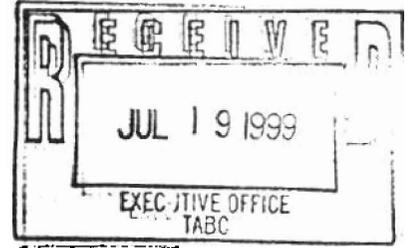


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



July 16, 1999

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

VIA CERTIFIED MAIL Z 269 601 787

RE: Docket No. 458-99-0258; Texas Alcoholic Beverage Commission vs. Sonny Otutu, d/b/a
Dread-n-Irle, (TABC Case No. 580325)

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, Sonny Otutu. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond 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,

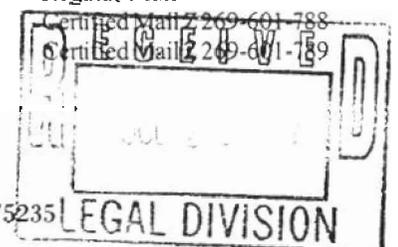
Jerry A. Garrett
Administrative Law Judge

JAG:fgm

Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing
Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission
Sonny Otutu, 1916 MLK, Jr. Blvd., Dallas 75125

Regular Mail



SOAH DOCKET NO. 458-99-0258

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

SONNY OTUTU
D/B/A DREAD-N-IRIE
PERMIT NO. BG-318769, BL-318770
DALLAS COUNTY, TEXAS
(TABC CASE NO. 580325)

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 Sonny Otutu (Respondent) d/b/a Dread-N-Irie. Respondent posted a conduct surety bond on the 26th day of May 1997, in compliance with Section 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 five violations of the Code since September 1, 1995. This proposal for decision agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

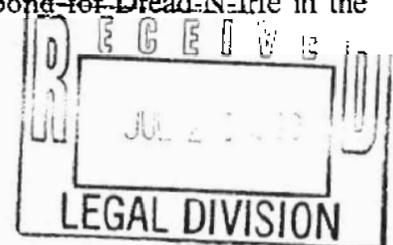
There are no contested issues of jurisdiction or notice in the proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On April 8, 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 did not appear. The Respondent appeared on April 9, 1999, leaving a letter stating he had confused the date of the hearing. On May 17, 1999, the record was reopened and Respondent appeared in person and a hearing was held on the merits on June 10, 1999. Timothy Griffith, TABC attorney, appeared in person to represent the Staff. Evidence and argument were heard.

II. Conduct Surety Bond

On June 24, 1997, the Commission issued a Wine and Beer Retailer's Permit, BG-318769 and Retail Dealer's On Premise Late Hours License, BL-318770, to Respondent for the premises known as Dread-N-Irie at 2807 Commerce, Dallas, Dallas County, Texas.

On May 26, 1997, Respondent, executed a conduct surety bond for Dread-N-Irie in the amount of \$5,000 as required by Section 11.11 of the Code.



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

On May 28, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding five violations of the Code. By signing the waiver agreement, Respondent did not deny that: on May 10, 1998, Respondent permitted a minor to possess and consume an alcoholic beverage, in violation of Section 106.04 of the Code, and violated the Code in the place and manner of its operation by violating the City Curfew Ordinance, in violation of Section 11.61(b)(13) and Section 11.61(b)(7) of the Code; on March 21, 1998, Respondent permitted a minor to possess and consume an alcoholic beverage, in violation of Section 106.04 of the Code; and, on March 21, 1998, Permittee was intoxicated on the licensed premises, in violation of Section 11.61(b)(13) of the Code.

"My name is Sonny Otutu. I am sole owner. I neither admit nor deny that the violations stated above have occurred and do hereby waive my rights to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of cancel for cause 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. The signing of this waiver may result in the forfeiture of any related conduct surety bond."

As a result of this waiver agreement, the Commission Administrator entered an Order on June 15, 1998. The Order stated that the violations, as stated, did occur. Further the Order adopted the above described waiver of hearing and assessed the penalty of canceling Respondent's Permit and License for cause.

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). "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person. TEX. ALCO. BEV. CODE Section 1.04(16). 16 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, on final adjudication, that the holder violated a provision of the Code. The Commission's rule at 16 TEX. ADMIN. CODE §33.24 also applies and requires forfeiture upon cancellation, or upon final adjudication determining a holder had committed three violations of the Code since September 1, 1995.

PROPOSED FINDINGS OF FACT

1. On June 24, 1997, the Commission issued a Wine and Beer Retailer's Permit, BG-318769 and Retail Dealer's On Premise Late Hours License, BL-318770, to Respondent for the premises known as Dread-N-Irie at 2807 Commerce, Dallas, Dallas County, Texas. On May 26, 1997, Respondent executed a conduct surety bond payable to the State of Texas 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 Wine and Beer Retailer's Permit and Retail Dealer's On Premise Late Hours License, which was June 24, 1997.
2. The hearing was convened on June 10, 1999, at the Hearings Facility of the State Office of Administrative Hearings, 6300 Forest Park Rd., Suite 230-B, Dallas, Texas. Respondent appeared in person. Timothy Griffith, TABC attorney, appeared in person to represent the Staff. Evidence and argument was heard, and the record was closed at 4:00 p.m. on June 14, 1999.
3. Both parties received proper and timely notice of hearing.
4. On May 28, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding five violations of the Code. By signing the waiver agreement, Respondent did not deny that: on May 10, 1998, Respondent permitted a minor to possess and consume an alcoholic beverage, in violation of Section 106.04 of the Code, and violated the Code in the place and manner of its operation by violating the City Curfew Ordinance, in violation of Section 11.61(b)(13) and Section 11.61(b)(7) of the Code; on March 21, 1998, Respondent permitted a minor to possess and consume an alcoholic beverage, in violation of Section 106.04 of the Code; and, on March 21, 1998, Permittee was intoxicated on the licensed premises, in violation of Section 11.61(b)(13) of the Code. Respondent waived his right to a hearing to contest these violations of the Code and acknowledged that his permits would be cancelled for cause by the Commission. By his signature, he further acknowledged that the forfeiture of any related conduct surety bond could result.
5. On June 15, 1998, the Commission Administrator entered an order finding Respondent had committed five violations of the Code consistent with Respondent's admission found in Findings of Fact No. 4.
6. Respondent has committed five violations of the Code and had at least five final adjudications regarding these violations since September 1, 1995.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the Code.
2. The State Office of Administrative Hearings has jurisdiction over the matter 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 Findings of Fact No. 3, the parties received proper and timely notice of hearing pursuant to TEX. GOV'T CODE ANN Sections 2001.051 and 2001.052 (Vernon 1998).
4. Based upon Findings of Fact No. 1, Respondent holds Wine and Beer Retailer's Permit no. BG-318769 and Retail Dealer's On Premise Late Hours License, Permit no. BL-318770 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).
5. Based upon Findings of Fact Nos. 4-6, Respondent violated 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE Section 11.11 by violating a Commission rule and law of the State of Texas relating to alcoholic beverages while holding a Wine and Beer Retailers Permit no. BG-318769 and Retail Dealer's On Premise Late Hours License, Permit no. BL-318770, issued by the Commission, having five violations of the Code since September 1995.
6. Based on Finding of Fact Nos. 4-6, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED and entered this 14 day of July, 1999.


JERRY A. GARRETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS