

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 15, 1999

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

Certified Mail No. Z133586747

**RE: Docket No. 458-99-0301; Texas Alcoholic Beverage Commission vs. Agustin Felipe Madrigal d/b/a Madrigal Lounge (TABC Case No. 579589)**

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 Andrew Del Cueto, attorney for Texas Alcoholic Beverage Commission, and to Gary Aboud attorney for Agustin Felipe Madrigal d/b/a Madrigal Lounge. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond may 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 black ink, appearing to read "Louis R. Lopez".

Louis R. Lopez  
Administrative Law Judge

JUN 18 1999

LRL:et  
Enclosure

cc: Shance Woodbridge, Docket Clerk, State Office of Administrative Hearing - CERTIFIED MAIL NO. Z133586747  
Andrew Del Cueto, Staff Attorney, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. Z133586748  
Gary Aboud, Attorney at Law - CERTIFIED MAIL NO. Z. 133586750, RETURN RECEIPT REQUESTED

DOCKET NO. 458-99-0301  
(TABC NO. 579589)

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

AGUSTIN FELIPE MADRIGAL  
dba MADRIGAL LOUNGE  
PERMIT NO. BG-307629  
EL PASO COUNTY, TEXAS

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the TEXAS ALCOHOLIC BEVERAGE COMMISSION (Staff), Petitioner, brought this action against AGUSTIN FELIPE MADRIGAL dba MADRIGAL LOUNGE, Respondent, to establish that the criteria for the forfeiture of Respondent's conduct surety bond had been met under the Texas Alcoholic Beverage Code (hereinafter Code) and under the Texas Alcoholic Beverage Commission Rules (hereinafter Rules), which are found in 16 Texas Administrative Code. Respondent did not contest the forfeiture but did present one legal issue. This proposal finds that the criteria for forfeiture have been met, and the Commission may forfeit Respondent's conduct surety bond.

A hearing was held in El Paso with both sides represented by attorneys. Respondent did not offer controverting evidence or counter argument to the action proposed by the Petitioner after having the opportunity to review the evidence. The sole legal issue was whether the ALJ has the authority to set the amount of the bond forfeiture.

**REASONS FOR PROPOSED DECISION**

Respondent urged, both in oral and written closing arguments, that the PFD recommend that the forfeiture amount be 15% of the bond. This argument was based on Code §11.70 which talks about a judgment for 15% of the face value of the bond.

The Staff contended that an ALJ had no authority to set the amount of the forfeiture. It based this on the claim that Code §11.70 did not apply to this proceeding but that rather Rule 33.24(j)(2) specified the authority of an ALJ.

It appears from the context of Code §11.70 that the judgment it mentions would be one made by a court in Travis County in the event the commission had to begin court action to collect on the bond. Additionally, an administrative decision in a TABC case is not considered a court judgment but is only a proposal for a decision that is to be ultimately made by the relevant state agency. Rule 33.24(j)(2) states that a hearing can be requested by a licensee to determine whether the "criteria for forfeiture" have been satisfied. There is no mention of the ALJ making any determination on the proper amount—whether full or partial—of the bond to be forfeited.

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LEGAL DIVISION

Accordingly, it is found that an ALJ simply has no authority in a conduct surety bond case to make any recommendation on the proper amount of forfeiture and that the criteria for forfeiture have been met because Respondent's license was canceled because of a subterfuge application. A forfeiture may be sought.

#### **FINDINGS OF FACT**

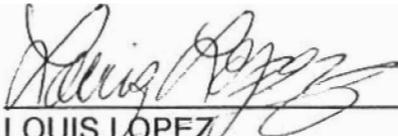
1. AGUSTIN FELIPE MADRIGAL dba MADRIGAL LOUNGE, Respondent, was issued Wine and Beer Retailer's Permit BG-307629 by the Texas Alcoholic Beverage Commission ("Commission") on May 17, 1995, for the Madrigal Lounge at 2314 Myrtle Avenue, El Paso, Texas. The permit was continuously renewed until canceled.
2. Notice of hearing was sent to the parties on March 1, 1999, and received, to which the parties stipulated. The parties appeared at the hearing.
3. On April 5, 1999, a hearing was held before Administrative Law Judge Louis Lopez in the El Paso office of the State Office of Administrative Hearings at 9434 Viscount Boulevard, Suite 102. The Petitioner was represented by attorney Andrew del Cueto. The Respondent was represented by attorney Gary A. Aboud. Evidence was received, and the hearing was closed on the same day.
4. On March 5, 1998, it was determined that Respondent had submitted a subterfuge application.
5. Consequently, Respondent's permit was canceled on April 24, 1998.

#### **CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Sections 5.31--5.44, 6.01(b), 25.04(b), and 61.71.
2. Venue was proper in accordance with Code §11.015 and 1 Texas Administrative Code §155.13.
3. Service of proper notice of the hearing was made on Respondent pursuant to Code §11.63 and the Administrative Procedure Act, Texas Government Code §§2001.051 and 2001.052.
4. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code §5.43(a) and Tex. Govt. Code Chapter 2003.
5. Under Code §§6.01 and 61.71, the Commission may revoke a license or permit if the holder violates a provision of the Code or a rule of the Commission.

6. Under Texas Alcoholic Beverage Commission Rule 33.24(j), found in 16 Texas Administrative Code, a permittee is subject to forfeiture of its conduct surety bond after its permit is canceled.
7. Based on the foregoing, Respondent's conduct surety bond may be forfeited.
8. An ALJ has no authority in a conduct surety bond case to make any recommendation on the amount of the bond forfeiture.

SIGNED this 15th day of June, 1999.

  
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LOUIS LOPEZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

By: \_\_\_\_\_