

DOCKET NO. 518935

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| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION | § | |
| | § | |
| VS. | § | |
| | § | OF |
| PAUL M. ORTIZ JR | § | |
| D/B/A ORTIZ BAR & RECREATION | § | |
| PERMIT/LICENSE NO(s). BG266906 | § | |
| COMAL COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-06-2281) | § | ADMINISTRATIVE HEARINGS |

ORDER

CAME ON FOR CONSIDERATION this 6th day of September, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on June 22, 2006, and the record was closed the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 1, 2006. The Proposal For Decision 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 BE FORFEITED**.

This Order will become final and enforceable on October 20, 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 6th day of September, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

PAUL M. ORTIZ JR
d/b/a ORTIZ BAR & RECREATION
RESPONDENT
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NEW BRAUNFELS, TX 781304628
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Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE: (512) 475-4994

Ashley Storm
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

**DOCKET NO. 458-06-2281
(TABC CASE NO. 518935)**

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

V.

**PAUL M. ORTIZ, JR.
D/B/A ORTIZ BAR & RECREATION
PERMIT/LICENCE NO. BG266906
COMAL COUNTY, TEXAS,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Paul M. Ortiz, Jr. d/b/a Ortiz Bar & Recreation (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permit was canceled for cause. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. JURISDICTION AND NOTICE

Notice and jurisdiction were not contested issues and are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. PROCEDURAL HISTORY

The hearing convened on June 22, 2006, and the record was closed the same day. Petitioner appeared and was represented by Ashley Storm, staff attorney. Respondent appeared and represented himself. Administrative Law Judge John Beeler presided.

III. DISCUSSION

A. Background

On February 13, 2005, the Commission canceled Respondent Paul M. Ortiz, Jr.'s, permit for cause because he violated TEX. ALCO. BEV. CODE § 104.01(9) and § 11.61(b)(2) and 16 TEX. ADMIN. CODE (TAC) § 31.1. Because Respondent's permit was canceled, the Commission seeks forfeiture of the conduct surety bond, pursuant to TEX. ALCO. BEV. CODE § 11.11 and 16 TAC § 33.24(j).

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct surety bond based upon the cancellation of his permit. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

B. Legal Standards

When a license or permit is canceled, Petitioner may seek forfeiture of the licensee's or permittee's bond.

The applicable statutory provision at TEX. ALCO. BEV. CODE § 11.11(b)(2) states "... the holder of the permit agrees 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 this code"

Petitioner's rule at 16 TEX. ADMIN. CODE (TAC) § 33.24(j) is more lenient, and provides, "(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the license or permittee, in writing, of its intent to seek forfeiture of the bond."

C. Analysis

Petitioner's exhibit two, which was admitted, includes copies of the certified record: Respondent's permit; the Commission's Order canceling the permit; the Proposal for Decision recommending Respondent's permit be canceled; the Commission's Order adopting the PFD; Respondent's surety bond; and a letter from the Commission seeking forfeiture of the bond. Exhibit three, which was also admitted, contained an Order Denying Motion for Rehearing, prolonging the effective date of cancellation of the permit from December 23, 2004, to February 13, 2005.

Respondent, testified that he did commit the violations that caused his permit to be canceled, but because he has gotten himself into so much trouble, and he is now bankrupt, he is asking for leniency.

D. Recommendation

Petitioner proved by a preponderance of the evidence that all requirements for forfeiture of Respondent's conduct surety bond have been met; therefore, the Administrative Law Judge recommends Respondent's conduct bond be forfeited.

IV. PROPOSED FINDINGS OF FACT

1. On February 13, 2005, Respondent, Paul M. Ortiz, Jr., d/b/a Ortiz Bar & Recreation, was adjudged to have committed a violation of TEX. ALCO. BEV. CODE § 104.01(9) and § 11.61(b)(2) and 16 TEX. ADMIN. CODE § 31.1, and as a result the Commission canceled his permit.
2. Respondent holds a Wine and Beer Retailer's Permit No. BG-266906.
3. Staff notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on Petitioner's final adjudication of Respondent's violation of the Texas Alcoholic Beverage Code.
4. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of the conduct surety bond, resulting in the June 22, 2006, hearing in this case.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE § 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 Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. Based on the above Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met.
5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's conduct surety bond should be forfeited.

SIGNED August 1, 2006.



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