

DOCKET NO. 458-99-0311

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
ANASTACIO CHAVEZ ORTIZ	§	
D/B/A FLAMINGOS NIGHT CLUB	§	
PERMIT NO. BG-315019	§	
LICENSE NO. BL-315020	§	
POTTER COUNTY, TEXAS	§	
(TABC CASE NO. 579759)	§	ADMINISTRATIVE HEARINGS

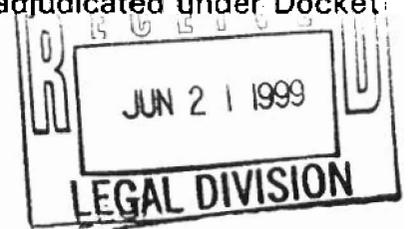
PROPOSAL FOR DECISION

I. Statement of the Case

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this action against Anastacio Chavez Ortiz, d/b/a Flamingos Night Club (Respondent) to establish that the criteria for the forfeiture of Respondent's conduct surety bond had been met under the Texas Alcoholic Beverage Code (Code) and the Texas Alcoholic Beverage Commission Rules. A hearing on Staff's allegations commenced on June 10, 1999 and concluded the same day. Gayle Gordon, an attorney with the Commission's Legal Section represented Staff and appeared by telephone. Respondent appeared by telephone and was not represented by an attorney at the hearing. Respondent did not offer controverting evidence or counter argument to the action proposed by Staff after having the opportunity to review the evidence. This proposal finds that the criteria for forfeiture have been met and that the Commission may forfeit the Respondent's conduct surety bond.

II. Discussion

The Staff offered into evidence three exhibits which the Respondent offered no objection to and which were admitted into evidence. Exhibit Number 1 is the Notice of Hearing mailed to Respondent by certified mail return receipt requested. Exhibit number 2 is a certified letter from the Texas Alcoholic Beverage Commission to Respondent explaining that TABC was seeking to forfeit his conduct surety bond because Respondent had three violations of the Code or Rules since September 1, 1995. The letter details that Respondent was found to have three violations on November 16, 1997 which were having an intoxicated permittee/licensee/employee on the premises and two incidents of consumption during prohibited hours by a permittee/licensee/employee and that the violations were adjudicated under Docket



Number 576891. Respondent indicated on the response portion of the letter that he requested a hearing to determine if his bond should be forfeited. Finally, Exhibit Number 3 is a government record containing copies of Respondent's permit/license, violation history, Conduct Surety Bond and correspondence. This exhibit shows that Respondent's permit and license were issued to him on January 30, 1996 and have been continuously renewed. Exhibit 3 also confirms the violation history as previously set forth in Exhibit 2. The Staff rested after the above evidence was offered and admitted and Respondent did not put on any evidence or provide any argument.

III. Findings of Fact

1. Anastacio Chavez Ortiz d/b/a Flamingos Night Club (the Respondent) received notice by certified mail of the date, time and place of this hearing.
2. Respondent holds a Wine and Beer Retailer's Permit BG-315019 and a Retail Dealer's On Premise Late Hours License BL-315020 for the premises known as Flamingos Night Club located at 6007 E. Amarillo Boulevard, Amarillo, Potter County, Texas.
3. Respondent was previously adjudicated to have committed three violations of the Code since September 1, 1995, to wit, allowing an intoxicated permittee/licensee/employee on the premises and consumption during prohibited hours by two permittees/licensees/employees, each incident occurring on November 16, 1997.

III. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. Subchapter B of Chapter 5 Sections 6.01, 11.11 and 61.13 of the Texas Alcoholic Beverage Code and 16 Texas Administrative Code Section 33.24.
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. ch. 2001.
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to Tex. Gov't Code Ann. ch. 2001.
4. Under 16 Texas Administrative Code Section 33.24(j) a permittee is subject to forfeiture of its conduct surety bond if a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995.

5. Based on the foregoing and Finding of Fact No. 3, Respondent's conduct surety bond may be forfeited.

SIGNED this 18th day of June, 1999.



B.E. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS