

DOCKET NO. 590344

IN RE BABE'S CLUB	§	BEFORE THE
	§	
PERMIT NOS. N-405322, NL405323	§	
& PE405324	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-0425)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned on November 1, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 6, 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.

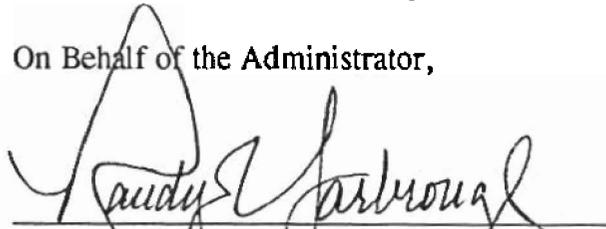
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on December 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 November, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Babe's Club
RESPONDENT
580 West Arapho Road, Ste. 134
Richardson, Texas 75080
VIA CERTIFIED MAIL/RRR NO. Z 473 039 343

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

DOCKET NO. 458-01-0425

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

BABE'S CLUB
DALLAS COUNTY, TEXAS
(TABC CASE NO...590344)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Respondent Babe's Club. Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent had been finally adjudicated of committing three violations of the Alcoholic Beverage Code. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion here.

On November 1, 2000, a hearing convened before ALJ Robert F. Jones Jr., State Office of Administrative Hearings (SOAH). The Texas Alcoholic Beverage Commission (TABC) was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent was represented at the hearing by Mildred Sizemore.¹ Evidence was received and the record was closed on November 1, 2000.

Staff alleged that (1) Respondent had been issued permits, (2) Respondent has posted a conduct surety bond, (3) Respondent has been finally adjudicated of three violations of the Alcoholic Beverage Code since September 1, 1995, and (4) Staff sent Respondent written notice of Staff's intent to seek to forfeit the bond. Respondent argued that two of the violations on which Staff relied were committed by Respondent's employees and not by Ms. Sizemore, and that accordingly the Respondent should not forfeit the bond.

II. EVIDENCE

Respondent was issued Private Club Registration Permit N405322, Private Club Late Hours Permit NL405323, and Beverage Cartage Permit PE405324. The permits were issued on January 8,

¹ Ms. Sizemore identified herself as the "owner" of Babe's Club, which she identified as a Texas Corporation. Indeed, Ms. Sizemore signed the surety bond in question, and other documents, as "Owner." Other documents admitted in evidence identified Babe's Club as a "non-incorporated association of persons." The ALJ does not believe that Babe's Club legal status effects the outcome of the case. This information is added only to identify Ms. Sizemore and describe her relationship to Babe's Club

1999, and renewed one year later. Respondent has posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL01846, dated February 24, 1998. Respondent, acting through Mildred Sizemore, executed the bond as Principal. First Indemnity of America Insurance Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.

On January 20, 1999, an Order was issued by TABC in Docket Number 582229 in a case styled *In re Babe's Club*. Under the Order's terms, Respondent agreed that a violation of law had occurred, and that the violation was identified in another document called "the Agreement and Waiver of Hearing." This second document was adopted by the Commission, and recited that the violation was for the sale of alcoholic beverages to a nonmember on November 4, 1998. On May 16, 2000, an Order was issued by TABC in Docket Number 588957. In this instance the Order found Respondent had committed two violations: one for possession of narcotics by an employee on January 7, 2000, and a second for an employee being intoxicated on the licensed premises on January 7, 2000.

On June 23, 2000, Staff sent Respondent written notice of Staff's intent to seek forfeiture of the bond. The notice, on page two, is signed by Mildred Sizemore and indicates her desire for a hearing to determine if the bond should be forfeited.

III. DISCUSSION

TABC is authorized under TEX. ALCO. BEV. CODE (Vernon 2000) (the Code), § 11.11(b)(2), to seek the forfeiture of a conduct surety bond on final adjudication that the permittee had violated a provision of the Code. Under TABC's rule, each of the three violations must have been committed after September 1, 1995. 16 TEX. ADMIN. CODE § 33.24(j)(1). TABC must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing is to be conducted in accordance with the Administrative Procedure Act. *Id.*, § 33.24(j).

Ms. Sizemore did not testify on behalf of Respondent, but argued the violations involving possession of narcotics by an employee and being intoxicated on the licensed premises were the independent actions of the employee in question. She averred the employee was immediately terminated. She urges that the Respondent should not be liable for the wrongful actions of its employee. Ms. Sizemore admitted she had committed the violation concerning sale to a nonmember.

A permittee means the holder of the permit or its "an agent, servant, or employee." Code, § 1.04(11), (6). Ms. Sizemore's sale to a nonmember is a violation of § 32.17(1) of the Code. In the words of the Code, the violation is that of the "permittee club." Possession of narcotics by an employee is a violation of § 11.61(b)(6) or (7) of the Code. An employee being intoxicated on the licensed premises is a violation of § 11.61(b)(13). Both violations are attributable to Respondent.

The TABC Orders of January 20, 1999 and May 16, 2000 are "final adjudications" that Respondent has committed three violations of the Alcoholic Beverage Code since September 1, 1995.

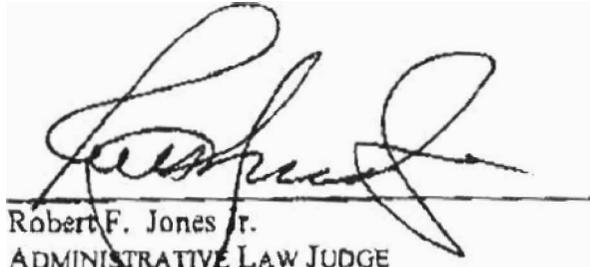
IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent Private Club Registration Permit N405322, Private Club Late Hours Permit NL405323, and Beverage Cartage Permit PE405324. The permits were issued on January 8, 1999, and renewed one year later.
2. Respondent's licensed premises are located at 580 West Arapaho, Suite 134, Richardson, Dallas County, Texas 75080.
3. Respondent has posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission's Conduct Surety Bond Number XTL01846, dated February 24, 1998. Respondent, acting through Mildred Sizemore, executed the bond as Principal. First Indemnity of America Insurance Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.
4. On January 20, 1999, Respondent signed an "Agreement and Waiver of Hearing" for which TABC entered an Order finding the Respondent sold alcoholic beverages to a nonmember on November 4, 1998.
5. On May 16, 2000, Respondent signed an "Agreement and Waiver of Hearing" for which TABC entered an Order finding an employee of Respondent was in possession of narcotics on January 7, 2000.
6. On May 16, 2000, Respondent signed an "Agreement and Waiver of Hearing" for which TABC entered an Order finding an employee of Respondent was intoxicated on the licensed premises on January 7, 2000.
7. Respondent did not timely file a motion for rehearing with TABC and the Orders described in Findings of Fact Nos. 4, 5, and 6 became final.
8. Respondent committed three violations of the Texas Alcoholic Beverage Code.
9. The Staff of TABC (Staff) sent Respondent written notice of their intent to seek forfeiture of the bond. The notice, on page two, is signed by Mildred Sizemore and indicates her desire for a hearing to determine if the bond should be forfeited.
10. On October 9, 2000, Staff issued its Notice of Hearing. The notice was directed to Respondent at 580 West Arapaho, Suite 134, Richardson, Dallas County, Texas 75080.
11. On November 1, 2000, a hearing convened before ALJ Robert F. Jones Jr., State Office of Administrative Hearings SOAH. TABC was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent was represented at the hearing by its owner Mildred Sizemore. Evidence was received, and the record was closed on November 1, 2000.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) 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 fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 2000).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 3, Respondent holds three TABC permits and has posted a conduct surety bond in compliance with the Code.
5. Based on Finding of Fact No. 4 - 8, the TABC has made a final adjudication that Respondent has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.
6. Based on Finding of Fact No. 9 and Conclusions of Law Nos. 4 - 5, the criteria for forfeiture of Respondent's conduct surety bond have been met.
7. Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL01846, dated February 24, 1998 in the amount of \$5,000.00 should be forfeited.

SIGNED November 6, 2000.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS