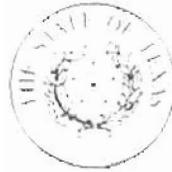


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 10, 1999

Mr. Doyne Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-99-0129; Raja Sweets, Inc.; TABC No. 579197

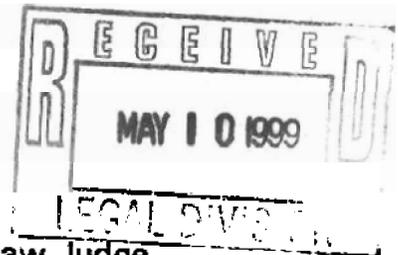
Dear Mr. Bailey:

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, counsel representing the Texas Alcoholic Beverage Commission, and to Raja Sweets, Inc.. For reasons discussed in the Proposal for Decision, I have recommended Permittee's surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), 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,

John H. Beeler
Administrative Law Judge



JHB/es

Enclosures

cc: Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**
Raja Sweets, Inc., Bragas, 10101 Bissonet, Houston, TX 77036 - **VIA CERTIFIED MAIL, RETURN RECEIPT**
REQUESTED NO. Z 383 248 484

Sarah Hudson, Docketing, State Office of Administrative Hearings

**DOCKET NO. 458-99-0129
(TABC CASE NO. 579197)**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
vs.	§	
	§	OF
RAJA SWEETS, INC. D/B/A BRAGAS PERMIT NO. MB-250632 HARRIS COUNTY, TEXAS	§ § § §	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 Raja Sweets, Inc., Joginder Singh Gahunia, President (Respondent), d/b/a Bragas. Respondent renewed a conduct surety bond¹ on November 21, 1997, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). The Staff recommended that the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing in this matter convened on March 10, 1999, before ALJ John H. Beeler, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

¹Respondent provided a conduct surety bond, Bond Number XTL 00505, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewal of the permit or license have expired." Exhibit 2.

II. Conduct Surety Bond

On November 21, 1994, the Commission issued a *Mixed Beverage Permit No. MB-250632*, to Respondent for the premises known as Bragas at 10101 Bissonnet, Houston, Harris County, Texas. On March 18, 1997, Respondent, as holder of a mixed beverage permit, posted a conduct surety bond for Bragas for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On April 16, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding four violations of the Code. The waiver agreement stated that on March 9, 1997, Respondent sold alcoholic beverages during prohibited hours, governed by TEX. ALCO. BEV. CODE ANN. § 105.03(a); possessed an alcoholic beverage unfit for consumption, governed by TEX. ALCO. BEV. CODE ANN. § 103.07; local distributor stamp not mutilated, governed by TEX. ALCO. BEV. CODE ANN. § 28.09(d); and possessed distilled spirits without local distributor's stamp, governed by TEX. ALCO. BEV. CODE ANN. § 28.15(a). The agreement contained the following language:

My name is Joginder S. Gahunia. I am permittee of Bragas. I hereby declare that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$2250.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in questions.

As a result of this waiver agreement, the Commission Administrator entered an Order on April 27, 1997. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's licenses were suspended for fifteen (15) days unless Respondent paid \$2250.00 as a civil penalty.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN., §§ 6.01 and 61.71. Texas Alcoholic Beverage Commission's (TABC) rule found at 16 Tex. Admin. Code (TAC) § 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 cancelled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree 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 the Code. Section

33.24 also applies and requires forfeiture upon cancellation, or upon final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

PROPOSED FINDINGS OF FACT

1. On November 21, 1997, the Texas Alcoholic Beverage Commission (Commission) renewed a *Mixed Beverage Permit*, issued to Respondent for the premises known as Bragas at 10101 Bissonnet, Houston, Harris County, Texas. On March 18, 1997, Respondent, as holder of the permit, posted a conduct surety bond for Bragas for \$5,000.
2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (the Staff) in a notice of hearing, dated January 25, 1999. The notice was properly sent to Respondent at the address provided in findings of fact No. 1. The notice of hearing was returned to the Commission marked, "Return to Sender, Unclaimed."
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 short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in capital letters in 10-point or larger boldface type:

If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. The hearing was convened on March 10, 1999, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. Respondent did not appear and was not represented at the hearing. Gayle Gordon, Assistant Attorney General, represented the Staff.
4. On April 16, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding four violations of the Code. By signing the waiver agreement, Respondent declared that on March 9, 1997, Respondent sold alcoholic beverages during prohibited hours, possessed an alcoholic beverage unfit for consumption, possessed a local distributor stamp that was not mutilated, and possessed distilled spirits without local distributor's stamp. Respondent acknowledged four violations of the Code had occurred and that his permit would be suspended or cancelled by the Commission unless he paid a civil penalty.
5. On April 24, 1997, the Commission Administrator entered an order finding Respondent had committed four violations of the Code consistent with Respondent's admissions found in Findings of Fact No. 4.

8. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, and 61.71 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Respondent holds permit number MG-250632, and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated four provisions of the Texas Alcoholic Beverage Code: sale of alcoholic beverages during prohibited hours, which is governed by TEX. ALCO. BEV. CODE ANN. § 105.03(a) (Vernon 1995 & Supp. 1999); possession of an alcoholic beverage unfit for consumption, which is governed by TEX. ALCO. BEV. CODE ANN. § 103.07 (Vernon 1995); in possession of a local distributor stamp not mutilated, governed by TEX. ALCO. BEV. CODE ANN. § 28.09(d) (Vernon 1995); and possession of distilled spirits without local distributor's stamp, governed by TEX. ALCO. BEV. CODE ANN. § 28.15(a) (Vernon 1995).
6. Respondent violated 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding a *Mixed Beverage Permit No. MG-250632*, issued by the Commission, and the conduct surety bond renewed by Respondent should be forfeited to the State.

SIGNED and entered this 10th day of May 1999.



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