

**DOCKET NO. 583056**

IN RE GOLDEN ENTERTAINMENT, INC.	§	BEFORE THE
D/B/A CLUB LA PLAYA	§	
PERMIT NOS. MB-268921 & LB-268922	§	
	§	TEXAS ALCOHOLIC
	§	
NUECES COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-2319)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 21st day of June, 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 10, 2000, and the record was closed March 31, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 12, 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.

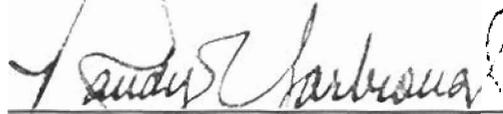
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be forfeited.

**This Order will become final and enforceable on July 12, 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 21st day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Edel Ruiseco  
Administrative Law Judge  
State Office of Administrative Hearings  
1225 Agnes Street, Ste. 102  
Corpus Christi, Texas 78401  
**VIA FACSIMILE: (361) 884-5427**

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

Golden Entertainment, Inc.  
d/b/a Club La Playa  
**RESPONDENT**  
421 N. Chaparral Street  
Corpus Christi, Texas 78401  
**CERTIFIED MAIL NO. Z 473 037 880**

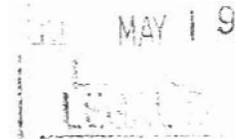
Licensing Division  
Corpus Christi District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 12, 2000



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

**VIA CERTIFIED MAIL**  
**Z 136 743 053**

**RE: Docket No. 458-99-2319; Texas Alcoholic Beverage Commission vs. Golden Entertainment, Inc.  
d/b/a Club La Playa (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 Dewey Brackin, attorney for Texas Alcoholic Beverage Commission, and to Robert A. Berg attorney for Golden Entertainment, d/b/a Club La Playa. 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 - **FACSIMILIE 512-475-4994**  
Dewey Brackin, Staff Attorney, Texas Alcoholic Beverage Commission -  
**CERTIFIED MAIL NO. Z 136 743 057**  
Robert A. Berg, Attorney at Law, 3833 So. Alameda, Corpus Christi, Texas 78411 - **CERTIFIED MAIL NO.  
Z 136 743 059, RETURN RECEIPT REQUESTED**

**DOCKET NO. 458-99-2319  
(TABC CASE NO. 583056)**

<b>TEXAS ALCOHOL BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>VS.</b>	§	
<b>GOLDEN ENTERTAINMENT, INC. D/B/A CLUB LA PLAYA</b>	§ §	<b>OF ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Alcoholic Beverage Commission (the Commission) initiated this action seeking forfeiture of the conduct surety bond posted by John W. O'Hara (Respondent), President, Golden Entertainment, Inc., d/b/a Club La Playa. Respondent posted a conduct surety bond on August 9, 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 10, 2000, Edel P. Ruisecco, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH), convened a public hearing by telephone, at the Hearing Facility of the State Office of Administrative Hearings, Corpus Christi, Texas. Respondent appeared by its attorney of record Robert A. Berg, Esq. Petitioner appeared by Dewey A. Brackin, Staff attorney. Evidence and argument were heard. At the conclusion of the hearing the record was left open for the parties to submit briefs, until March 31, 2000, when the record closed.

**II. Conduct Surety Bond**

On August 22, 1996, the Commission issued a Mixed Beverage Permit No. MB-268921 and Mixed Beverage Late Hours Permit No. LB-268922, to Respondent for the premises known as Club La Playa, 407 Schatzell Street, Corpus Christi, Nueces County, Texas, 78401. On August 9, 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 July 23, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, the violation being the sale of an alcoholic beverage to a minor on June 21, 1997. As a result of the waiver agreement the Commissioner Ordered that the employee, Andy Perez, attend a commission approved seller training program, which was done.

On July 17, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, the violation being the sale of an alcoholic beverage to a minor on May 16, 1998. As a result of the waiver agreement the Commissioner Ordered a suspension of seven days or the payment of a civil penalty of \$1,050.00 before September 2, 1998.

On July 8, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, the violation being the possession of Distilled Spirits without Local Distributor's Stamps, on June 26, 1998. **As a result of the waiver agreement the Commissioner Ordered a suspension of one day or the payment of a civil penalty of \$150.00, by September 2, 1998.**

On December 8, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding four violations of the Code, all occurring on November 18, 1998, the violation being the Possession of Distilled Spirits with Local Distributor's Stamp Mutilated, Possession of Distilled Spirits with No Local Distributor's Stamp, Improper Record Keeping regarding Invoices, and Possession of Alcoholic Beverage Unfit For Consumption. **As a result of the waiver agreement the Commissioner Ordered a suspension of 3 days or the payment of a civil penalty of \$450.00, by January 27, 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. 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 it was unfair to forfeit Respondent's conduct surety bond, and requested a lesser penalty.

### PROPOSED FINDINGS OF FACT

1. On August 22, 1996, The Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit, MB-268921 and Mixed Beverage Late Hours Permit, LB-268922, to Respondent for the premises known as Club La Playa, 421 N. Chaparral Street, Corpus Christi, Nueces County, Texas, 78401.
2. On August 9, 1996, Respondent executed a conduct surety bond for Club La Playa for \$5,000 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 January 29, 1999.
4. The hearing was convened on March 10, 2000.
5. On July 23, 1997, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the code, for which the Commission filed a Violation Notice dated July 29, 1997, and for which no penalty was imposed.
6. On July 17, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the code, for which the Commission entered an order finding Respondent committed a violation of the Code and imposed a 7-day suspension or a civil penalty of \$1,050.
7. On July 8, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code, for which the Commission entered an order finding Respondent had committed a violation of the Code and imposed a 1-day suspension or a civil penalty of \$150.
8. On December 8, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding four violations of the Code, for which the Commission entered an order finding Respondent had committed four violations of the Code and imposed a 3-day suspension or a civil penalty of \$450.
9. Respondent has committed 7 violations of the Code, since September 1, 1995.

## PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (the Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE Ann §§ 5.35, 25.04, 11.11, and 61.71 (Vernon 1995 and Supp. 2000) and 16 TEX. ADMIN. CODE § 33.24 (1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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 1995 and Supp. 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Based upon Finding 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 1999)
4. Based upon Findings of Fact Nos. 1 and 2, Respondent held permits as follows: Mixed Beverage Permit, MB-268921 and Mixed Beverage Late Hours Permit, LB-268922, 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 1999).
5. Based upon Findings of Fact Nos. 5-8, Respondent committed six violations of 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE. Sections 11.11 and 61.13 (Vernon 1999).
6. Based on Finding of Fact No. 9, and Conclusion of Law No. 5, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 12th day of May, 2000.



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