

DOCKET NO. 587603

IN RE CASE & POINT INCORPORATED	§	BEFORE THE
D/B/A BARE FACTS	§	
PERMIT NO. MB423190, LB423191	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0926)	§	BEVERAGE COMMISSION

ORDER

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 Brenda Coleman. The hearing convened on April 25, 2000 and adjourned May 3, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 30, 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.

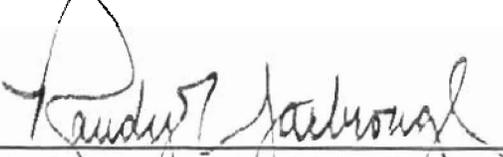
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

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

TEG\bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

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

Roger Albright
ATTORNEY FOR RESPONDENT
3301 Elm Street
Dallas, Texas 75226-1637
VIA FACSIMILE (214) 939-9229

Case & Point Incorporated
8410 Harry Hines Blvd.
Dallas, Texas 75235-3006
VIA REGULAR MAIL

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

State Office of Administrative Hearings



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.269.601.890

RE: Docket No.458-00-0926; Texas Alcoholic Beverage Commission vs. Case & Point, Incorporated
d/b/a Bare Facts (TABC Case No.587603)

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 Timothy E. Griffith, attorney for Texas Alcoholic Beverage Commission, and to Roger Albright, attorney for Case & Point, Incorporated d/b/a Bare Facts. For reasons discussed in the proposal, I recommend Brookhollow National Bank Certificate of Deposit in the amount of \$5,000.00, numbered 25174, dated October 14, 1997, should be forfeited. TEX. ALCO. BEV. CODE § 11.11(b)(2).

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,

Brenda Coleman

Brenda Coleman
Administrative Law Judge

BC:fg
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings, Austin, Texas - REGULAR MAIL
Timothy E. Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - FAX 972/547-5093
Roger Albright, Attorney for Respondent, Case & Point, Inc. d/b/a Bare Facts - CERTIFIED MAIL NO.
Z.269.601.891

SOAH DOCKET NO. 458-00-0926

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**CASE & POINT INCORPORATED
D/B/A BARE FACTS
PERMIT NOS. MB423190, LB423191
DALLAS COUNTY, TEXAS
(TABC CASE NO. 587603)**

§ BEFORE THE STATE OFFICE
§
§
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§ OF
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§ ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the certificate of deposit (in place of a conduct surety bond) posted by Case & Point Incorporated d/b/a Bare Facts (Respondent). The Staff recommended that the certificate of deposit be forfeited because Respondent had committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that the Respondent's certificate of deposit be forfeited.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

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

On March 27, 2000, the Staff issued its Notice of Hearing. The notice was directed to Case & Point Incorporated d/b/a Bare Facts by and through its attorney of record. On April 25, 2000, a hearing convened before Brenda Coleman, an administrative law judge (ALJ), at the State Office of Administrative Hearings (SOAH), 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent was represented at the hearing by Roger Albright, Attorney at Law. Evidence was received from both parties on that date. The record was closed on May 3, 2000, after the parties were allowed to submit additional written materials.

II. LEGAL STANDARDS

The Texas Alcoholic Beverage Commission (TABC) is authorized under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 2000)(the Code), to forfeit the amount of a conduct surety bond if Respondent's license was revoked or on a final adjudication that the licensee had violated a

provision of the Code. A holder of a permit required to file a surety bond may furnish instead of all or part of the required bond amount one or more certificates of deposit assigned to the State issued by a federally insured bank or savings institution authorized to do business in this State. TEX. ALCO. BEV. CODE ANN. § 11(d)(1) (Vernon 2000)(the Code).

The following TABC rule governs forfeiture of a conduct surety bond:

(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, § 11.11 and § 61.13, and this rule have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedures Act. 16 TEX. ADMIN. CODE § 33.24(j)

III. CONDUCT SURETY BOND

On October 14, 1997, Respondent executed an assignment of account in lieu of a conduct surety bond. The Assignment provides the Commission with all right, title and interest of whatever nature that Case & Point, Incorporated has to an insured account in the Brookhollow National Bank, a Certificate of Deposit in the amount of \$5,000.00 and numbered 25174. The Assignment bears the acknowledgment of the Brookhollow National Bank, 1111 West Mockingbird Lane, Dallas, Texas.

On November 24, 1997, the Commission issued Mixed Beverage Permit, MB423190, and Mixed Beverage Late Hours Permit, LB423191, to Respondent for the premises known as Case & Point Incorporated d/b/a Bare Facts at 8410 Harry Hines Boulevard, Dallas, Dallas County, Texas. The permits have been continuously renewed.

IV. EVENTS LEADING TO THE REQUEST TO FORFEIT RESPONDENT'S CONDUCT SURETY BOND

On December 2, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 581150 regarding several violations of the Code, to wit:

(a) On or about May 26, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(6) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code; additionally, on or about May 26, 1998, Respondent, its employee, servant or agent, did then and there on the licensed premises solicit a customer to buy drinks for consumption by Respondent and/or its employee, in violation of § 104.01(4) of the Code, which

warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code;

(b) On or about June 8, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(6) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code; and

(c) On or about July 23, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(2) of the Code and § 21.08(a) of the Texas Penal Code; additionally, on or about July 23, 1998, an employee, agent or servant of the Respondent, did then and there on the licensed premises knowingly allow employees, servants and/or agents to engage in acts of sexual contact with intent to arouse or gratify sexual desires, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code.

The waiver agreement contained the following language:

My name is Roger Albright, Attorney for Respondent, authorized to represent Respondent in the styled and numbered cause above. Respondent, without admitting the violation described herein occurred, waives hearing in the matter and accepts the penalty assessed. Respondent agrees that the above-referenced permits be suspended for a period of twenty-eight days starting 12:01 A.M. on the 5th day of May, 2000, unless a civil penalty in the amount of \$4,200.00 is paid on or before the 29th day of December, 1999. Respondent agrees that this agreement becomes final and enforceable on the date the Order is signed, and acknowledges that the signing of this waiver may result in the forfeiture of any related conduct surety bond. Additionally, for purposes of this agreement, the original six charges have been combined into three charges. Respondent declares its understanding of the terms of this AGREEMENT and accepts the penalty assessed for this violation.

As a result of this waiver agreement, the Commission Administrator entered an Order on December 6, 1999. The Order stated Respondent violated the Code as stated in the Agreement and Waiver of Hearing. The Order further provided that Respondent's permits were suspended for twenty-eight days unless Respondent paid \$4,200.00 as a civil penalty.

V. 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 ANN. §§ 6.01 and 61.71. Texas Alcoholic Beverage Commission rule § 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 (or any instrument serving in place of 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. Section 33.24(j) requires forfeiture upon cancellation or upon final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

FINDINGS OF FACT

1. On October 14, 1997, Respondent executed an assignment of account in lieu of a conduct surety bond, evidenced by a Certificate of Deposit in the amount of \$5,000.00, numbered 25174, deposited in the Brookhollow National Bank.
2. On November 24, 1997, the Commission issued Mixed Beverage Permit, MB423190, and Mixed Beverage Late Hours Permit, LB423191, to Respondent for the premises known as Case & Point, Incorporated d/b/a Bare Facts at 8410 Harry Hines Boulevard, Dallas, Dallas County, Texas.
3. On December 2, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 581150 regarding several violations of the Code, which were combined into three charges, to wit:
 - (a) On or about May 26, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(6) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code; additionally, on or about May 26, 1998, Respondent, its employee, servant or agent, did then and there on the licensed premises solicit a customer to buy drinks for consumption by Respondent and/or its employee, in violation of § 104.01(4) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code;
 - (b) On or about June 8, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(6) of the Code, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code; and
 - (c) On or about July 23, 1998, the Respondent, or its employee, agent or servant, engaged in or permitted conduct on the premises which was lewd, immoral or offensive to public decency, in violation of § 104.01(2) of the Code and § 21.08(a) of the Texas Penal Code; additionally, on or about July 23, 1998, an employee, agent or servant of the Respondent, did then and there on the licensed premises knowingly allow employees, servants and/or agents to engage in acts of sexual contact with intent to arouse or gratify sexual desires, which warrants suspension or cancellation of the permit under § 11.61(b)(2) of the Code.

4. By signing the waiver agreement, Respondent acknowledged that his permits would be suspended by the Commission unless he paid a civil penalty. Respondent agreed that the agreement would become final and enforceable on the date the Waiver Order was signed, and further acknowledged that the signing of the waiver agreement may result in the forfeiture of any related conduct surety bond.
5. On December 6, 1999, the Commission Administrator entered an order finding Respondent had violated §§ 104.01(6), 104.01(4) and 104.01(2) of the Code, as well as § 21.08(a) of the Penal Code.
6. Respondent has committed three violations of the Code since September 1, 1995, which resulted in a final adjudication by the Commission against Respondent.
7. Staff sent Respondent written notice of Staff's intent to forfeit the bond by a letter dated January 13, 2000.
8. On March 27, 2000, the Staff issued its Notice of Hearing.
9. On April 25, 2000, a hearing convened before Brenda Coleman, an administrative law judge (ALJ), at the State Office of Administrative Hearings (SOAH), 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent was represented at the hearing by Roger Albright, Attorney at Law. Evidence was received from both parties on that date. The record was closed on May 3, 2000.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021 (Vernon 2000).
3. Based on Findings of Fact Nos. 1 and 2, Respondent holds Mixed Beverage Permit, MB423190, and Mixed Beverage Late Hours Permit, LB423191, and posted a conduct surety bond (certificate of deposit) in accordance with the requirements set forth in 16 TEX. ADMIN. CODE § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 2000).
4. Based on Findings of Fact Nos. 3-7, Brookhollow National Bank Certificate of Deposit in the amount of \$5,000.00, numbered 25174, dated October 14, 1997, should be forfeited. TEX. ALCO BEV. CODE §§ 11.11(b)(2) and 11.11(d)(1) (Vernon 2000).

SIGNED this 30th day of June, 2000.

Brenda Coleman
Brenda Coleman
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS