

DOCKET NO. 607344

IN RE VICTOR GARCIA	§	BEFORE THE
D/B/A HONEY HOLE	§	
	§	
PERMIT NO. BG523415	§	
	§	TEXAS ALCOHOLIC
	§	
LIMESTONE COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2852)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 15th day of June, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on April 26, 2004 and adjourned on April 26, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 28, 2004. 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 JULY 6, 2004, 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.

SIGNED this the 15th day of June, 2004.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
Waco, Texas
VIA FAX (254) 750-9380

Victor Garcia
d/b/a Honey Hole
Respondent
PO Box 724
Groesbeck, Texas 766420724
CERTIFIED MAIL/RRR# 7000 1530 0003 1902 0630

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 28, 2004

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

REGULAR MAIL

RE: Docket No. 458-04-2852, Victor Garcia d/b/a Honey Hole, TABC Case No. 607344

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzan Moon Shinder".

Suzan Moon Shinder
Administrative Law Judge

sms/me

Enclosure

xc: Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - **REGULAR MAIL**
Victor Garcia d/b/a Honey Hole, P.O. Box 724, Groesbeck, Texas 76642-0724 - **REGULAR MAIL**

**SOAH DOCKET NO. 458-04-2852
TABC CASE NO. 607344**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
V.	§	OF
VICTOR GARCIA D/B/A HONEY HOLE PERMIT NO. BG 523415	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (the Commission or Staff) initiated this action against Victor Garcia d/b/a Honey Hole (the Respondent), seeking the forfeiture of the conduct surety bond posted by the Respondent. The Commission recommended that the bond be forfeited because the Respondent has committed three violations of the Code after September 1, 1995, in violation of Texas Alcoholic Beverage Code (Code) §11.11, and 16 TEX. ADMIN. CODE (Rules) §33.24. The undersigned Administrative Law Judge (ALJ) concludes that the Commission's allegations are true and agrees with the Commission's recommended penalty.

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 April 26, 2004, a public hearing was held before Suzan Shinder, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, in Waco, Texas. The Commission appeared by its attorney, Gayle Gordon, via video-conference from the

Commission's headquarters in Austin, Texas. Respondent appeared *pro se* at the Waco SOAH office, by its officer, Victor Garcia. Evidence and argument were heard, and the record closed the same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code §11.11, an applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with alcoholic beverage law. Pursuant to Rule §33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond, as established by Code §11.11, and Rule §33.24, have been satisfied.

III. ANALYSIS

The Commission's exhibit was admitted without objection. The Respondent's officer, Victor Garcia, testified for the Respondent, and the Respondent rested without putting on any additional evidence.

Commission's Exhibit No. 1, copies of the Respondent's permit, violation history, and conduct surety bond, reveals that on August 7, 2003, the Respondent, by its officer, Victor Garcia, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on July 19, 2003, the Respondent had three violations of the Code: "Permit Consumption During Prohibited Hours by (Employee)," under Code §61.71(a)(18); "Possession Distilled Spirits by BG Employee," under Code §61.71(a)(9); and "Intoxicated Employee on Licensed Premises," under Code §61.71(a)(1), "to wit" Code §104.01(5). In this waiver, the Respondent accepted a 15-day suspension of its permit, to begin on

September 17, 2003, unless a civil penalty in the amount of \$2250.00 was received by the Commission on or before the final due date stated in the administrative order.¹ In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered an order on August 13, 2003, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty reflected in that agreement.

In his testimony, Mr. Garcia did not deny the Commission's allegations, but complained that he was not on the permitted premises at the time the violations occurred. There was no evidence that the Respondent appealed the Commission's order.

Based on the foregoing, the Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. The Respondent is the holder of the Wine and Beer Retailer's Permit, BG-423415, issued to Victor Garcia, d/b/a Honey Hole, 3146 Highway 14 North, Mexia, Limestone County, Texas, by the Commission, on October 7, 2002.
2. On May 22, 2003, the Respondent, executed a conduct surety bond for the Honey Hole, in the amount of \$5000.00.
3. On August 7, 2003, the Respondent, by its officer, Victor Garcia, signed an "Agreement and Waiver of Hearing" in which the Respondent waived its right to a hearing to contest the Commission's assertion that on July 19, 2003, the Respondent committed three violations of the Code: "Permit Consumption During Prohibited Hours by (Employee)," under Code §61.71(a)(18); "Possession Distilled Spirits by BG Employee," under Code §61.71(a)(9); and "Intoxicated Employee on Licensed Premises," under Code §61.71(a)(1), "to wit" Code §104.01(5).

¹ The administrative order was included as part of Commission's Exhibit No. 1, and recited a final due date of September 3, 2003.

4. In the August 7, 2003, waiver agreement, the Respondent accepted a 15 day suspension of its permit, to begin on September 17, 2003, unless a civil penalty in the amount of \$2250.00 was paid to the Commission on or before September 3, 2003. In the waiver agreement, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond.
5. As a result of the August 7, 2003, waiver agreement, the Commission Administrator entered an order on August 13, 2003, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty as stated in the waiver agreement.
6. The Respondent did not appeal the Commission's order of August 13, 2003.
7. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on February 5, 2004.²
8. This Notice of Hearing informed the 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.
9. The hearing on the merits convened on April 26, 2004, in the SOAH offices at 801 Austin Avenue, Suite 750, in Waco, Texas. The Commission appeared by its attorney, Gayle Gordon, via video-conference from the Commission's headquarters in Austin, Texas. The Respondent appeared *pro se* at the Waco SOAH offices. Evidence and argument were heard and the record closed on the same date.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed 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 under the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.

² Official Notice was taken of the Commission's Notice of Hearing, and the stipulation of both parties that notice was proper and timely was accepted by the ALJ.

4. Based on the foregoing findings and conclusions, the Respondent violated TEX. ALCO. BEV. CODE ANN. §11.11, and 16 TEX. ADMIN. CODE §33.24.
5. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

SIGNED May 28, 2004.



**SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**