

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 22, 1999

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

VIA CERTIFIED MAIL Z 186 432 004
RETURNED RECEIPT REQUESTED

RE: **Docket No. 458-99-0299; Texas Alcoholic Beverage Commission vs. City Limits d/b/a City Limits (Permit No. N-423505, NL-423506 & PE-423507) (TABC Case No. 581131)**

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 Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Eric M. Albritton, attorney for City Limits d/b/a City Limits. For reasons discussed in the proposal, the Respondent has committed at least three violations of the Code since September 1, 1995; and based on the foregoing Findings and Conclusions, and in compliance with the TEX. ALCO. BEV. CODE ANN. §11.11, the Respondent's conduct surety bond should be forfeited.

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,

A handwritten signature in cursive script that reads "Richard Farrow".

Richard Farrow
Administrative Law Judge

RF:tmn

Enclosure: 1

xc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing ~~REGULAR MAIL~~
Gayle Gordon, Attorney For Petitioner, Texas Alcoholic Beverage Commission } **CERTIFIED MAIL NO.**
Z 186 432 005, RETURN RECEIPT REQUESTED
Eric M. Albritton, Attorney at Law, City Limits d/b/a City Limits, P. O. Drawer 3267, Longview, Texas 75606
CERTIFIED MAIL NO. Z 186 432 006, RETURN RECEIPT REQUESTED OCT 29 1999

Commerce Square
3323 S. SW Loop 323 ♦ Tyler, Texas 75701
(903) 534-7101 Fax (903) 534-7076

LEGAL DIVISION

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
	§	
CITY LIMITS	§	
PERMIT NOS. N-423505, NL-423506 &	§	
PE-423507	§	
GREGG COUNTY, TEXAS	§	
(TABC CASE NO. 581131)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission's Staff sought forfeiture of the conduct surety bond posted by City Limits, Respondent, because the Respondent committed three or more violations of the Texas Alcoholic Beverage Code, (Code), since September 1, 1995. This proposal for decision recommends forfeiture of the bond.

I. Jurisdiction, Notice, and Procedural History

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

On April 23, 1999, hearing was held at the Tyler office of the State Office of Administrative Hearings before Richard Farrow, Administrative Law Judge. Gayle Gordon, attorney for the Texas Alcoholic Beverage Commission, appeared in person representing the Staff. Eric Albritton, attorney, appeared in person with Respondent. After the testimony and exhibits were received, along with argument of counsel, the hearing was adjourned and the record was closed April 23, 1999.

II. Discussion of the Evidence

On November 25, 1997, the Respondent was issued a Private Club Registration Permit, N-423505, a Private Club Late Hours Permit, NL-423506, and a Beverage Cartage Permit, PE-423507. The Respondent provided a conduct surety bond, issued by First Indemnity of America Insurance Company as surety, made payable to the State of Texas in the amount of Five Thousand (\$5,000.00) Dollars effective from date of issuance of license or permits by the Texas Alcoholic Beverage Commission and payable in the event that Respondent should violate a law of the state relating to alcoholic beverages or a rule of the commission.

Thereafter, on January 23, 1998, the Texas Alcoholic Beverage Commission entered an order, based on an agreement and waiver of hearing signed by the TABC and the Respondent, finding that on January 3, 1998, the Respondent had violated TEX. ALCO. BEV. CODE §106.13 (permit minor to possess alcoholic beverage), and had violated TEX. ALCO. BEV. CODE §108.02 (outdoor advertising violation). On May 20, 1998, the Texas Alcoholic Beverage Commission, again based on agreement and waiver of hearing, entered an order finding that the Respondent had violated TEX. ALCO. BEV. CODE §32.17 (a)(1) in that Respondent had operated or operated as an open saloon in violation of its permit.

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The Respondent offered no dispute to the facts as set out in the documents introduced by the Staff. Respondent did object to the introduction of the documents offered on the basis that the documents were not properly certified as public records or as business records. The documents were, however, admitted as properly certified records.

III. Analysis

The Code and Commission rule 16 TAC and §33.24 require a beer and wine retailer to file a conduct surety bond of either \$5000 or \$10,000 as specified in Code §11.11 unless the holder of the permit meets a specified exception. Respondent did not qualify for any exception and properly filed the appropriate conduct surety bond in the required amount of \$5,000. Code §11.11 specifies that the bond state on its face that the amount of the bond will be paid to the state in the event the permit holder violates any provision of the Code. Rule 33.24 requires the Commission to notify a permittee of its intent to seek forfeiture of the bond after final adjudication that the Permittee has committed three violations of the Code since September 1, 1995. The Respondent entered into waiver agreements and agreed orders that it had violated the Code or the Rules as regards alcoholic beverages three times as set out above and final orders were entered for each of those violations. On September 16, 1998, the Texas Alcoholic Beverage Commission sent to Respondent notice that it intended to seek forfeiture of the entire amount of the conduct surety bond. A hearing was requested and scheduled to be heard by an Administrative Law Judge of the State Office of Administrative Hearings in accordance with the Administrative Procedure Act.

IV. Findings of Fact

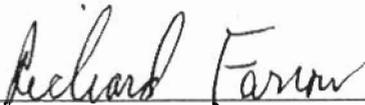
1. Respondent, City Limits, was issued a Private Club Registration Permit, N-423505, a Private Club Late Hours Permit, NL-423506, and a Beverage Cartage Permit, PE-423507, on November 25, 1997.
2. On September 12, 1997, First Indemnity of America Insurance Company, as surety for Respondent, issued a \$5,000.00 conduct surety bond payable to the State of Texas.
3. On January 20, 1998, Respondent signed a waiver agreement accepting penalty for violations of the Texas Alcoholic Beverage Code, §§106.13 and 108.02.
4. A final order was entered by the Texas Alcoholic Beverage Commission on January 23, 1998 imposing the sanctions that had been agreed to by Respondent for the violation found in the above Finding No. 3.
5. The Respondent did not file a motion for rehearing and did not appeal the order imposing the agreed penalties.
6. The order became final 21 days after it was entered.
7. On May 14, 1998, Respondent signed a waiver agreement accepting penalty for violation of Texas Alcoholic Beverage Code §32.17 (a)(1).
8. A final order was entered on May 20, 1998, imposing the sanction and penalty to which the Respondent had agreed for the violation found in Finding No. 7.

9. The Respondent did not file a motion for rehearing and did not file an appeal of the order imposing the agreed penalty.
10. The order became final 21 days after it was entered.
11. On September 16, 1998, Staff notified Respondent of its intent to seek forfeiture of the full amount of the conduct surety bond and Respondent timely requested a hearing.
12. Notice of hearing was sent to Respondent by certified mail, return receipt requested, on May 4, 1999.
13. On April 23, 1999, hearing was held in Tyler, Texas, before Administrative Law Judge of the State Office of Administrative Hearings. Gayle Gordon appeared in person on behalf of the Texas Alcoholic Beverage Commission and Eric Albritton appeared in person on behalf of City Limits, Respondent.
14. Respondent has committed three violations of the Code and had three final adjudications regarding those violations since September 1, 1995.

VI. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§11.61 and 61.71 of the TEX. ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction over 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. §§2003.021(b) and 2003.042 (5).
3. The parties received proper and timely notice of hearing pursuant to TEX. GOV'T CODE ANN. §2001.051.
4. Respondent posted the required conduct surety bond in the amount of \$5,000.00 payable to the State in the event the Respondent violated any provision of the Code. TEX. ALCO. BEV. CODE §11.11.
5. The Respondent has committed at least three violations of the Code since September 1, 1995.
6. Based on the foregoing Findings and Conclusions, and in compliance with the TEX. ALCO. BEV. CODE ANN. §11.11, the Respondent's conduct surety bond should be forfeited.

SIGNED this 22nd day of October, 1999



Richard Farrow
Administrative Law Judge
State Office of Administrative Hearings