

SOAH DOCKET NO. 458-05-3132

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
RULER INC.	§	
D/B/A RODEO NITE CLUB	§	
PERMIT NOS. MB480665, LB480666	§	
EL PASO COUNTY, TEXAS	§	
(TABC CASE NO. 612887)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 27th day of April, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on February 11, 2005 and adjourned on February 11, 2005. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 4, 2005. 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.

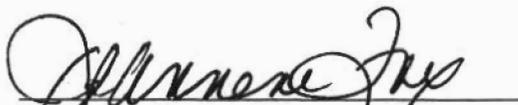
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on **MAY 18, 2005**, 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 27th day of April, 2005.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Veronica S. Najera
Administrative Law Judge
State Office of Administrative Hearings
El Paso, Texas
VIA FAX (915) 834-5657

William Hardie
ATTORNEY FOR RESPONDENT
VIA FAX (915) 845-5089

Ruler Inc.
d/b/a Rodeo Nite Club
RESPONDENT
4455 Shadow Willow
El Paso, Tx. 79922
CERTIFIED MAIL RRR #7000 1530 0003 1930 2217

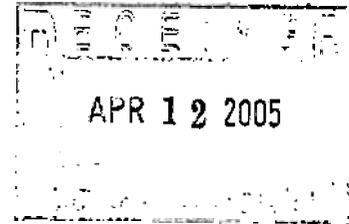
Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



April 4, 2005

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

VIA FACSIMILE NO. 512-206-3350
AND REGULAR MAIL

RE: Docket No. 458-05-3132
Texas Alcoholic Beverage Commission v. Ruler Inc. d/b/a Rodeo Nite Club

Dear Ms. Fox:

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


Veronica S. Najera
Administrative Law Judge

VSN/cr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA FACSIMILE AND REGULAR MAIL**

Gayle Gordon, Attorney, TABC Legal Division, 5806 Mesa, Suite 160, Austin, Texas - 79912-**VIA FACSIMILE NO. 512-206-3498 AND REGULAR MAIL**

William Hardie, Attorney at Law, 725 S. Mesa Hills Drive, Bldg. 2, Suite 2, El Paso, Texas 79912-**VIA FACSIMILE NO. 915-845-5089 AND REGULAR MAIL**



El Paso State Office Building
401 East Franklin Ave., Suite 580 ♦ El Paso, Texas 79901

III. DISCUSSION

A. Background

On October 18, 2000, the Texas Alcoholic Beverage Commission issued to Respondent a Mixed Beverage Permit, MB-480665, and a Mixed Beverage Late Hours Permit, LB-480666, which had been continuously renewed.

On January 8, 2001, Petitioner issued a waiver order against Respondent for a violation of §104.01(9)¹ of the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violation occurred, and accepted a \$6,750.00 penalty or suspension for a period of 45 days. The January 2001 order constituted a final adjudication of the violation.

On August 25, 2004, Petitioner issued a waiver order against Respondent for a violation of §28.11² and §61.42(a)(3)³ of the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violations occurred, and accepted a \$15,000.00 penalty or suspension for a period of 60 days. The August 2004 order constituted a final adjudication of two violations.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct

1

TEX. ALCO. BEV. CODE §104.01(9). No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: possession of a narcotic or any equipment used or designed for administering of a narcotic or permitting a person on the licensed premises to do so.

2

TEX. ALCO. BEV. CODE §28.11. The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on the premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on the premises under his control.

3

TEX. ALCO. BEV. CODE §61.42(a)(3). The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people.

surety bond based on three or more adjudicated violations of the Texas Alcoholic Beverage Code. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

B. Legal Standards

Respondent was required to file with the Commission a surety bond in the amount of \$5,000.00.⁴ When a licensee or permittee has committed three violations of the Texas Alcoholic Code since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.⁵ In this case, three violations were committed and waiver orders were issued on each violation. The applicable statutory provision states ". . . that 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"⁶

C. 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 surety bond be forfeited.

IV. FINDINGS OF FACT

1. On January 8, 2001, Petitioner issued a waiver order suspending Respondent's permit for a violation of §104.01(9) of the Texas Alcoholic Beverage Code.
2. On August 25, 2004, Petitioner issued a waiver order suspending Respondent's permit for a violation of §28.11 of the Texas Alcoholic Beverage Code.

4
TEX. ALCO. BEV. CODE § 11.11(a)(1).

5
16 TEX. ADMIN. CODE § 33.24(j).

6
TEX. ALCO. BEV. CODE § 11.11(b)(2).

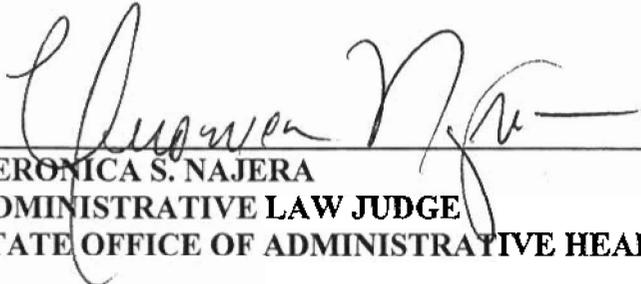
3. On August 25, 2004, Petitioner issued a waiver order suspending Respondent's permit for a violation of §61.42(a)(3) of the Texas Alcoholic Beverage Code.
4. Respondent holds a Mixed Beverage Permit No. MB-480665, issued by Petitioner for the premises located at 6930 Alameda, in El Paso, El Paso County, Texas 79915.
5. Respondent holds a Mixed Beverage Late Hours Permit No. LB-480666, issued by Petitioner for the premises located at 6930 Alameda, in El Paso, El Paso County, Texas 79915.
6. Respondent has posted a Conduct Surety Bond, numbered 091000040857808, executed on October 3, 2001, in the amount of \$5,000.00.
7. Respondent has three final adjudications of three separate provisions of the Texas Alcoholic Beverage Code since September 1, 1995.
8. 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.
9. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of the conduct surety bond, resulting in the February 11, 2005, hearing in this case.
10. Proper and timely notice of the hearing was sent to Respondent on January 6, 2005.
11. 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 short, plain statement of the matters asserted.

V. 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 Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met pursuant to TEX. ALCO. BEV. CODE §11.11(b)(2) and TEX. ADMIN. CODE §33.24(j).
5. Based on Conclusion of Law No. 4, Respondent's conduct surety bond should be forfeited.

SIGNED April 4, 2005.



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