

DOCKET NO. 505334

IN RE WELL WATER CONCEPTS L.L.C. § BEFORE THE TEXAS
D/B/A ROOKIE'S SPORTS BAR AND GRILL §
PERMIT/LICENSE NO(s). MB546004 §
§
§ ALCOHOLIC
§
§
MONTGOMERY COUNTY, TEXAS §
(SOAH DOCKET NO. 458-06-1895) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of June 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on 28th day of April 2006 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on 8th day of May 2006. The Proposal For Decision, attached as Exhibit "A", was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein, are denied.

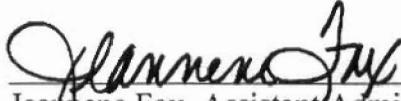
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent 's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on 26th day of June 2006, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 5th day of June, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

LBH/dp

Hon. Don Smith
Administrative Law Judge
State Office Of Administrative Hearing
Houston, Texas
VIA FAX (713) 812-1001

Mark L. Mithcell
ATTORNEY FOR RESPONDENT
310 Main St.
Houston, Tx 77002
VIA FAX: 713-228-4391

Well Water Concepts L.L.C.
RESPONDENT
d/b/a Rookie's Sports Bar And Grill
305 Sawdust Rd 'B'
The Woodlands, TX 77380
CERTIFIED MAIL NO. 7005 3110 0000 6409 0505

Lindy Hendricks
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 8, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-1895; Texas Alcoholic Beverage Commission v. Well Water Concepts L.L.C. d/b/a Rookie's Sports Bar and Grill

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

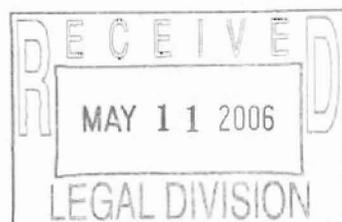
Sincerely,

A handwritten signature in cursive script that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/mc
Enclosure

xc: Lindy B. Hendricks, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Mark Mitchell, Attorney at Law, 310 Main Street, Houston, Texas 77002 -VIA REGULAR MAIL



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governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

The staff attorney introduced Exhibit TABC 1, which is the affidavit of Amy Harrison, Custodian of Records, with attached Respondent's TABC records (the records). The records state that the Mixed Beverage Permit, MB-546004, Mixed Beverage Late Hours Permit, LB-546005, and Beverage Cartage Permit, PE-546006 were issued to Well Water Concepts L.L.C., doing business as Rookie's Sports Bar and Grill, 305 Sawdust Road 'B', The Woodlands, Montgomery County, Texas, by the Texas Alcoholic Beverage Commission, on the third day of December, 2003. The records contain final Orders dated July 5, 2004, December 27, 2004, and April 12, 2005, that Respondent had committed three violations under the code. Each Order found that Respondent violated the code and assessed a penalty. On May 11, 2005, the Commission mailed a notice to Respondent that the Commission intended to forfeit the conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited.

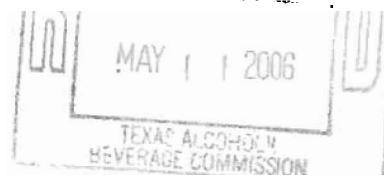
The staff attorney mailed and faxed a Notice of Hearing to the Respondent, introduced the certified return receipt as TABC Exhibit 2, and introduced the faxed message confirmation as TABC Exhibit 3. Respondent signed the certified return receipt on April 6, 2006. Respondent's attorney received the fax on April 4, 2006.

III. RECOMMENDATION

Because the Respondent has committed three violations of the Code since September 1, 1995, the Respondent should forfeit the full amount of the conduct surety bond.

IV. FINDINGS OF FACT

1. Well Water Concepts L.L.C., doing business as Rookie's Sports Bar and Grill, 305 Sawdust Road 'B', The Woodlands, Montgomery County, Texas, was issued a Mixed Beverage



Permit, MB-546004, a Mixed Beverage Late Hours Permit, LB-546005, and a Beverage Cartage Permit, PE-546006 by the Texas Alcoholic Beverage Commission.

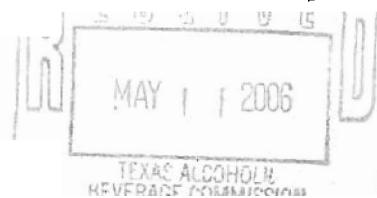
- 2. On April 3, 2006, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing to Respondent concerning the forfeiture of the conduct surety bond.
- 3. Notice of hearing to the Respondent was shown by proof that the notice was sent to the Respondent's attorney by fax, and by mail to Respondent's known address, as shown on the referring agency's record, by certified mail, return receipt requested. Proof of actual receipt was shown by the faxed message confirmation, and by the certified return receipt signed by Respondent.
- 4. The notice of hearing also contained the following language in capital letters in 10 point or larger boldface type:

If you fail to appear at the hearing, the allegation in this notice will be deemed admitted as true, and the relief sought may be granted by default.

- 5. The hearing on the merits was held on April 28, 2006, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Lindy B. Hendricks. The Respondent did not appear and was not represented at the hearing.
- 6. On July 5, 2004, the Commission issued a final Order that Respondent had violated a provision of the code.
- 7. On December 27, 2004, the Commission issued a final Order that Respondent had violated a provision of the code.
- 8. On April 12, 2005, the Commission issued a final Order that Respondent had violated a provision of the code.
- 9. Respondent has committed at least three violations of the Code and has at least three final adjudications regarding these violations since September 1, 1995.

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 61.13 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 the code. Commission rule found at 16 TEX. ADMIN. CODE § 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 canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.
6. Based on Findings of Fact Nos. 6, 7, 8, and 9, and the above Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED May 8, 2006.



**DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

