

DOCKET NO. 588545

IN RE ANNA MARIE ORTEGON	§	BEFORE THE
D/B/A T R Y TEJANO PRIDE	§	
PERMIT NO. BL449280, BG449279	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1638)	§	BEVERAGE COMMISSION

ORDER,

CAME ON FOR CONSIDERATION this 25th day of October, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened and adjourned on July 25, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 27, 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.

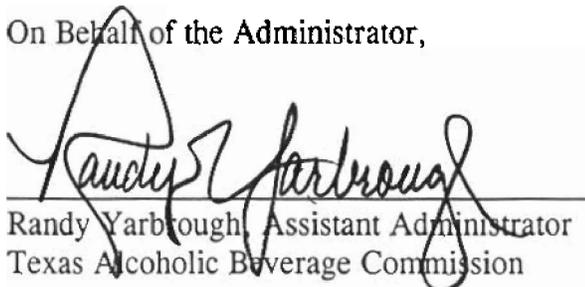
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on November 15, 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 25th day of October, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

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

Anna Marie Ortegon
d/b/a T R Y Tejano Pride
RESPONDENT
1123 N. Flores
San Antonio, Texas 78212-4921
VIA CERTIFIED MAIL/RRR NO. Z 473 039 263

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

and beer retailer's permit, posted a conduct surety bond for T.R.Y. Tejano Pride for \$5,000.00 as required by the TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

The Respondent committed three violations of the Commission's rules and regulations since April 5, 1999. The violations occurred on May 16, 1999, December 4, 1999 and December 31, 1999. The Respondent signed an "Agreement and Waiver of Hearing" regarding these violations on June 23, 1999, December 13, 1999, and February 7, 2000, respectively. All the agreements contained the following language:

My name is Anna Marie Ortegon. I am the permittee. I neither admit or 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.*

(emphasis added in italics).

In lieu of the cash civil penalties noted above, the Respondent was offered five days suspension for the violations.

As a result of these waiver agreements, the Commission Administrator entered Orders on August 29, 1999, February 13, 1999, and April 9, 2000, respectively. The Orders adjudicated that the violations acknowledged by Respondent in the waiver agreements had occurred. The Orders further provided that Respondent's permit(s) would be suspended unless Respondent paid a civil penalty in the amount indicated above for each occurrence.

III. Applicable Law

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the rules or regulations of the Commission, in accordance with TEX. ALCO. BEV. CODE ANN. §§ 6.01 (Vernon 1995) and 61.71 (Vernon 1995 and Supp. 2000). Additionally, the Commission may seek forfeiture of a conduct surety bond 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 TEX. ALCO. BEV. CODE ANN. since September 1, 1995, in accordance with 16 TEX. ADMIN. CODE § 33.24(j) (1999).

When posting a conduct surety bond, the bond specifies on its face that the permit or license holder must agree to "conform with the Texas Alcoholic Beverage Code and rules of the Commission." In signing the bond, the permittee is also put on notice that if he "violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall

be paid to the state," subject to certain conditions. *See* TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

IV. Proposed Findings of Fact

1. On March 3 1999, Anna Marie Ortegon (Respondent) posted a conduct surety bond for T.R.Y. Tejano Pride located at 1123 N. Flores, San Antonio, Bexar County, Texas, for \$5,000.00. The Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit No. BG-449279 and a Retail Dealer's On-Premise Late Hours License No. BL-449280 to Respondent on April 5, 1999.
2. On May 19, 2000, the staff for the Commission (Staff) mailed notice of hearing to the Respondent via certified mail, return receipt requested, to Respondent's mailing address at 1123 N. Flores, San Antonio, Texas 78212.
3. The notice of hearing contained a statement of the date, time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The hearing was convened on July 25, 2000, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. The Respondent attended the hearing. Christopher Burnett, Attorney for the Petitioner, represented the Staff. The ALJ closed the record that same day.
5. The violations occurred on May 16, 1999, December 4, 1999 and December 31, 1999. The Respondent signed an "Agreement and Waiver of Hearing" regarding these violations on June 23, 1999, December 13, 1999, and February 7, 2000, respectively. By signing each waiver agreement, Respondent declared and acknowledged that certain violations had been committed, and that her permit would be suspended or canceled by the Commission unless she paid a specified civil penalty for each occurrence.
6. The Commission Administrator entered three separate orders on August 29, 1999, February 13, 2000 and April 9, 2000, finding Respondent had committed three violations of the Commission's rules and regulations.
7. Respondent committed three violations of the Commission's rules and regulations which resulted in three final adjudications of these violations since April 5, 1999.

V. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (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 (TAC) § 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. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TAC ch. 155 (1999).
4. Respondent holds Permit No. BG-449279 and License No. BL-449280, and posted a conduct surety bond in accordance with the requirements set forth in 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 2000).
5. Respondent committed three violations of the Commission's rules and regulations, in accordance with 16 TAC § 33.24(j).
6. Respondent violated 16 TAC § 33.24 (1999) and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a Commission rule and a law of the State of Texas relating to alcoholic beverages while holding Wine and Beer Retailer's Permit No. BG-449279 and Retail Dealer's On-Premise Late Hours License No. BL-449280, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED and entered this 27th day of September, 2000.


 LEAH DAVIS BATES
 ADMINISTRATIVE LAW JUDGE
 STATE OFFICE OF ADMINISTRATIVE HEARINGS