

**DOCKET NO. 585961**

IN RE ISRAEL LEE RIVAS	§	BEFORE THE
D/B/A EZ'S STREET PUB	§	
PERMIT NO. MB-268906, LB-268907	§	
	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0293)	§	BEVERAGE COMMISSION

**O R D E R**

**CAME ON FOR CONSIDERATION** this 27th 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 April 10, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 28, 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 17, 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 27th day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Edel P. Ruiseco  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (361) 884-5427

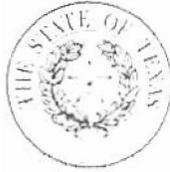
Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
VIA FACSIMILE (512) 475-4994

Israel Lee Rivas  
**RESPONDENT**  
RR 6 Box 530-1  
Edinburg, Texas 78539  
VIA CERTIFIED MAIL Z 473 041 952

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

Licensing Division  
McAllen District Office

# State Office of Administrative Hearings



111 5

Shelia Bailey Taylor  
Chief Administrative Law Judge

June 30, 2000

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

Via Certified Mail  
Z 136 743 086

RE: Docket No. 458-00-0293; Texas Alcoholic Beverage Commission vs. Israel Lee Rivas d/b/a EZ'S STREET PUB (TABC Case No. 585961)

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 Israel Lee Rivas d/b/a EZ's Street Pub. 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: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing - Facsimile 512-475-4994  
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission - Certified Mail No. Z 136 743 087  
Israel Lee Rivas, RR 6 Box 530-1 Edinburg Tx. 78539 CERTIFIED MAIL NO. Z136 743 088

DOCKET NO. 458-00-0293  
(TABC CASE NO. 585961)

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
VS.	§	OF
ISRAEL LEE RIVAS	§	
D/B/A EZ'S STREET PUB	§	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 Israel Lee Rivas (Respondent), d/b/a EZ's Street Pub. Respondent posted a conduct surety bond<sup>1</sup> on December 31, 1998, 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, pro se. Evidence and argument were proffered by the Staff, and Respondent neither disputed the evidence, nor offered any testimony. Respondent requested time to offer documents as evidence that his former attorney and agents of the Commission had agreed that no further penalties would be assessed beyond the civil penalty described in the Agreement and Waiver of Hearing for each violation. At the conclusion of the hearing the record was left open for Respondent to submit additional evidence, until April 10, 2000, when the record closed. Respondent did not submit additional evidence.

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<sup>1</sup> Respondent assigned a \$5,000.00 Time Certificate of Deposit, No. 23154, by Alamo Bank of Texas, to the Texas Alcoholic Beverage Commission on December 31, 1997, for conduct surety bond purposes only.

## II. Conduct Surety Bond

On August 26, 1996, the Commission issued a Mixed Beverage Permit No. MB-268906 and Mixed Beverage Late Hours Permit No. LB-268922 to Respondent for the premises known as EZ's Street Pub, 4302 N. Cage Boulevard, Pharr, Hidalgo County, Texas. On December 31, 1997, 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 15, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code, for the sale of an alcoholic beverage to a minor on June 25, 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 August 19, 1998.

On June 4, 1999, Respondent's attorney, Maurio Barriero, Esq., signed an "Agreement and Waiver of Hearing" regarding two violations of the Code on June 1, 1998, for allowing an aggravated breach of peace on the licensed premises, and failing to report a breach of the peace. As a result of the waiver agreement the Commissioner Ordered a suspension of forty days or the payment of a civil penalty of \$6,000.00 before August 10, 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 his former attorney arranged that the sole penalty which the Commission would assess, unless

Respondent committed another violation in a 24-month period after June 4, 1999, would be a \$6,000 civil penalty or a suspension of 40 days.

Respondent requested time to produce agreements between Respondent and the Commission that would confirm that the Commission agreed not to assess any further penalty.

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

### **PROPOSED FINDINGS OF FACT**

1. On August 26, 1996, The Texas Alcoholic Beverage Commission (Commission) issued a Mixed Beverage Permit No. MB-268906 and Mixed Beverage Late Hours Permit No. LB-268922, to Respondent for the premises known as EZ's Street Pub, 4302 N. Cage Boulevard, Pharr, Hidalgo County, Texas.
2. On December 31, 1997, 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 2, 2000. The notice contained the time, date and location of the hearing, and described the allegations against Respondent.
4. The hearing was convened on March 6, 2000.
5. On July 15, 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.
6. On June 4, 1999, Respondent's attorney signed an "Agreement and Waiver of Hearing" regarding two violations of the Code, for which the Commission entered an order finding Respondent had committed two violations of the Code and imposed a 40-day suspension or a civil penalty of \$6,000.
7. Respondent 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. GOV'T CODE ANN. Section 2001.051 (Vernon 2000)
3. As referenced in 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 2000)
4. 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).
5. 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 28th day of June, 2000.



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