

DOCKET NO. 608658

IN RE LAWRENCE GREENWOOD, SR. § BEFORE THE TEXAS  
D/B/A GREENWOOD'S BAR & GRILL §  
PERMIT NOS. MB458692, LB458693 §  
§ ALCOHOLIC  
§  
BEXAR COUNTY, TEXAS §  
(SOAH DOCKET NO. 458-04-5330) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Marilyn Bradley. The hearing convened on May 25, 2004 and adjourned on May 25, 2004. After the record was closed, the case was reassigned to Administrative Law Judge Robert F. Jones, who after review of the record in its entirety, made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 10, 2004. The Proposal For Decision, attached hereto as Exhibit "A", was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Petitioner filed Exceptions to the proposal for decision on August 24, 2004. After review of the Exceptions, Administrative Law Judge Jones was of the opinion the Proposal For Decision should stand as issued.

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.

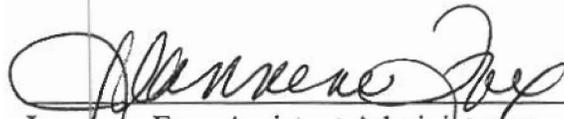
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond **NOT BE FORFEITED**.

This Order will become final and enforceable on OCTOBER 29, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 8<sup>th</sup> day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Robert F. Jones  
Administrative Law Judge  
State Office of Administrative Hearings  
Fort Worth, Texas  
**VIA FAX (817) 377-3706**

Lawrence Greenwood, Sr.  
d/b/a Greenwood's Bar & Grill  
**RESPONDENT**  
3426 Chateau  
San Antonio, Texas 782192512  
**CERTIFIED MAIL RRR #7000 1530 0003 1926 6243**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 10, 2004

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Lawrence Greenwood, Sr.,  
d/b/a Greenwood's Bar & Grill  
3426 Chateau  
San Antonio, Texas 78219-2511

VIA REGULAR MAIL

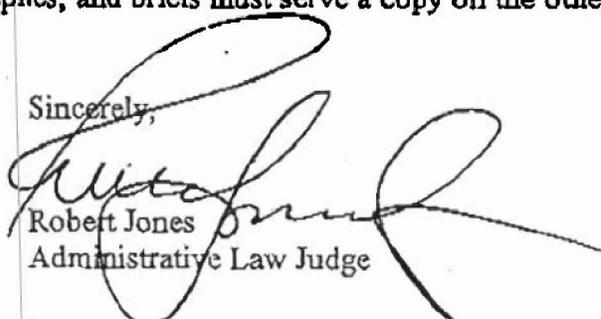
RE: Docket No. 458-04-5330; Texas Alcoholic Beverage Commission vs Lawrence Greenwood, Sr.  
d/b/a Greenwood's Bar & Grill (TABC Case No. 608658)

Dear Mr. Steen:

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 to Lawrence Greenwood, Sr., d/b/a Greenwood's Bar & Grill, Respondent. The Texas Alcoholic Beverage Commission (TABC) Staff sought forfeiture of Respondent's conduct surety bond. The Administrative Law Judge (ALJ) recommends the conduct surety bond not 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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

  
Robert Jones  
Administrative Law Judge

attachments



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**II. DISCUSSION**

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**A. Applicable Law**

A permit holder can be required to post a conduct surety bond.<sup>1</sup> The TABC may seek the forfeiture of a conduct surety bond if the permittee has been finally adjudicated of committing three Code violations after September 1, 1995.<sup>2</sup> The Commission must provide written notice of its intent to the permittee. The permittee may request a hearing on whether the bond should be forfeited.<sup>3</sup> For the purposes of bond forfeiture, a violation of the Code by an employee that is not attributable to the permittee under Section 106.14 of the Code<sup>4</sup> may nevertheless be a disqualifying violation.<sup>5</sup> To be so considered the Commission must have determined that

an agent or servant of the licensee or permittee has been adjudicated guilty of, or granted deferred adjudication for, an offense under the Alcoholic Beverage Code, because of conduct occurring during the performance of his/her duties for the licensee or permittee. . . . This paragraph only applies to violations which were not attributable to the licensee or permittee because of the operations of the Alcoholic Beverage Code, §106.14.<sup>6</sup>

**B. Evidence**

The TABC issued mixed-beverage permit MB458692 and mixed-beverage late-hours permit LB458693 to Respondent. Respondent's licensed premise is located at 222 N. New Braunfels, San

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<sup>1</sup> TEX. ALCO. BEV. CODE ANN. § 11.11(a) (Vernon 2004) (the Code).

<sup>2</sup> § 11.11(b)(2) of the Code; 16 TEX. ADMIN. CODE (TAC) § 33.24(j)(1).

<sup>3</sup> 16 TAC § 33.24(j)(2).

<sup>4</sup> § 106.14(a) of the Code provides that sale of alcoholic beverages to a minor by an employee is not attributable to the employer if: "(1) the employer requires its employees to attend a commission-approved seller training program; (2) the employee has actually attended such a training program; and (3) the employer has not directly or indirectly encouraged the employee to violate such law."

<sup>5</sup> § 11.11(b)(2).

<sup>6</sup> 16 TAC § 33.24(j)(3).

Docket No. 458-04-5330

Proposal For Decision

Page 3

~~Antonio, Bexar County, Texas. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL03373. Lawrence Greenwood, Sr. executed the bond as principal and First Indemnity of America Insurance Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.~~

The following facts<sup>7</sup> are not disputed:

- On August 8, 2001, the Commission entered a waiver order under Docket Number 594783 finding that Respondent violated Section 11.64(b)(14) of the Code by selling an alcoholic beverage to an intoxicated person and assessing a seven-day suspension (or a \$1,050 civil penalty) against Respondent.

On March 5, 2003, the Commission entered a "violation notice" under Docket Number 603789 that an "apparent violation"<sup>\*</sup> of Section 106.03 of the Code was committed by Respondent's employee by selling an alcoholic beverage to a minor. No administrative sanctions were sought against Respondent.

- On September 30, 2003, the Commission entered an order under Docket Number 606891 finding that Respondent violated Section 106.03 of the Code by selling an alcoholic beverage to a minor and assessing a seven-day suspension (or a \$1,050 civil penalty) against Respondent.

On November 13, 2003, Staff sent Respondent written notice of its intent to seek forfeiture of Respondent's conduct surety bond.

- Respondent requested a hearing to determine if the bond should be forfeited.

Mr. Greenwood disputed the facts supporting the August 8, 2001, adjudication, but acknowledged that he did not contest the administrative proceeding at the time and had waived a hearing on the merits. Mr. Greenwood also complained that the March 5, 2003, "apparent violation" should not be counted against him.

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<sup>7</sup> The information is taken from TABC Exhibit #1, a certified copy of Respondent's administrative record.

<sup>\*</sup> TABC Exhibit #1, p.8.

**C. Discussion**

The Staff proved Respondent has two violations of the Code since September 1, 1995. The March 5, 2003, "apparent violation" should not be counted against Mr. Greenwood. The Staff did not adduce evidence of any sort that Mr. Greenwood's employee had been convicted of, or received deferred adjudication for, a violation of Section 106.03 of the Code occurring on Respondent's premises on January 10, 2003.<sup>9</sup> Evidence of the employee's conviction or deferral is "evidence of an adjudication that [Mr. Greenwood] has violated a provision of the Alcoholic Beverage Code,"<sup>10</sup> and in its absence the ALJ cannot find that the "apparent violation" should be counted against Mr. Greenwood.

Therefore, the ALJ recommends Respondent's conduct surety bond not be forfeited.

**III. FINDINGS OF FACT**

1. The Texas Alcoholic Beverage Commission (TABC) issued mixed-beverage permit MB458692 and mixed-beverage late-hours permit LB458693 to Lawrence Greenwood, Sr. d/b/a Greenwood's Bar & Grill (Respondent).
2. Respondent's premises are located at 222 N. New Braunfels, San Antonio, Bexar County, Texas.
3. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL03373. Lawrence Greenwood, Sr. executed the bond as principal and First Indemnity of America Insurance Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.
4. On August 8, 2001, the Commission entered a waiver order under Docket Number 594783 finding that Respondent violated Section 11.64(b)(14) of the Texas Alcoholic Beverage Code (the Code) by selling an alcoholic beverage to an intoxicated person and assessing a seven-day suspension (or a \$1,050 civil penalty) against Respondent.
5. On September 30, 2003, the Commission entered an order under Docket Number 606891 finding that Respondent violated Section 106.03 of the Code by selling an alcoholic beverage to a minor

<sup>9</sup> TABC Exhibit #1, p. 9.

<sup>10</sup> 16 TAC § 33.24(j)(3).

Docket No. 458-04-5330

Proposal For Decision

Page 5

and assessing a seven-day suspension (or a \$1,050 civil penalty) against Respondent.

6. On November 13, 2003, Staff sent Respondent written notice of Staff's intent to seek forfeiture of Respondent's conduct surety bond.
7. Respondent requested a hearing to determine if the bond should be forfeited.
8. On April 30, 2004, the Staff of the TABC (Staff) served its Notice of Hearing (NOH) on Respondent.
9. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
10. On May 25, 2004, a telephone hearing was convened before an administrative law judge at the SOAH San Antonio office located at 10300 Heritage, Suite 250, San Antonio, Bexar County, Texas. Staff was represented by Gayle Gordon, an attorney with the TABC's Legal Division. Respondent represented himself. The record was closed on May 25, 2004.

#### IV. CONCLUSIONS OF LAW

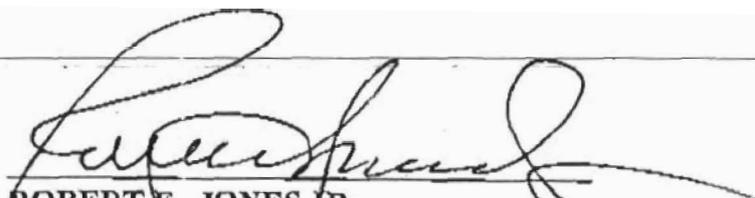
1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Code.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2004).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2004).
4. Based on the foregoing findings and conclusions, Respondent committed two violations of the Code since September 1, 1995.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should not be forfeited. § 11.11 of the Code; 16 TAC § 33.24.

Docket No. 458-04-5330

Proposal For Decision

Page 6

SIGNED August 10, 2004.



ROBERT F. JONES JR.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS