

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 22, 1999

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

CERTIFIED MAIL NO. Z 409 580 960
RETURN RECEIPT REQUESTED

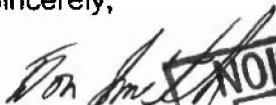
**RE: Docket No. 458-99-1905; TABC vs. Mary Teer Ward d/b/a Cabana, TABC
Case No. 583053**

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 Mary Teer Ward, d/b/a Cabana. For reasons discussed in the Proposal for Decision, I have recommended that the conduct surety bond executed by Permittee should be forfeited to the State.

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 replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,


Don Smith
Administrative Law Judge



DS/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**
Robert E. Hoskins, 1023 Moody Ave, Galveston, TX 77550 - **VIA CERTIFIED MAIL NO. Z 409 580 961.**
RETURN RECEIPT REQUESTED
Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearings - **VIA REGULAR MAIL**

North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

DOCKET NO. 458-99-1905

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.S.

MARY TEER WARD
D/B/A CABANA
PERMIT NO. BG-289167
GALVESTON COUNTY, TEXAS
(TABC CASE NO. 583053)

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BEFORE THE STATE

OFFICE OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) initiated this action seeking forfeiture of the conduct surety bond posted by Mary Teer Ward d/b/a Cabana (the Permittee) because Permittee's permit or license was canceled, or the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The cancellation or violations have been finally adjudicated. The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code.

The staff attorney introduced Exhibit TABC 3, which is the affidavit of Brian L. Guenther, Custodian of Records, with attached Permittee TABC records. Exhibit TABC 3 states that the Wine and Beer Retailer's Permit, BG-289167 and Retail Dealer's On-Premise Late Hours License, BL-312419 were issued to Mary Teer Ward, doing business as Cabana, 817 21st Street, Galveston, Galveston County, Texas, by the Texas Alcoholic Beverage Commission, on the 24th day of August, 1993 and on the 16th day of November, 1995. The TABC records show that Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The mailing address of the Permittee is 817 21st Street, Galveston, Texas 77550.

The staff attorney introduced the Notice of Hearing to the Permittee, (Exhibit TABC 1) showing that the notice was sent to the Permittee's last known address as shown on the referring agency's record, with green card attached showing Permittee received notice on September 20, 1999.

III. RECOMMENDATION

Because the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995, the Permittee has forfeited the full amount of their conduct surety bond.

IV. FINDINGS OF FACT

1. Mary Teer Ward, doing business as Cabana, 817 21st Street, Galveston, Galveston County, Texas, was issued a Wine and Beer Retailer's Permit, BG-289167 and Retail Dealer's On-Premise Late Hours License, BL-312419 by the Texas Alcoholic Beverage Commission.
2. On September 17, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing on the forfeiture of the conduct surety bond to the Permittee at 817 21st Street, Galveston, Texas 77550, its address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Permittee was shown by proof that the notice was sent to the Permittee's last known address as shown on the referring agency's record, by certified mail, return receipt requested, and received by Permittee by proof of actual receipt of the notice by Mary Teer Ward.
4. The hearing on the merits was held on October 28, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.
5. Wine and Beer Retailer's Permit, BG-289167 was issued to Mary Teer Ward, doing business as Cabana, 817 21st Street, Galveston, Galveston County Texas, by the Texas Alcoholic Beverage Commission, on the 24th day of August, 1993.
6. Retail Dealer's On-Premise Late Hours License, BL-312419 was issued to Mary Teer Ward, doing business as Cabana, 817 21st Street, Galveston, Galveston County Texas, by the Texas Alcoholic Beverage Commission, on the 16th day of November, 1995.
7. Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The violations were Sale to Intoxicated Person on 11-8-1995; Happy Hour Violation on 11-8-1995; and Sale to Minor on 2-20-1998.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.

3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Permittee should be forfeited to the State.

SIGNED this 22 th day of November, 1999.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS