

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 16, 1999

Doyme Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL Z269 601 777

**RE: Docket No. 458-99-0257; Texas Alcoholic Beverage Commission vs. T & B Restaurants
d/b/a T-Back (TABC Case No. 579839)**

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Tim Griffith, attorney for Texas Alcoholic Beverage Commission, and to Respondent's attorney, Rogert Albright. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond not be forfeited to the State.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,


Jerry A. Garrett
Administrative Law Judge

JAG:fgm

Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing
✓ Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission
Rogert Albright, Attorney, 3301 Elm, Dallas, Texas 75226-1637

Regular Mail
Certified Mail Z269-601-778
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JUN 18 1999

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LEGAL DIVISION

SOAH DOCKET NO. 458-99-0257

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

T & B RESTAURANTS, L.L.C
D/B/A T-BACK
PERMIT NO. MB-267241
DALLAS COUNTY, TEXAS
(TABC CASE NO. 579839)

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission initiated this action seeking forfeiture of the conduct surety bond posted by T & B Restaurants (Respondent) d/b/a T-Back. Respondent posted a conduct surety bond on the 3rd day of June 1997, in compliance with Sections 11.11 of the Texas Alcoholic Beverage Code (the Code). The Commission's Staff (the Staff) recommended that the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. This Proposal for Decision finds that the evidence is insufficient to sustain a finding that Respondent waived a final decision on the violations and that the bond should not be forfeited.

I. Jurisdiction, Notice, and Procedural History

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

On March 17, 1999, Jerry A. Garrett, Administrative Law Judge for the State Office of Administrative Hearings (SOAH), convened a public hearing at the Hearing Facility of the State Office of Administrative Hearings, Dallas, Texas. Respondent appeared in person and was represented by its counsel, Roger Albright. Tim Griffith, Assistant Attorney General, appeared to represent the Staff. Evidence and argument were heard, and the record closed at 4:00 p.m. March 26, 1999.

II. Conduct Surety Bond

On July 18, 1996, the Commission issued a Mixed Beverage Permit, MB-267241, to Respondent for the premises known as T & B Restaurants, 10649 Harry Hines, Dallas, Dallas County, Texas.

On June 3, 1997, Respondent, executed a conduct surety bond for T & B Restaurants in the amount of \$5,000 as required by Section 11.11 of the Code.

III. Waiver Order

On July 22, 1998, the Texas Alcoholic Beverage Commission administrator signed a Waiver Order finding in paragraph (2) the following:

2. Respondent has waived final decision on the violation described on the attached waiver, without admitting said violation did occur, and accepts the penalty assessed below.

The Waiver Order was admitted as part of the Commission's Exhibit Two. The "attached waiver" alluded to in the Order was not attached, and no evidence of a waiver signed or agreed to by Respondent was offered.

As a result of the Waiver Agreement not being attached to the Waiver Order, the Waiver Agreement cannot be considered in support of the Waiver Order signed on July 22, 1998.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke or suspend a permit, if the holder violates a provision of the Code or a rule of the Commission. TEX.ALCO.BEV.CODE Section 6.01. "Permittee" means a person who is the holder of a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE Section 1.04(11). 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 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, or final adjudication, that the holder violated a provision of the Code. The Commission's rule at TEX.ADMIN.CODE §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 July 18, 1996, the Commission issued a Mixed Beverage Permit, MB-267241, to Respondent for the premises known as T & B Restaurants, 10649 Harry Hines, Dallas, Dallas County, Texas.
2. The hearing was convened on March 17, 1999, at the Hearing Facility of the State Office of Administrative Hearings, 6300 Forest Park Rd., Suite 230B, Dallas, Texas. Respondent appeared in person and was represented by counsel, Roger Albright. Tim Griffith, Assistant Attorney General, appeared to represent the Staff. Evidence and argument were heard.
3. Both parties stipulated that Respondent received proper and timely notice of the hearing.
4. On June 3, 1997, Respondent executed a conduct surety bond to Respondent doing business as T & B Restaurants for \$5,000 as required by Section 11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of Respondent's Mixed Beverage Permit, which was July 18, 1996.
5. On July 22, 1998, the Commission Administrator entered an order stating that "that Respondent has waived final decision on the violation" described in the Attached Waiver. No Waiver by Respondent is attached.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the TEX. ALCO. BEV. CODE (Vernon 1995).
2. The State Office of Administrative Hearings has jurisdiction over the matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN., Sections 2003.021(b) and 2003.042(6) (Vernon 1998).
3. As referenced in Finding of Fact No. 3, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. Sections 2001.051 and 2001.052 (Vernon 1998).
4. Based upon Findings of Fact Nos. 1 and 4, Respondent holds Mixed Beverage Permit MB-267241 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE Section 11.11 (Vernon 1995 and Vernon Supp. 1998).