

DOCKET NO. 594737

IN RE SERGIO ALVAREZ	§	BEFORE THE
D/B/A JERRY'S CLUB	§	
PERMIT NO. BG443939	§	
LICENSE NO. BL443940	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3572)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6TH day of November 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened and adjourned on September 6, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 11, 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.

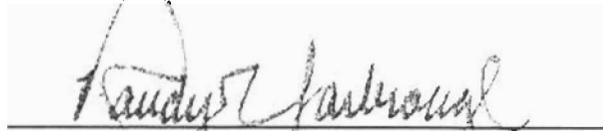
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on November 27, 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 6th day of November 2001.

On Behalf of the Administrator,

A handwritten signature in cursive script, appearing to read "Randy Yarbrough", is written over a light gray rectangular background.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE (214) 956-8611

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Timothy E. Griffith
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TABC Legal Section

Licensing Division
Dallas District Office

DOCKET NO. 458-01-3572

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
SERGIO ALVAREZ d/b/a JERRY'S CLUB PERMIT NO. BG-443939 LICENSE NO. BL-443940 DALLAS COUNTY, TEXAS	§	OF
	§	
	§	
(TABC CASE NO. 594737)	§	ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this action against Sergio Alvarez d/b/a Jerry's Club (Respondent) seeking forfeiture of Respondent's conduct surety bond. Staff alleged that Respondent committed three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995, and that Respondent's bond was therefore subject to forfeiture. The Administrative Law Judge (ALJ) finds that Staff has proven its allegations and recommends that Respondent's bond be forfeited.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On September 6, 2001, a hearing was convened before Jerry Van Hamme, ALJ, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite A-150, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent was represented by its attorney, Joel Rich. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to 16 TEX. ADMIN. CODE § 33.24, an applicant for a license or permit must submit security, in an amount prescribed by TEX. ALCO. BEV. CODE ANN. §11.11, at the time application is made for each license or permit. When posting a conduct surety bond the permit or license holder must agree not to violate Texas law relating to alcoholic beverages or Texas Alcoholic Beverage Commission (Commission) rules. The bond is subject to forfeiture upon final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995. 16 TEX. ADMIN. CODE § 33.24(j)(1).

III. EVIDENCE AND PARTIES' CONTENTIONS

1. Staff's Evidence

a. Conduct Surety Bond, Permit, and License

On January 7, 1999, Respondent obtained a conduct surety bond numbered XTL02935 in the amount of \$5,000. On January 22, 1999, the Commission issued a Wine and Beer Retailer's Permit, BG-443939, and Retail Dealer's On-Premise Late Hours License, BL-443940, to Respondent for Jerry's Club, 1634 W. Mockingbird Lane, Dallas, Dallas County, Texas.

b. Respondent's Past Violations

i. Violation No. 1

On November 7, 2000, Respondent signed an "Agreement and Waiver of Hearing" stating that its license and permit were subject to suspension or civil penalty because Respondent purchased alcoholic beverages from an unauthorized source in violation of the Code. The Agreement and Waiver stated that "[t]he signing of this waiver may result in the forfeiture of any related conduct surety bond." (TABC Ex. No. 2). By Order dated November 14, 2000, the Commission adopted the Agreement and Waiver and found that a violation of law had occurred, and that Respondent had waived a hearing on the matter and had accepted a penalty of either a three-day suspension or \$450 civil penalty.

ii. Violations Nos. 2 - 5

On April 17, 2001, Respondent signed an "Agreement and Waiver of Hearing" stating that its license and permit were subject to suspension or civil penalty for (a) selling during prohibited hours, (b) permitting consumption during prohibited hours, (c) allowing Respondent's employee to solicit drinks, and (d) allowing Respondent's employee to possess drugs, all in violation of the Code. The Agreement and Waiver stated that "[t]he signing of this waiver may result in the forfeiture of any related conduct surety bond." (TABC Ex. No. 2). By Order dated April 20, 2001, the Commission adopted the Agreement and Waiver and found that a violation of law had occurred, and that Respondent had waived a hearing on the matter and had accepted a penalty of either a 20-day suspension or \$3,000 civil penalty.

2. Respondent's Evidence

Respondent presented no evidence at the hearing.

IV. RECOMMENDATION

The ALJ finds that Respondent has committed three violations of the Code and that final adjudications regarding these violations have been made since September 1, 1995. Accordingly, the ALJ recommends that Respondent's conduct surety bond be forfeited.

FINDINGS OF FACT

1. On January 7, 1999, Respondent posted a conduct surety bond numbered XTL02935 in the amount of \$5,000.
2. On January 22, 1999, the Commission issued a Wine and Beer Retailer's Permit, BG-443939, and a Retail Dealer's On-Premise Late Hours License, BL-443940, to Respondent for its premises, Jerry's Club, located at 1634 West Mockingbird Lane, Dallas, Dallas County, Texas.
3. On November 7, 2000, Respondent signed an "Agreement and Waiver of Hearing" stating that its license and permit were subject to suspension or civil penalty for purchasing alcoholic beverages from an unauthorized source in violation of the Code.
4. By Order dated November 14, 2000, the Commission adopted the Agreement and Waiver, and found that Respondent had agreed that a violation of law had occurred, had waived a hearing on the matter, and had accepted a penalty of either a three-day suspension or \$450 civil penalty.
5. On April 17, 2001, Respondent signed an "Agreement and Waiver of Hearing" stating that its license and permit were subject to suspension or civil penalty for (a) selling during prohibited hours, (b) permitting consumption during prohibited hours, (c) allowing Respondent's employee to solicit drinks, and (d) allowing Respondent's employee to possess drugs, all in violation of the Code.
6. By Order dated April 20, 2001, the Commission adopted the Agreement and Waiver, and found that Respondent had agreed that a violation of law had occurred, had waived a hearing on the matter, and had accepted a penalty of either a 20-day suspension or \$3,000 civil penalty.
7. By signing the waiver agreements, Respondent acknowledged that Respondent's conduct surety bond may be forfeited.
8. Respondent has committed three violations of the Code, and final adjudications regarding these violations have been made, since September 1, 1995.
9. Staff sent Respondent written notice of Staff's intent to forfeit the bond by letter dated May 17, 2001.

10. On July 27, 2001, Staff issued its Notice of Hearing.
11. On September 6, 2001, a hearing was convened before Jerry Van Hamme, Administrative Law Judge, State Office of Administrative Hearings, at 6333 Forest Park Road, Suite A-150, Dallas, Dallas County, Texas. Staff was represented by its attorney, Timothy Griffith. Respondent was represented by its attorney, Joel Rich. The record was closed on that date.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11.
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 facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021.
3. Based on Finding of Fact No. 1, Respondent posted a conduct surety bond in the amount of \$5,000 in accordance with the requirements set forth in 16 TEX. ADMIN. CODE § 33.24 and TEX. ALCO. BEV. CODE ANN. § 11.11.
4. Based on Findings of Fact Nos. 3 - 8, Respondent has committed three violations of the Code, and final adjudications regarding those violations have been made, since September 1, 1995. 16 TEX. ADMIN. CODE § 33.24(j)(1); TEX. ALCO. BEV. CODE ANN. § 11.11.
5. Based on Findings of Fact Nos. 1 - 11, and Conclusion of Law No. 4, the conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11.

SIGNED this 11 day of October, 2001.



JERRY VAN HAMME
Administrative Law Judge
State Office of Administrative Hearings