

DOCKET NO. 587324

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|-------------------------------------|---|---------------------|
| IN RE JOSE LUIS VILLARREAL, JR. | § | BEFORE THE |
| D/B/A THE KORNER POCKET BAR & GRILL | § | |
| PERMIT NO. BG-425729 | § | |
| LICENSE NO. BL-425730 | § | TEXAS ALCOHOLIC |
| | § | |
| NUECES COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-00-1696) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 26th day of September, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Bill Zukauckasa. The hearing convened on August 17, 2000, and adjourned August 17, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 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.

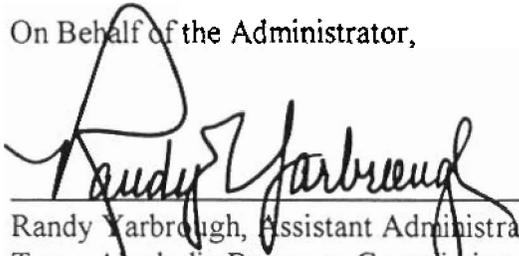
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on October 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 26th day of September, 2000.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Bill Zukauckas
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

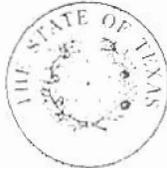
Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
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Victor C. Hernandez
ATTORNEY FOR RESPONDENT
P.O. Box 349
Robstown, Texas 78380
CERTIFIED MAIL/RRR NO. Z 473 042 969

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Corpus Christi District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 31, 2000

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

HAND DELIVERY

RE: Docket No. 458-00-1696; TABC vs. JOSE LUIS VILLARREAL, JR. D/B/A THE KORNER POCKET BAR & GRILL (TABC CASE NO. 58732)

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Christopher Burnett, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Victor C. Hernandez, attorney for Respondent. For reasons discussed in the Proposal for Decision, I recommend that Respondent's conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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 reply 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 black ink, appearing to read "Bill Zukauckas".

Bill Zukauckas
Administrative Law Judge

BZ/cb
Enclosure

xc: Christopher Burnett, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, TX 78731 - VIA HAND DELIVERY
Victor C. Hernandez, Attorney at Law, P.O. Box 349, Robstown, TX 78380 - VIA REGULAR U.S. MAIL
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY

DOCKET NO. 458-00-1696

| | | |
|---|---|--------------------------------|
| TEXAS ALCOHOLIC BEVERAGE COMMISSION | § | BEFORE THE STATE OFFICE |
| | § | |
| | § | |
| vs. | § | |
| | § | OF |
| JOSE LUIS VILLARREAL, JR., D/B/A THE KORNER POCKET BAR & GRILL (TABC CASE NO. 58732) | § | |
| | § | |
| | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DÉCISION

The Staff of the Texas Alcoholic Beverage (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Jose Luis Villarreal, Jr. (Respondent) d/b/a The Corner Pocket Bar & Grill. Respondent posted a conduct surety bond on the 7th day of August, 2000, in compliance with Sections 11.11 of the Texas Alcoholic Beverage Code (the Code). The Commission's Staff (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 that 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 here.

On August 17, 2000, Bill Zukauckas, Administrative Law Judge for the State Office of Administrative Hearings (SOAH), convened a public hearing at the Hearing Facility of the State Office of Administrative Hearings, Austin, Texas. Respondent, appeared by telephone represented by Attorney Victor C. Hernandez. Christopher Burnett, Assistant Attorney General, also appeared by telephone to represent the Staff. Evidence and argument were heard. At the conclusion of the hearing the record was closed.

II. Conduct Surety Bond

On February 4, 1998, the Commission issued a Wine and Beer Retailer's Permit, BG-425729, and a Retail Dealer's On Premises Late Hours License, BL-425730, to Respondent for the premises known as The Korner Pocket Bar and Grill, 10136 Leopard Street, Corpus Christi, Nueces County, Texas.

On January 7, 1998, Respondent, executed a conduct surety bond for The Corner Pocket Bar & Grill in the amount of \$5,000 as required by Section 11.11 of the Code.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On November 16, 1998, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 581400, regarding two violations of the Code. The waiver agreement stated that on September 9, 1998, Respondent has committed the violations of breach of the peace and failure to report the breach of peace on the licensed premises, in violation of Sections 69.13 and 61.71a(31) of the Code, respectively. The agreement contained the following language:

My name is Jose Luis Villarreal. I am the permittee. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1500.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on November 20, 1998. The Order stated that the violations, as stated, did occur. Further, the Order adopted the above described waiver of hearing and assessed the penalty of suspension of Respondent's permit for a period of ten days beginning on January 13, 1999, unless the permittee paid a civil penalty in the amount of \$1,500.00 on or before December 30, 1998.

Again, on October 23, 1999, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 586551, regarding one violation of the Code. The waiver agreement stated that on October 23, 1999, Respondent has committed the violation of permitting consumption during prohibited hours in violation of Sections 61.71(a)(7) of the Code. The agreement contained the following language:

My name is Jose Luis Villarreal. I am the permittee. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$750.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on November 8, 1999. The Order stated that the violations, as stated, did occur. Further, the Order

adopted the above described waiver of hearing and assessed the penalty of suspension of Respondent's permit for a period of five days beginning on January 12, 2000, unless the permittee paid a civil penalty in the amount of \$750.00 on or before December 29, 1999.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke or suspend a permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE Section 6.01. "Permittee" means a person who is the holder of a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE Section 1.04(11). TEX. ADMIN. CODE §33.24(j) 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.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree 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 the Code. The Commission's rule at TEX. ADMIN. CODE §33.24 also applies and requires forfeiture upon cancellation, or upon final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

PROPOSED FINDINGS OF FACT

1. On February 4, 1998, the Commission issued a Wine and Beer Retailer's Permit, BG-425729, and a Retail Dealer's On Premises Late Hours License, BL-425730, to Respondent for the premises known as The Corner Pocket Bar and Grill, 10136 Leopard Street, Corpus Christi, Nueces County, Texas. On January 7, 1998, Respondent executed a conduct surety bond for The Corner Pocket Bar and Grill for \$5,000 as required by Section 11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of the permit, which was February 4, 1998.
2. A hearing was convened on August 17, 2000, at the Hearings Facility of the State Office of Administrative Hearings, Austin, Texas. Respondent was represented by phone by Attorney Victor C. Hernandez. Christopher Burnett, Assistant Attorney General, appeared by phone to represent the Staff. Evidence and argument were heard, and the record was closed at the conclusion of the hearing.
3. Respondent received proper and timely notice of the hearing.
4. On January 7, 1998, Respondent, executed a conduct surety bond to Respondent doing business as The Komer Pocket Bar and Grill for \$5,000 as required by Section 11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of Respondent's Permits, which was February 4, 1998.

- On November 16, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. By signing the waiver agreement, Respondent did not deny that: on September 9, 1998, Respondent had a breach of the peace on his premises, in violation of Section 69.13 of the Code; and on that same date, Respondent failed to report the breach of peace on the licensed premise, in violation of Section 67.71(a)(31) of the Code. Respondent waived his right to a hearing to contest these violations of the Code and acknowledged that his permit would be suspended or canceled by the Commission unless he paid a civil penalty. By his signature, he further acknowledged that the forfeiture of any related conduct surety bond could result.
6. On November 20, 1998, the Commission Administrator entered an order finding Respondent had committed two violations of the Code consistent with Respondent's admissions found in Findings of Fact No. 5.
 7. On October 23, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. By signing the waiver agreement, Respondent did not deny that: on October 23, 1999, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of Section 61.71(a)(7) of the Code. Respondent waived his right to a hearing to contest these violations of the Code and acknowledged that his permit would be suspended or canceled by the Commission unless he paid a civil penalty. By his signature, he further acknowledged that the forfeiture of any related conduct surety bond could result.
 8. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

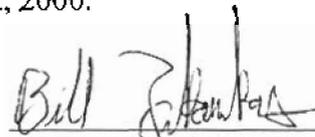
PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the TEX. ALCO. BEV. CODE (Vernon 1995 and Vernon Supp. 2000).
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., Sections 2003.021(b) and 2003.042(6) (Vernon 2000).
3. As referenced in Findings of Fact Nos. 2 and 3, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN Sections 2001.051 and 2001.052 (Vernon 2000).
4. Based upon Findings of Fact Nos. 1 and 4, Respondent holds Wine and Beer Retailer's Permit BG-425729, and a Retail Dealer's On Premises Late Hours License, BL-425730 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 Section 11.11 (Vernon 1995 and Vernon Supp. 2000).

5. Based upon Findings of Fact Nos. 5-9, Respondent violated 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE Section 11.11 by violating a Commission rule and law of the State of Texas relating to alcoholic beverages while holding a Wine and Beer Retailer's Permit no. BG-425729, and a Retail Dealer's On Premises Late Hours License no. BL-425730, issued by the Commission, having three violations of the Code since September 1995.
6. Based on Finding of Fact No. 5-9, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED and entered this 31st day of August, 2000.



BILL ZUKAUCKAS

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS