

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 7, 2000

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

VIA CERTIFIED MAIL  
Z 582 526 465

RE: ~~Docket No. 458-99-2310~~; Texas Alcoholic Beverage Commission vs. Viola Morales d/b/a Sweet Lips (TABC Case No. ~~583351~~) *585351*

Dear Mr. Bailey:

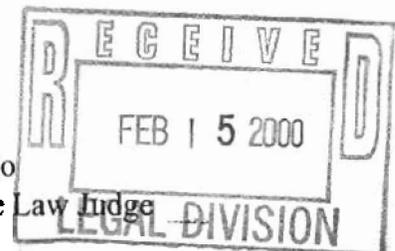
Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Richard K. Houtchens attorney for Viola Morales d/b/a Sweet Lips. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond 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 "Edel P. Ruiseco".

Edel P. Ruiseco  
Administrative Law Judge



EPR:mar

Enclosure

cc: Shance Woodbridge, Docket Clerk, State Office of Administrative Hearing - FACSIMILIE  
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. Z 582 526 463  
Richard K. Houtchens, attorney at Law, 1108 Leopard Corpus Christi, Tx. 78404 - CERTIFIED MAIL NO. Z 582 526 464 RETURN RECEIPT REQUESTED

**DOCKET NO. 458-99-2310  
(TABC CASE NO. 583351)**

<b>TEXAS ALCOHOL BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>VS.</b>	§	<b>OF</b>
<b>VIOLA MORALES D/B/A SWEET LIPS</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) brought this action seeking forfeiture of the conduct surety bond of the Wine and Beer Retailer's Permit and Retailer Dealer's On-Premises Late Hours License posted by Viola Morales, d/b/a Sweet Lips (Respondent). Respondent renewed a conduct surety bond<sup>1</sup> on March 6, 1999, 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 committed three violations of the Code since September 1, 1995. Respondent did not appear and was not represented at the hearing. Edel P. Ruiseco, the Administrative Law Judge (ALJ) was appointed by the State Office of Administrative Hearings (SOAH) to hear this matter. The ALJ agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened as a telephonic hearing on December 2, 1999, before the ALJ at the SOAH offices in Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Dewey Brackin. Respondent did not appear. Because the hearing proceeded on a default basis pursuant to 1 Texas Administrative Code (TAC) §155.55, 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 SOAH 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.

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<sup>1</sup>Respondent provided a conduct surety bond, Irrevocable Letter of Credit No. 93 (Bond), from Nueces National Bank, 1434 S. Port, Corpus Christi, Texas. The Bond provided that it is effective up to the aggregate amount of \$5,000.00, and "shall in effect until the Nueces National Bank is released or discharged by the Texas Alcoholic Beverage Commission or until the expiration date of Feb. 27, 2000.

## **II. Conduct Surety Bond**

On March 6, 1997, the Commission issued a *Wine and Beer Retailer's Permit No. BG-408862 and Retail Dealer's On Premise Late Hours License No. BL-408863*, to Respondent for the premises known as Sweet Lips at 2846 S. Port Avenue, Corpus Christi, Nueces County, Texas. On February 27, 1997, Respondent posted a conduct surety bond 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 October 22, 1997, and June 23, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code (including two violations in October, 1997 and one in June, 1999, respectively). The 1997 waiver agreement stated that on October 4, 1997, Respondent allowed an intoxicated employee on the premises, governed by TEX. ALCO. BEV. CODE ANN. §11.61(b)(13); and was in possession of distilled liquor by an employee, a 375 ml bottle of Seagrams 7, governed by TEX. ALCO. BEV. CODE ANN. §69.12. The 1999 waiver agreement stated that on June 6, 1999, Respondent did sell/serve/deliver for off-premise consumption an alcoholic beverage during prohibited hours, governed by TEX. ALCO. BEV. CODE ANN. §61.71(a)(7). The agreements contained the following:

My name is Viola Morales. I am the Permittee. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of (\$1550.00 and \$750.00 respectively) must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of these waiver agreements, the Commission Administrator entered orders on October 27, 1997 and June 25, 1999. The orders stated Respondent violated the Code as stated in the agreement and waiver of hearings. The orders further provided that Respondent's licenses were suspended for 10 days and 5 days, respectively, unless Respondent paid \$1500.00 and \$750.00 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. Texas Alcoholic Beverage Commission's (TABC) rule found at 16 Tex. Admin. Code (TAC) §33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture 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. Section 33.24 also applies and requires forfeiture upon cancellation, or upon a final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

### PROPOSED FINDINGS OF FACT

1. On March 6, 1999, the Texas Alcoholic Beverage Commission (Commission) renewed a *Wine and Beer Retailer's Permit* and a *Retail Dealer's On-Premise Late Hours License* issued to Respondent for the premises known as Sweet Lips at 2846 S. Port Avenue, Corpus Christi, Nueces County, Texas.
2. On February 27, 1997, Respondent, as holder of the permit, posted a conduct surety bond in the form of an Irrevocable Letter of Credit for Sweet Lips for \$5,000.00.
3. On October 14, 1999, the Staff of the Commission sent a notice of hearing by certified mail, return receipt requested, to the Respondent at her address in proposed findings of fact number 1.
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 telephonic hearing convened on December 2, 1999, at SOAH offices at 1225 N. Agnes, Suite 102, Corpus Christi, Texas.
7. Respondent did not appear and was not represented at the hearing. Dewey Brackin, staff attorney, represented the Commission.

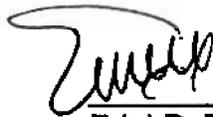
8. On October 22, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. By signing the waiver agreement Respondent acknowledged that a forfeiture of the conduct surety bond could result regarding the two violations.
9. On October 27, 1997, the Commission Administrator entered an order finding Respondent had committed two violations of the Code, consistent with Proposed Finding of Fact No. 8.
10. On June 23, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding a third violation of the Code. By signing the waiver agreement Respondent acknowledged that a forfeiture of the conduct surety bond could result regarding the violation.
11. On June 25, 1999, the Commission Administrator entered an order finding Respondent had committed a violation of the Code, consistent with Proposed Finding of Fact No. 10.
12. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 6.01, 11.61(c), 25.04, 61.13, and 61.71 (Vernon 1999), and §33.24 of the Rules.
2. SOAH 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. 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. 2003 (Vernon 1999), and 1 TEX. ADMIN. CODE §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-408862 and BL-408863, and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE §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 an employee to be intoxicated on the licensed premises, governed by TEX. ALCO. BEV. CODE ANN. §11.61(b)(13); possession of distilled liquor by an employee, governed by TEX. ALCO. BEV. CODE ANN. §69.12; and the sale/serving/delivery for off-premise consumption of alcoholic beverages during prohibited hours, governed by TEX. ALCO. BEV. CODE ANN. §61.71(a)(7).
6. Respondent violated 16 TAC §33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 AND 61.13 (Vernon 1995 & Supp. 1999), by violating a commission rule and a law of the state of Texas relating to alcoholic beverages while holding a *Wine and Beer Retailer's Permit* and a *Retail Dealer's On-Premise Late Hours License* issued by the Commission, and the conduct surety bond renewed by Respondent should be forfeited to the State.

Signed this 4th day of February, 2000.



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Edel P. Ruiseco, ALJ, Corpus Christi  
State Office of Administrative Hearings