

DOCKET NO. 609681

IN RE JOSE AURELIO GOMEZ	§	BEFORE THE
D/B/A EL ROSIES LOUNGE AND CAFE	§	
PERMIT NO. BG506880	§	
LICENSE NO. BL506881	§	TEXAS ALCOHOLIC
	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-5489)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of August, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on June 17, 2004 and adjourned on June 17, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 8, 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.

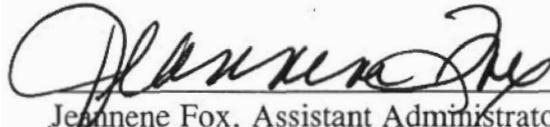
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on SEPTEMBER 13, 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 23rd day of August, 2004 at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Veronica S. Najera
Administrative Law Judge
State Office of Administrative Hearings
El Paso, Texas
VIA FAX (915) 834-5657

Jose Aurelio Gomez
d/b/a El Rosies Lounge and Cafe
RESPONDENT
2224 Bassett Avenue
El Paso, TX 79901
CERTIFIED MAIL RRR #7000 1530 0003 1902 5970

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
El Paso District Office

SOAH DOCKET NO. 458-04-5489

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
 Petitioner	§	
	§	
V.	§	
	§	OF
JOSE AURELIO GOMEZ	§	
D/B/A EL ROSIES LOUNGE AND CAFE	§	
	§	
	§	
EL PASO COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
(TABC CASE NO. 609681)	§	
 Respondent		

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Jose Aurelio Gomez d/b/a El Rosies Lounge and Cafe (Respondent). The Administrative Law Judge (ALJ) finds Petitioner proved, by a preponderance of the evidence, that all requirements for forfeiture of the bond have been met. Consequently, the Administrative Law Judge recommends Petitioner's proposed action be sustained and Respondent's conduct surety bond be forfeited.

I. JURISDICTION AND NOTICE

Notice and jurisdiction were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

II. PROCEDURAL HISTORY

The hearing convened and the record closed on June 17, 2004. Petitioner was represented by Gayle Gordon, staff attorney. Respondent appeared *pro se*. Administrative Law Judge (ALJ), Veronica S. Najera presided.

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PROPOSAL FOR DECISION

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III. DISCUSSION

A. Background

In December 2001, the Texas Alcoholic Commission issued to Respondent a Wine and Beer Retailer's Permit, BG-506880, and a Retail Dealer's On-Premise Late Hours License, BL-506881, which have been continuously renewed.

On November 1, 2002, Petitioner issued a waiver order against Respondent for a violation of § 61.73(b)¹ of the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violation occurred, and accepted a \$450.00 penalty or suspension for a period of three days. Respondent's license was canceled for cause. The November 2002 order constituted a final adjudication of the violation.

On December 4, 2002, Petitioner issued a waiver order against Respondent for a violation of § 61.73(b) of the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violation occurred, and accepted a \$750.00 penalty or suspension for a period of five days. Respondent's license was canceled for cause. The December 2002 order constituted a final adjudication of the violation.

On April 29, 2003, Petitioner issued a waiver order against Respondent for a violation of § 61.73(b) the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violation occurred, and accepted a \$750.00 penalty or suspension for a period of five days. Respondent's license was canceled for cause. The April 2003 order constituted a final adjudication of the violation.

On February 26, 2004, Petitioner issued a waiver order against Respondent for a violation

¹ The commission may suspend for not more than 60 days if it is found that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

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of § 61.71(a)(6)² of the Texas Alcoholic Beverage Code, for which Respondent waived its right to a hearing, without admitting said violation occurred, and accepted a \$3,000.00 penalty or suspension for a period of 20 days. Respondent's license was canceled for cause. The February 2004 order constituted a final adjudication of the violation.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct surety bond based on three or more adjudicated violations of the Texas Alcoholic Beverage Code. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

B. Legal Standards

Respondent was required to file with the commission a surety bond in the amount of \$5,000.00.³ When a license or permit is canceled, Petitioner may seek forfeiture of the licensee's or permittee's bond. In this case, the license was canceled, on more than three occasions, for cause, and waiver orders were issued on each violation.

The applicable statutory provision states ". . . that the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code"⁴

Furthermore, "When a license or permit is canceled, or upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the license or permittee, in writing, of its intent to seek forfeiture

2

The commission may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found that the licensee sold, served, or delivered an alcoholic beverage to an intoxicated person.

3

TEX. ALCO. BEV. CODE § 11.11(a)(1).

4

TEX. ALCO. BEV. CODE § 11.11(b)(2).

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of the bond.”⁵

C. Recommendation

Because Petitioner proved by a preponderance of the evidence that all requirements for forfeiture of Respondent’s conduct surety bond have been met, the ALJ recommends Respondent’s conduct surety bond be forfeited.

IV. FINDINGS OF FACT

1. On November 1, 2002, the Petitioner issued a waiver order suspending Respondent’s permit for a violation of § 61.73(b) of the Texas Alcoholic Beverage Code.
2. On December 4, 2002, the Petitioner issued a waiver order suspending Respondent’s permit for a violation of § 61.73(b) of the Texas Alcoholic Beverage Code.
3. On April 29, 2003, the Petitioner issued a waiver order suspending Respondent’s permit for a violation of § 61.73(b) of the Texas Alcoholic Beverage Code.
4. On February 26, 2004, the Petitioner issued a waiver order suspending Respondent’s permit for a violation of § 61.71(a)(6) of the Texas Alcoholic Beverage Code.
5. Respondent holds Wine and Beer Retailer’s Permit No. BG-506880.
6. Respondent holds Retail Dealer’s On-Premise Late Hours License No. BL-506881.
7. Petitioner notified Respondent that it intended to seek forfeiture of Respondent’s conduct surety bond based on Petitioner’s final adjudication of Respondent’s violations of the Texas Alcoholic Beverage Code.
8. Respondent initiated an administrative appeal of Petitioner’s stated intention to seek forfeiture of the conduct surety bond, resulting in the June 17, 2004, hearing in this case.
9. Proper and timely notice of the hearing was sent to Respondent on May 25, 2004.
10. Notice of hearing contained all the requisite elements required by law.

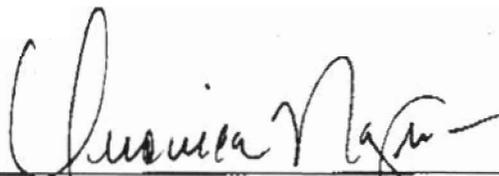
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V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§ 6.01 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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 Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§ 2001.051 and 2001.052.
4. Based on the above Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met pursuant to TEX. ALCO. BEV. CODE §§ 11.11(a)(1) and 11.11(b)(2) and 16 TEX. ADMIN. CODE §33.24(j).
5. Based on Conclusion of Law number 4, Respondent's conduct surety bond should be forfeited.

SIGNED July 8, 2004.

VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS