

DOCKET NO. 583055

| | | |
|--------------------------------|---|---------------------|
| IN RE MINERVA RAMIREZ SANDOVAL | § | BEFORE THE |
| D/B/A DESPERADO'S NIGHTCLUB | § | |
| PERMIT NO. BG406107 & BL406108 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| WILLACY COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-00-0292) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 28th day of July, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Edel P. Ruiseco. The hearing convened on March 6, 2000 and adjourned May 15, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 31, 2000. This 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, Transcripts, 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 August 18, 2000, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 28th day of July, 2000.

On Behalf of the Administrator,



**Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission**

KGG/vr

**Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (361) 884-5427**

**Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994**

**Mr. Hector J. Villarreal
ATTORNEY FOR RESPONDENT
VIA FACSIMILE (956) 383-6603**

**Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section**

**Licensing Division
McAllen District Office**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 6, 2000

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

Via Certified Mail
Z 136 743 089

RE: Docket No. 458-00-0292; Texas Alcoholic Beverage Commission vs. Minerva Rivera Sandoval
d/b/a Desparado's Nightclub (TABC Case No. 583056)

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 Gayle Gordon attorney for Texas Alcoholic Beverage Commission, and to Hector J. Villarreal attorney for Minerva Rivera Sandoval d/b/a Desparado's Nightclub. For reasons discussed in the proposal, I recommend that the 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

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing - Regular Mail
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission -
Certified Mail No. Z 136 743 090 Return Receipt Requested
Hector J. Villarreal Attorney at Law, 400 East Cano, Edinburg, Tx 78539-
CERTIFIED MAIL NO. Z 136 743 092. RETURN RECEIPT REQUESTED

**DOCKET NO. 458-00-0292
(TABC CASE NO. 583056)**

| | | |
|------------------------------------|---|--------------------------------|
| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION | § | |
| VS. | § | OF |
| MINERVA RIVERA SANDOVAL | § | |
| D/B/A DESPARADO'S NIGHTCLUB | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Minerva Ramirez Sandoval (Respondent), d/b/a Desparado's Nightclub. Respondent posted a conduct surety bond¹ on November 21, 1996, in compliance with §11.11 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. This proposal for decision agrees with the Staff's recommendation and recommends that the Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

There are no contested issues of jurisdiction or notice in the proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion.

On March 6, 2000, Edel P. Ruiseco, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH), convened a public hearing by telephone, at the SOAH Hearing Facility, McAllen, Texas. The Staff appeared by Gayle Gordon, Staff attorney. Respondent appeared in person, and by attorney Hector Villarreal. Evidence and argument were proffered by the Staff, and Respondent did not dispute the evidence, nor offer evidence, but claimed that the forfeiture action violated the Double Jeopardy Clause of the U.S. Constitution. At the conclusion of the hearing the record was left open for Respondent to submit additional evidence. The record closed on May 15, 2000.

II. Conduct Surety Bond

On January 28, 1996, the Commission issued a Wine and Beer Retailer's Permit No. BG-406107 and a Retail Dealer's On Premise Late Hours License No. BL-406108,

¹ Respondent assigned a \$5,000.00 Certificate of Deposit, No. 13412, by Bank of Texas, to the Texas Alcoholic Beverage Commission on November 21, 1996, for conduct surety bond purposes only.

to Respondent for the premises known as Desperado's Nightclub, 589 N. 7th Street, Raymondville, Willacy County, Texas. On November 21, 1996, Respondent executed a conduct surety bond in the amount of \$5,000.00, as required by Sections 11.11 and 61.13 of the Code.

III. Events Leading to Forfeiture Request

On October 26, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, for the sale of an alcoholic beverage during prohibited hours on October 3, 1998. As a result of the waiver agreement the Commissioner Ordered a suspension of five days or the payment of a civil penalty of \$750.00 before December 2, 1998.

On December 10, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code on November 6, 1998, for the sale of an alcoholic beverage to an intoxicated person and for sale of an alcoholic beverage to a minor. As a result of the waiver agreement the Commissioner Ordered a suspension of seventeen days or the payment of a civil penalty of \$2,550.00 before January 20, 1999.

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, pursuant to TEX. ALCO. BEV. CODE Sections 6.01 and 61.71. Section 33.24(j) of the Rules, 16 Texas Administrative Code, 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.

V. Analysis

1. Petitioner's Position: The Commission alleges that Respondent has committed three or more violations of the Alcoholic Beverage Code, and because of such violations the permittee's conduct surety bond should be forfeited.

2. Respondent's Position: Respondent contended that the forfeiture of the conduct surety bond is Double Jeopardy under the U.S. Constitution. Respondent contends that based upon the fact that Respondent has already been punished for the acts alleged, that this additional punishment constitutes double punishment for the same offense, and therefore is unconstitutional.

Respondent requested time to brief the subject in support of his position regarding the constitutional argument.

3. Exhibits: The Commission filed an exhibit which included the two orders and Agreements. Respondent offered a brief, but did not offer other evidence during the hearing, nor before the record was closed.

PROPOSED FINDINGS OF FACT

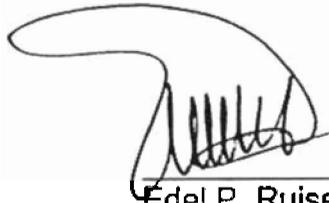
1. On January 28, 1996, The Texas Alcoholic Beverage Commission (Commission) issued a Wine and Beer Retailer's Permit No. BG-406107 and a Retail Dealer's On Premise Late Hours License No. BL-406108, to Respondent for the premises known as Desparado's Nightclub, 589 N. 7th Street, Raymondville, Willacy County, Texas.
2. On November 21, 1996, Respondent executed a conduct surety bond in the amount of \$5,000.00, as required by Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code).
3. Respondent received proper and timely notice of the hearing from the Staff for the Commission (the Staff) in a notice of hearing, dated February 4, 2000.
4. The hearing was convened on March 6, 2000.
5. On October 26, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, for which the Commission entered an order finding Respondent committed a violation of the Code and imposed a five day suspension or the payment of a civil penalty of \$750.00.
6. On December 10, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code, for which the Commissioner entered an order finding Respondent committed two violations of the Code and imposed a 17 day suspension or the payment of a civil penalty of \$2,550.00.
7. Respondent has committed three violations of the Code, since September 1, 1995.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 of the Code.
2. The State Office of Administrative Hearings has jurisdiction over the matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOVT CODE ANN. Section 2001.051 (Vernon 2000)

3. As referenced in Findings of Fact Nos. 3 and 4, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. Section 2001.051 (Vernon 2000)
4. Based upon Findings of Fact Nos. 1 and 2, Respondent held permits as follows: a Wine and Beer Retailer's Permit No. BG-406107 and a Retail Dealer's On Premise Late Hours License No. BL-406108, to Respondent for the premises known as Desparado's Nightclub, 589 N. 7th Street, Raymondville, Willacy County, Texas, 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. Sections 11.11 and 61.13 (Vernon 2000).
5. Based upon Findings of Fact Nos. 5 and 6, Respondent committed three violations of 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE. Sections 11.11 and 61.13 (Vernon 2000).
6. Based on Findings of Fact No. 7, and Conclusion of Law No. 5, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 31ST day of June, 2000.



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