

DOCKET NO. 590354

IN RE CONG HIEU HUYNH	§	BEFORE THE
D/B/A NIKKI'S LOUNGE	§	
PERMIT NO. BG412224	§	
LICENSE NO. BL412225	§	
	§	TEXAS ALCOHOLIC
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2290)	§	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 Don Smith. The hearing convened and adjourned on September 28, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 7, 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.

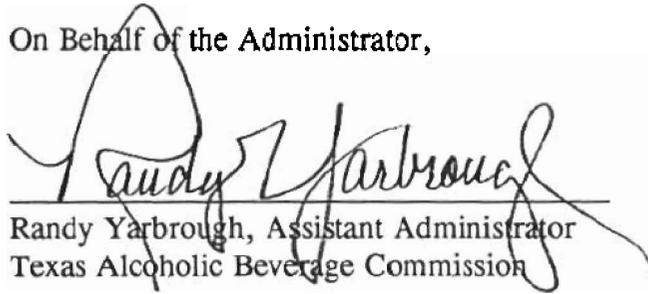
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

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 Don Smith
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Cong Hieu Huynh
d/b/a Nikki's Lounge
RESPONDENT
5300 Gulfway Drive
Port Arthur, Texas 77642
VIA CERTIFIED MAIL/RRR NO. Z 473 039 342

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Beaumont District Office

DOCKET NO. 458-00-2299

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

CONG HIEU HUYNH
D/B/A NIKKI'S LOUNGE
LICENSE NOS. BG-412224 & BL-412225
JEFFERSON COUNTY, TEXAS
(TABC CASE NO. 590354)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Cong Hieu Huynh d/b/a Nikki's Lounge (Respondent) because Respondent was found to have committed three violations of the Alcoholic Beverage Code (the code) since September 1, 1995. The violations of the code have been adjudicated. The Respondent made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §11.11 and/or 61.13 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of the code. Commission rule found at 16 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.

The staff attorney introduced Exhibit TABC 1, which is the affidavit of Brian L. Guenther, Custodian of Records, with attached Respondent's TABC records (the records). The records state that the Wine and Beer Retailer's Permit, BG-412224 and Retail Dealer's On-Premise Late Hours License, BL-412225 were issued to Cong Hieu Huynh, doing business as Nikki's Lounge, 5300 Gulfway Drive, Port Arthur, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 3rd day of June, 1997. The records contain final Orders dated November 19, 1997, February 2, 1998, and July 11, 2000 that Respondent had committed three violations under the code. Each Order states Respondent agreed that a violation of the code had occurred, and each

Order assessed a penalty to Respondent. On July 24, 2000, the Commission mailed a notice to Respondent that the Commission intended to forfeit the conduct surety bond. Respondent, on July 29, 2000, waived the hearing to determine if the bond should be forfeited.

The staff attorney mailed a Notice of Hearing to the Respondent, and introduced the certified return receipt as TABC Exhibit 2. Respondent signed the receipt on August 25, 2000.

III. RECOMMENDATION

Because the Respondent has committed three violations of the Code since September 1, 1995, the Respondent has forfeited the full amount of the conduct surety bond.

IV. FINDINGS OF FACT

1. Cong Hieu Huynh, doing business as Nikki's Lounge, 5300 Gulfway Drive, Port Arthur, Jefferson County, Texas, was issued a Wine and Beer Retailer's Permit, BG-412224 and a Retail Dealer's On-Premise Late Hours License, BL-412225 by the Texas Alcoholic Beverage Commission.
2. On August 22, 2000, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing to Respondent concerning the forfeiture of the conduct surety bond.
3. Notice of hearing to the Respondent was shown by proof that the notice was sent to the Respondent's last known address, as shown on the referring agency's record, by certified mail, return receipt requested, and received by Respondent by proof of actual receipt of the notice by Cong Hieu Huynh.
4. The notice of hearing also contained the following language in capital letters in 10 point or larger boldface type:

If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
5. The hearing on the merits was held on September 28, 2000, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Christopher Burnett. The Respondent did not appear and was not represented at the hearing.
6. On November 19, 1977, the Commission issued a final Order that Respondent had violated a provision of the code.
7. On February 2, 1998, the Commission issued a final Order that Respondent had violated a provision of the code.

8. On July 11, 2000, the Commission issued a final Order that Respondent had violated a provision of the code.
9. Respondent has committed at least three violations of the Code and has at least three final adjudications regarding these violations since September 1, 1995.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 11.11 and/or 61.13 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of the code. Commission rule found at 16 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.
6. Based on Findings of Fact Nos. 6, 7, 8, and 9, and the above Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 7 day of November, 2000.



Don Smith
Administrative Law Judge
State Office of Administrative Hearings