

**DOCKET NO. 594203**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE
COMMISSION	§	
	§	
VS.	§	
	§	TEXAS ALCOHOLIC
DOCKINS INC.	§	
D/B/A FAR WEST STAMPEDE	§	
PERMIT NOS. MB242717, LB242718	§	
LUBBOCK COUNTY, TEXAS	§	
(SOAH DOCKET NO.458-01-3426)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 7th day of November, 2001, 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 September 17, 2001 and adjourned on September 17, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 8, 2001. 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** instantler.

**This Order will become final and enforceable on November 28, 2001**, 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 7th day of November, 2001.

On Behalf of the Administrator,

A handwritten signature in cursive script, appearing to read "Randy Yarbrough", written over a horizontal line.

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable B.L. Phillips  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (806) 792-0149**

Dockins Inc.  
d/b/a Far West Stampede  
**RESPONDENT**  
308 81st St.  
Lubbock, Texas 79404-6320  
**VIA CERTIFIED MAIL 7000 1530 0003 1927 5382**

Licensing Division  
Lubbock District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge



October 8, 2001

Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

U.S. REGULAR MAIL

RE: Docket No. 458-01-3426; Texas Alcoholic Beverage Commission vs. Dockins Inc. d/b/a Far West Stampede (TABC Case No. 594203)

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 Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and Respondent Dockins Inc., d/b/a Far West Stampede. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond be forfeited.

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,

B. L. Phillips  
Administrative Law Judge

BLP:vu  
Enclosure

xc: Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission -U.S. REGULAR MAIL  
Dockins Inc., 301 81<sup>st</sup> Street, Lubbock, Texas 79404-6320 - U.S. REGULAR MAIL

DOCKET NO. 458-01-3426

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	
VS.	§	OF
	§	
DOCKINS INC.	§	
D/B/A FAR WEST STAMPEDE	§	
PERMIT NOS. MB242717, LB242718	§	
LUBBOCK COUNTY, TEXAS	§	
(TABC CASE NO. 594203)	§	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 Dockins Inc. dba Far West Stampede (Respondent). Respondent posted a conduct surety bond on October 26, 1998, 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 failed to appear 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 September 17, 2001 before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Staff was represented by Gail Gordon, Assistant Attorney General, who appeared by telephone. Respondent failed to appear for the hearing. 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 February 16, 1995, the Commission issued a Mixed Beverage Permit No. MB-242717 to Respondent. On October 26, 1998, Respondent posted a conduct surety bond 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 February 28, 2001, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. The waiver agreement stated that on February 21, 2001, Respondent knowingly possessed un-invoiced alcoholic beverages and distilled beverages with the distributor stamps not mutilated in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.06 and 28.09. As a result of this waiver agreement, the Commission Administrator entered an order on March 7, 2001, suspending Respondent's permits for forty-five days unless Respondent paid a civil penalty of \$ 6750.00.

On January 18, 2000, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on January 1, 2000, Respondent possessed distilled spirits without a local distributor's stamp in violation of TEX. ALCO. BEV. CODE ANN. § 28.15(a). As a result of this waiver agreement, the Commission Administrator entered an order on January 24, 2000, suspending Respondent's permits for three days unless Respondent paid a civil penalty of \$ 450.00.

## 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 that he has violated the provisions of the Code three times since September 1, 1995.

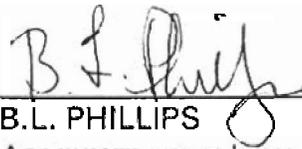
#### V. Proposed Findings of Fact

1. On February 16, 1995, the Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit No. MB-242717 to Respondent for premises located in Lubbock, Lubbock County, Texas. On October 26, 1998, Respondent posted a conduct surety bond 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 July 6, 2001. The notice was properly sent to Respondent at his 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 September 17, 2001, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent failed to appear at the hearing. Gail Gordon, Assistant Attorney General, represented Staff.
5. On February 28, 2001, Respondent signed a waiver agreement admitting that Respondent knowingly possessed un-invoiced alcoholic beverages and distilled beverages with the distributor stamps not mutilated in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.06 and 28.09.
6. On January 18, 2000, Respondent signed a waiver agreement admitting that Respondent possessed distilled spirits without a local distributor's stamp in violation of TEX. ALCO. BEV. CODE ANN. § 28.15(a).
7. On March 7, 2001 and January 24, 2000, 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. 5-6.
8. 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.
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.
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Respondent holds Permit Nos. MB-242717 and LB-242718 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 .
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code, to wit, knowingly possessing un-invoiced alcoholic beverages and distilled beverages with the distributor stamps not mutilated in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.06 and 28.09, and possessing distilled spirits without a local distributor's stamp in violation of TEX. ALCO. BEV. CODE ANN. § 28.15(a).
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-242717 and LB-242718, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED this 8th day of October, 2001.



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