

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

December 03, 1999

Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78711

**HAND DELIVERY**

**RE: Docket No. 458-99-15357; TABC vs. Patricio Ibarria Ornelas, d/b/a Club Del Toro;  
TABC Case No. 583052; Travis County, Texas**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon Staff Attorney representing the Texas Alcoholic Beverage Commission and to Patricio Ibarria Ornelas, Respondent. For reasons discussed in the Proposal for Decision, I have recommended that the Respondent's conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

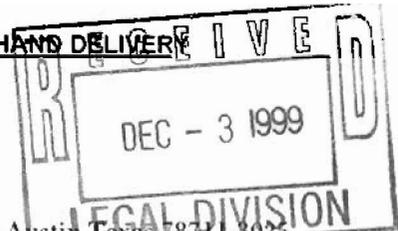
A handwritten signature in black ink, appearing to read "John Beeler", is written over a horizontal line.

John Beeler  
Administrative Law Judge

JB:es

Enclosure

cc: **Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY**  
**Patricio Ibarria Ornelas d/b/a Club Del Toro, 2916 Prado, Austin, TX 78702 - VIA CERTIFIED MAIL NO Z 332 923 730**  
**RETURN RECEIPT REQUESTED**  
**Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY**



William P. Clements Building  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin, Texas 78711-3025  
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**DOCKET NO. 458-99-1535  
(TABC CASE NO. 583052)**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>vs.</b>	§	
	§	<b>OF</b>
<b>PATRICIO IBARRIA ORNELAS</b>	§	
<b>D/B/A CLUB DEL TORO</b>	§	
<b>PERMIT NO. BG-411715</b>	§	
<b>LICENSE NO. BL-411716</b>	§	
<b>TRAVIS COUNTY, TEXAS</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Patricio Ibarria Ornelas d/b/a Club Del Toro (Respondent). Respondent renewed a conduct surety bond<sup>1</sup> on March 28, 1997, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). The Staff recommended that the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

**I. Jurisdiction, Notice, and Procedural History**

The hearing in this matter convened on October 14, 1999, before ALJ John H. Beeler, at the offices of the State Office of Administrative Hearings in Austin, Travis County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

**II. Conduct Surety Bond**

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<sup>1</sup>Respondent provided a conduct surety bond, Bond Number XTL 00239, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewal of the permit or license have expired." Exhibit 1.

On April 25, 1997, the Commission issued a Wine and Beer Retailer's Permit No. BG-411715 and a Retail Dealer's On-Premise Late Hours License, BL-411716 to Respondent for the premises known as Club Del Toro, 2316 Webberville Road, Austin, Travis County, Texas. On March 1, 1997, Respondent posted a conduct surety bond for Club Del Toro for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

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

On June 2, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on May 3, 1998, Respondent permitted a juvenile to consume/possess an alcoholic beverage in violation of TEX. ALCO BEV. CODE ANN. §§ 106.13(a) and 11.61(b)(6). As a result of this waiver agreement, the Commission Administrator entered an order on June 10, 1998, suspending Respondent's license and permit for 7 days unless Respondent paid \$1050.00 as a civil penalty.

On December 2, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. The waiver agreement stated that on October 16, 1998, Respondent's employee sold drugs in violation of TEX. ALCO BEV. CODE ANN. § 104.01(9), and that on November 22, 1998, Respondent sold alcoholic beverages to an intoxicated person in violation of TEX. ALCO BEV. CODE ANN. § 11.61(b)(14). As a result of this waiver agreement, the Commission Administrator entered an order on December 14, 1998, suspending Respondent's license and permit for 37 days unless Respondent paid \$5550.00 as a civil penalty.

### **IV. Forfeiture of Conduct Surety Bond**

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 61.71. The Commission's rule found at 16 TAC § 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 cancelled, 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.

Respondent admitted in the two Agreements and Waivers of Hearing that he has violated the provisions of the Code three times since September 1, 1995.

## V. Proposed Findings of Fact

1. On April 25, 1997, the Commission issued a Wine and Beer Retailer's Permit No. BG-411715 and a Retail Dealer's On-Premise Late Hours License, BL-411716 to Respondent for the premises known as Club Del Toro, 2316 Webberville Road, Austin, Travis County, Texas. On March 1, 1997, Respondent posted a conduct surety bond for Club Del Toro for \$5,000 as required by Sections 11.11 and 61.13 of the Code.
2. On January 19, 1999, the Commission sent Respondent a notice of its intent to seek forfeiture of the full amount of his conduct surety bond.
3. The Commission sent a notice of hearing dated September 10, 1999, to Respondent at the address provided in Finding of Fact No. 1. The notice of hearing was returned to the Commission unclaimed.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing also contained the following language in capital letters in 10-point or larger boldface type:

**If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.**
6. The hearing was convened on October 14, 1999, at the offices of the State Office of Administrative Hearings in Austin, Travis County, Texas. Respondent did not appear and was not represented at the hearing.
7. On June 2, 1998, Respondent signed a waiver agreement admitting that he had permitted a juvenile to consume/possess an alcoholic beverage.
8. On December 2, 1998, Respondent signed a waiver agreement admitting that his employee had sold drugs and that Respondent had sold alcoholic beverages to an intoxicated person.
9. On June 10, 1998, and December 14, 1998, the Commission Administrator entered orders finding Respondent had committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact Nos. 7 and 8.
10. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

## VI. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, and 61.71 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Respondent holds Permit Number BG-411715 and License No. BL-411716 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code: permitting a juvenile to consume/possess an alcoholic beverage in violation of TEX. ALCO BEV. CODE ANN. §§ 106.13(a) and 11.61(b)(6); allowing an employee to sell drugs in violation of TEX. ALCO BEV. CODE ANN. § 104.01(9); and selling alcoholic beverages to an intoxicated person in violation of TEX. ALCO BEV. CODE ANN. § 11.61(b)(14).
6. Respondent violated 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding Permit Number BG-411715 and License No. BL-411716, issued by the Commission, and the conduct surety bond renewed by Respondent should be forfeited to the State.

SIGNED and entered this 3<sup>rd</sup> day of December 1999.

  
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JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS