

**DOCKET NO. 594870**

IN RE DONALD EDWARD HARRIS	§	BEFORE THE
D/B/A GILLIGANS ISLAND	§	
PERMIT NO. BG432981	§	
	§	TEXAS ALCOHOLIC
	§	
HUNT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3571)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 6<sup>TH</sup> 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 6<sup>th</sup> day of November 2001.

On Behalf of the Administrator,



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**

Donald Edward Harris  
d/b/a Gilligans Island  
**RESPONDENT**  
1425 Hwy 276 E  
West Tawakoni, Texas 75453  
**VIA CERTIFIED MAIL 7000 1530 0003 1927 7089**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

DOCKET NO. 458-01-3571

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

VS.

OF

DONALD EDWARD HARRIS d/b/a  
GILLIGAN'S ISLAND  
PERMIT NO. BG-432981

(TABC CASE NO. 594870)

ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission staff (Staff) brought this action against Donald Edward Harris d/b/a Gilligan's Island (Respondent) seeking forfeiture of Respondent's conduct surety bond. Staff alleged that Respondent's bond was subject to forfeiture because Respondent had committed three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. 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 did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion. 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.

**FINDINGS OF FACT**

1. On July 1, 1998, Respondent posted a conduct surety bond numbered XTL02302 in the amount of \$5,000.
2. On July 10, 1998, the Commission issued a Wine and Beer Retailer's Permit, BG-432981, to Respondent for its premises, Gilligan's Island, located at 1425 Highway 276 East, West Tawakoni, Hunt County, Texas.
3. On November 4, 1998, Respondent signed an "Agreement and Waiver of Hearing" stating that its permit was subject to suspension or civil penalty because Respondent was intoxicated on the licensed premises in violation of the Code.
4. By Order dated November 10, 1998, 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 seven-day suspension or \$1,050 civil penalty.
5. On December 29, 1999, Respondent signed an "Agreement and Waiver of Hearing" stating that its permit was subject to suspension or civil penalty for Respondent's failure to promptly report a breach of the peace in violation of the Code.
6. By Order dated January 12, 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.
7. On April 3, 2001, Respondent signed an "Agreement and Waiver of Hearing" stating that its permit was subject to suspension or civil penalty because Respondent was in possession of "distilled spirits on premises of BG" in violation of the Code. (TABC Ex. No. 2).
8. By Order dated April 18, 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 5-day suspension or \$750 civil penalty.
9. By signing the waiver agreements, Respondent acknowledged that the conduct surety bond may be forfeited.
10. Respondent has committed three violations of the Code, and has had three final adjudications regarding these violations, since September 1, 1995.
11. Staff sent Respondent written notice of Staff's intent to forfeit the bond by letter dated May 10, 2001.

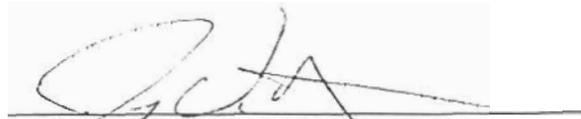
12. Staff sent its Notice of Hearing dated July 21, 2001, by certified mail, return receipt requested, to Respondent's mailing address listed in the Commission's records. The Notice of Hearing was delivered to that address and signed for on August 8, 2001.
13. The Notice of Hearing informed Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held. The Notice of Hearing also contained language in 10-point type stating that if Respondent failed to appear at the hearing Staff's factual allegations would be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
14. 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 did not appear and was not represented at the hearing. 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 - 10, Respondent has committed three violations of the Code and has had three final adjudications regarding those violations 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. 11 - 13, proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE § 155.55(d), which provide that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
6. Based on Findings of Fact Nos. 1 - 14, and Conclusions of Law Nos. 4 and 5, a default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55 (2000), and Respondent's conduct surety bond should be forfeited pursuant to TEX. ALCO.

BEV. CODE ANN. § 11.11.

ISSUED this 11 day of October, 2001.



JERRY VAN HAMME  
Administrative Law Judge  
State Office of Administrative Hearings