

DOCKET NO. 589644

IN RE SANDRA JANE SARRATT	§	BEFORE THE
D/B/A WEST TEXAS LOOSEY'S	§	
PERMIT NO. MB-449533 & LB-449534	§	
	§	TEXAS ALCOHOLIC
	§	
LUBBOCK COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1895)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of November, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on October 6, 2000, and adjourned October 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 23, 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.

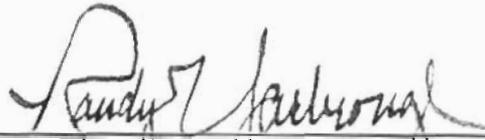
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on December 11, 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 20th day of November, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Brian Lee Phillips
Administrative Law Judge
State Office of Administrative Hearings
Lubbock, Texas
VIA FACSIMILE (806) 792-0149

Holly Wise, Docket Clerk
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300 West 15th Street, Suite 504
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TABC Legal Section

Licensing Division
Lubbock District Office

DOCKET NO. 458-00-1895

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE
COMMISSION §
§
§
VS. § OF
§
SANDRA JANE SARRATT §
D/B/A WEST TEXAS LOOSEY'S §
PERMIT NOS. MB-449533, LB-449534 §
LUBBOCK COUNTY, TEXAS §
(TABC CASE NO. 589644) § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Sandra Jane Sarratt, d/b/a West Texas Loosey's (Respondent). Respondent posted a conduct surety bond on January 19, 1999, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). Staff recommended the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent appeared on her own behalf by telephone at the hearing. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing on this matter convened on October 6, 2000, before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Staff was represented by Christopher Burnett, Assistant Attorney General, who appeared by telephone. Respondent appeared *pro se*, also by telephone. The record closed that same day.

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. Conduct Surety Bond

On May 11, 1999, the Commission issued a Mixed Beverage Permit No. MB-449533 and a Mixed Beverage Late Hours Permit No. LB-449534 to Respondent for

the premises known as West Texas Loosey's, 4802 Avenue Q, Lubbock, Lubbock County, Texas. On January 19, 1999, Respondent posted a conduct surety bond for West Texas Loosey's for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

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

On July 30, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on July 23, 1999, Respondent was intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13). As a result of this waiver agreement, the Commission Administrator entered an order on August 6, 1999, suspending Respondent's permits for seven days unless Respondent paid a civil penalty of \$ 1050.00.

On September 27, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on September 4, 1999, Respondent or her employee was intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(b)(13). As a result of this waiver agreement, the Commission Administrator entered an order on October 5, 1999, suspending Respondent's permits for ten days unless Respondent paid a civil penalty of \$ 1500.00.

Petitioner's Exhibit No. 1, which is a certified copy of Respondent's permit and violation history, also shows that on October 17, 1999 Respondent was found to have been intoxicated while on the licensed premises. That violation was adjudicated under the same docket number as the violation dated September 27, 1999. As a result of these two violations, the Commission Administrator entered an order on December 22, 1999, suspending Respondent's permits for forty days unless Respondent paid a civil penalty of \$ 6000.00.

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 ANN. §§ 6.01 and 61.71. The Commission's rule found at 16 TAC § 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.

Respondent admitted in the Agreements and Waivers of Hearing, and by not contesting the veracity of Petitioner's Exhibit No. 1, that she has violated the provisions of the Code three times since September 1, 1995.

V. Proposed Findings of Fact

1. On May 11, 1999, the Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit No. MB-449533 and a Mixed Beverage Late Hours Permit No. LB-449534 to Respondent for the premises known as West Texas Loosey's, 4802 Avenue Q, Lubbock, Lubbock County, Texas. On January 19, 1999, Respondent posted a conduct surety bond for West Texas Loosey's for \$5000, as required by Sections 11.11 and 61.13 of the Code.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated March 9, 2000. The notice was properly sent to Respondent at her address of record.
3. The notice of hearing contained a statement of the 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 section of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The hearing was convened on October 6, 2000, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent appeared on her own behalf by telephone. Christopher Burnett, Assistant Attorney General, represented Staff.
5. On July 30, 1999, Respondent signed a waiver agreement admitting that the permittee was intoxicated while on the licensed premises.
6. On September 27, 1999, Respondent signed a waiver agreement admitting that the permittee, licensee or an employee was intoxicated while on the licensed premises.
7. Petitioner's Exhibit No. 1 shows that Respondent was adjudicated to be intoxicated while on the licensed premises on October 17, 1999, which Respondent did not dispute at the hearing.
8. On August 6, 1999, October 6, 1999, and December 22, 1999, the Commission Administrator entered orders finding that Respondent had committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact Nos. 5-7.
9. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

VI. 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, and 61.71 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).
4. Respondent holds Permit Nos. MB-4495333 and LB-449534 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) AND TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 2000).
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code, to wit, being intoxicated and/or allowing an employee of the permittee to be intoxicated while on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 11.61(a)(13).
6. Respondent violated 16 TAC § 33.24 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 Permit Nos. MB-449533 and LB-449534, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED this 23rd day of October, 2000.



B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS