

**DOCKET NO. 587077**

IN RE ALOHA CLUB	§	BEFORE THE
D/B/A ALOHA CLUB	§	
PERMIT NOS. N-416824 & NL459960	§	
	§	TEXAS ALCOHOLIC
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0306)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of June, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on April 6, 2000 and adjourned April 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 6<sup>th</sup>, 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 20, 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 29th day of June, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001

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

Aloha Club  
**RESPONDENT**  
d/b/a Aloha Club  
725 9<sup>th</sup> Ave.  
Port Arthur, Texas 77642  
VIA CERTIFIED MAIL RRR Z 473 041 956

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

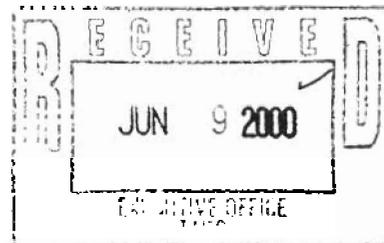
Licensing Division  
Beaumont District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 7, 2000



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

**VIA CERTIFIED MAIL P 332 127 583**  
**RETURNED RECEIPT REQUESTED**

**RE: Docket No. 458-00-0306; TABC vs. Aloha Club (Permit Nos. N416824,  
NL459960) (TABC Case No. 587077)**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above reference case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Aloha Club. For reasons discussed in the Proposal for Decision, I have recommended forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Veronica Dorsey".

Veronica Dorsey  
Administrative Law Judge

VD:rfm  
Enclosure:

cc: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, Texas 78731 - **REGULAR MAIL**  
Aloha Club, 725 9th Avenue, Port Arthur, Texas 77642 -  
**CERTIFIED MAIL NO. , RETURN RECEIPT REQUESTED P 332 127 584**  
Holly Wise, Docket Clerk, State Office of Administrative Hearing - **REGULAR MAIL**

SOAH DOCKET NO. 458-00-0306

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

ALOHA CLUB,  
PERMIT NOS. N416824, NL459960  
JEFFERSON COUNTY, TEXAS  
(TABC CASE NO. 587077)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Aloha Club (the Permittee) for forfeiture of the full amount of its conduct surety bond in conjunction with TEX. ALCO. BEV. CODE ANN. §61.13(b)(2) and Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24. TABC alleged that Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules 16 TAC §33.24. A violation of TEX. ALCO. BEV. CODE ANN §32.17(a)(1) occurred on or about September 4, 1999. A violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §41.52(c)(1)(C) also occurred on September 4, 1999. Violations of TEX. ALCO. BEV. CODE ANN §§32.17(a)(1) and 104.01(5) occurred on March 7, 1998.

The Permittee did not make an appearance at the hearing on April 6, 2000. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of TABC that the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), should be forfeited.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on April 6, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent was not represented, and Respondent did not appear. Veronica B. Dorsey, Administrative Law Judge (ALJ), presided. Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## **II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

Texas Alcoholic Beverage Commission Rules 16 TAC §33.24 authorizes TABC to notify a permittee or licensee of its intent to seek forfeiture of the bond when a licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995. As described in the Findings of Fact, the Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24 by committing three violations of the Alcoholic Beverage Code between March 7, 1998, and September 4, 1999.

The TABC's attorney introduced the following two exhibits into evidence:

Commission 1 is the claimed Notice of Hearing to Aloha Club which shows Respondent received notice on February 28, 2000.

Commission 2 is the file of Permittee with permit numbers N416824 and NL459960, including an "Agreement and Waiver of Hearing," signed on May 20, 1998, and a second "Agreement and Waiver of Hearing," signed on September 21, 1999.

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled on April 6, 2000. Notice was properly sent via certified mail on February 28, 2000.

## **III. RECOMMENDATION**

Because the Permittee committed three violations of the Alcoholic Beverage Code between March 7, 1998, and September 4, 1999, in violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

## **V. FINDINGS OF FACT**

1. Texas Alcoholic Beverage Commission (TABC) issued Permit Nos. N416824 and NL459960 to Aloha Club. The mailing address of Aloha Club is 725 9th Avenue, Port Arthur, Texas 77642.
2. TABC delivered a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to the Permittee on February 28, 2000.
3. The hearing on the merits was held on April 6, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent did not appear, and Respondent was not represented at the hearing. Veronica B. Dorsey, Administrative Law Judge (ALJ) presided.

4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

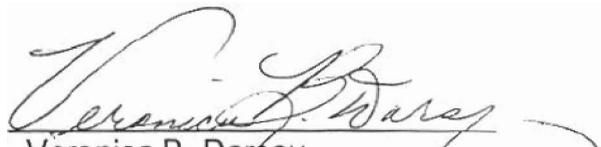
A violation of TEX. ALCO. BEV. CODE ANN §32.17(a)(1) occurred on or about September 4, 1999, and a violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §41.52(c)(1)(C) also occurred on the same day.

Violations of TEX. ALCO. BEV. CODE ANN §§32.17(a)(1) and 104.01(5) occurred on March 7, 1998.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
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. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing three violations of the Alcoholic Beverage Code between March 7, 1998, and September 4, 1999.
6. Based on the foregoing Findings of Fact and Conclusions of Law, forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

SIGNED this 4<sup>th</sup> day of June 2000.

  
Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings