BROCKMAN, INC.  
D/B/A GOLD CROWN BILLIARDS  
PERMIT NO. BG-520567  
HAYS COUNTY, TEXAS  
(TABC CASE NO. 604694)

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Techen-Brockman, Inc. d/b/a Gold Crown Billiards (Respondent). The Administrative Law Judge (ALJ) finds Petitioner proved, by a preponderance of the evidence, that all requirements for forfeiture of the bond have been met. Consequently, the ALJ recommends Petitioner's proposed action be sustained and Respondent's conduct surety bond be forfeited.

**JURISDICTION AND NOTICE**

Notice and jurisdiction were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

**PROCEDURAL HISTORY**

The hearing convened and the record closed on June 26, 2003. Petitioner was represented by Gayle Gordon, staff attorney. Respondent appeared and was represented Marilyn Techen. ALJ John H. Beeler presided.

**DISCUSSION**

**1. Background**

On February 18, 2003, Petitioner issued an order assessing an administrative penalty against Respondent for three violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent waived its right to a hearing. The order constituted a final adjudication of the violations. All violations occurred after September 1, 1995.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct security bond based on its final adjudication of Respondent's Code violations. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

## **2. Legal Standards**

Upon final adjudication that a licensee or permittee has committed three Code violations since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.

The applicable statutory provision at TEX. ALCO. BEV. CODE § 11.11(b)(2) states ". . . the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code . . . ."

Petitioner's rule at 16 TEX. ADMIN. CODE §33.24(j) is more lenient, and provides, "(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the license or permittee, in writing, of its intent to seek forfeiture of the bond."

## **3. Recommendation**

Because Petitioner proved by a preponderance of the evidence that all requirements for forfeiture of Respondent's conduct surety bond have been met, the ALJ recommends Respondent's conduct bond be forfeited.

### **PROPOSED FINDINGS OF FACT**

1. On February 18, 2003, the Texas Alcoholic Beverage Commission (Petitioner) issued a final order assessing an administrative penalty against Techen-Brockman, Inc. d/b/a Gold Crown Billiards (Respondent), for three violations of the Texas Alcoholic Beverage Code, each of which violations occurred after September 1, 1995.
2. Respondent holds Wine and Beer Retailer's Permit No. BG-520567.
3. Petitioner notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on Petitioner's final adjudication of Respondent's violations of the Texas Alcoholic Beverage Code
4. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of her conduct surety bond, resulting in the June 26, 2003, hearing in this case.

## PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§6.01 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§2001.051 and 2001.052.
4. Based on the above Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met.
5. Based on Conclusion of Law number 4, Respondent's conduct surety bond should be forfeited.

**SIGNED** this 21<sup>st</sup> day of August, 2002.



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**JOHN H. BEELER**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# State Office of Administrative Hearings



AUG 21 2003

**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

August 21, 2003

Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

**HAND DELIVERY**

**RE: Docket No. 458-03-3064; Texas Alcoholic Beverage Commission vs. Techen-Brockman Inc. d/b/a Gold Crown Billiards Permit No. BG520567 (TABC Case No. 604694)**

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

By copy of this letter, I am informing the parties that under TEX. GOV'T CODE ANN. § 2001.062, each party has the right to file exceptions and present briefs with respect to the Proposal for Decision. If a party files exceptions or briefs, all other parties may file replies. A copy of any exceptions, briefs, or replies must be filed with the State Office of Administrative Hearings and served on all parties.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler  
Administrative Law Judge

JHB/sb  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**  
Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**  
Marilyn Techen, Techen-Brockman, Inc. d/b/a Gold Crown Billiards, 205 W. San Antonio 'A', San Marcos, Texas  
78666 -**VIA REGULAR MAIL**

**DOCKET NO. 604694**

IN RE TECHEN-BROCKMAN INC.	§	BEFORE THE
D/B/A GOLD CROWN BILLIARDS	§	
PERMIT NO. BG520567	§	
	§	TEXAS ALCOHOLIC
	§	
HAYS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-3064)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 6th day of October, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on June 26, 2003 and adjourned on June 26, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 21, 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.

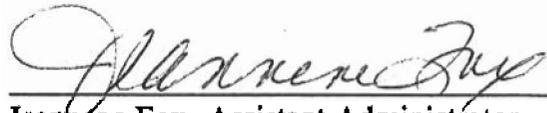
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on OCTOBER 27, 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 6th day of October, 2003.

On Behalf of the Administrator,



**Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission**

KGG/vr

**The Honorable John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (512) 475-4994**

**Techen-Brockman, Inc.  
RESPONDENT  
d/b/a Gold Crown Billiards  
2305 W. San Antonio "A"  
San Marcos, Tx. 78666  
VIA CERTIFIED MAIL RRR 7001 2510 0007 6975**

**Gayle Gordon  
ATTORNEY FOR PETITIONER  
TABC Legal Section**

**Licensing Division  
Austin District Office**