

**DOCKET NO. 609679**

IN RE EVEN KEEL BAR & GRILL CLUB D/B/A EVEN KEEL BAR & GRILL CLUB PERMIT NOS. N 535061, PE535062	§ § § § § § § § § §	BEFORE THE TEXAS      ALCOHOLIC   BEVERAGE COMMISSION
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**ORDER**

**CAME ON FOR CONSIDERATION** this 1st day of September, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on June 24, 2004 and adjourned on June 24, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 17, 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. 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 **SEPTEMBER 22, 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 1st day of September, 2004, at Austin, Texas.

On Behalf of the Administrator,

A handwritten signature in cursive script, appearing to read "Jeannere Fox", is written over a horizontal line.

Jeannere Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings  
Dallas, Texas  
**VIA FAX (214) 956-8611**

Even Keel Bar & Grill Club  
**RESPONDENT**  
709 FM 1201 Ext  
Gainesville, Tx. 76240  
**CERTIFIED MAIL RRR #7000 1530 0003 1902 6267**

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

Licensing Division  
Dallas District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge  
August 17, 2004

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

RE: TABC Vs. Even Keel Bar & Grill Club  
SOAH Docket No. 458-04-5768  
TABC Case No. 609679

Dear Ms. Fox:

Enclosed please find the Proposal For Decision in the above reference cause for the consideration of the Texas Alcoholic Beverage Commission.

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](http://www.soah.state.tx.us).

Sincerely,

*Brenda Coleman*

Brenda Coleman  
Administrative Law Judge

BC/sr

Enclosure

cc: Gayle Gordon, Staff Attorney for Texas Alcoholic Beverage Commission Via Fax;  
Even Keel Bar & Grill Club, Respondent, Via Regular Mail

SOAH DOCKET NO. 458-04-5768

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	OF
V.	§	
	§	
EVEN KEEL BAR & GRILL CLUB,	§	ADMINISTRATIVE HEARINGS
Respondent		

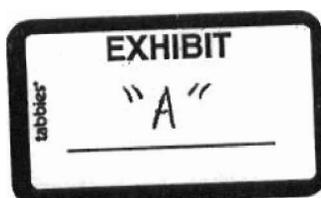
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) initiated this action seeking forfeiture of the conduct surety bond posted by Even Keel Bar & Grill Club (Respondent). Staff recommended that the bond be forfeited because Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge (ALJ) agrees with Staff's recommendation 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 May 18, 2004, Staff issued its Notice of Hearing to Respondent, setting a hearing for June 24, 2004. On June 24, 2004, a public hearing was held before ALJ Brenda Coleman at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented at the hearing by Gayle Gordon, Staff Attorney, who appeared by telephone. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Accordingly, 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

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. TEX. ALCO. BEV. CODE ANN. §§ 11.11(a) (1) & (2). When a final adjudication has been made that the permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. 16 TAC § 33.24(j)(1).

The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing is conducted in accordance with the Administrative Procedure Act. 16 TAC § 33.24(j)(2).

If a party who does not have the burden of proof fails to appear on the day and time set for hearing, the judge may proceed in that party's absence on a default basis and issue a proposal for decision against the defaulting party. In the proposal for decision, the factual allegations against that party in the notice of hearing will be deemed admitted. 1 TAC § 155.55(a).

## III. ANALYSIS

Based on the deemed factual findings in this case, Respondent has had three violations which have been finally adjudicated since September 1, 1995. Respondent's conduct surety bond should be forfeited.

## IV. FINDINGS OF FACT

1. Even Keel Bar & Grill Club (Respondent) is the holder of Private Club Registration Permit N535061 and Beverage Cartage Permit PE535062 issued by Staff for the premises known as located at 709 FM 1201 Ext, Gainesville, Cooke County, Texas.
2. Respondent has posted Staff Conduct Surety Bond Number 8107614, dated April 15, 2003, in the amount of \$5,000, payable to the State.

3. Respondent has been finally adjudicated of three violations of the Code since September 1, 1995.
4. By letter dated January 21, 2004, Staff sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
5. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
6. On May 18, 2004, Staff issued its Notice of Hearing by certified mail, return receipt requested, to Respondent at Respondent's address on record, setting the hearing on the merits for June 24, 2004.
7. The Notice of Hearing also informed Respondent of the time and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing was to be held; and contained language in 12-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.
8. Staff received a signed "green card" from the U.S. Postal Service showing that the Notice of Hearing was received and signed for at Respondent's mailing address.
9. On June 24, 2004, a hearing convened before ALJ Brenda Coleman at the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. Staff was represented by Staff Attorney Gayle Gordon, who appeared by telephone. Respondent did not appear and was not represented at the hearing. The record was closed on that date.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Staff) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61(b)(2).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. 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 (TAC) § 155.55.

A default judgment should be entered against Respondent pursuant to 1 TAC § 155.55.

5. The conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TAC § 33.24(j).

**SIGNED August 17, 2004.**

  
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**BRENDA COLEMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**