

DOCKET NO. 609682

IN RE HOUSTON HOSPITALITY	§	
CORPORATION	§	BEFORE THE TEXAS
D/B/A HOUSTON HOSPITALITY	§	
PERMIT NO. MB212877	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-7563)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on September 10, 2004 and adjourned on September 10, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 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 November 8, 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 18th day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannere Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/tc

The Honorable Don Smith
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FAX (713) 812-1001

Rebecca J. Manuel
Attorney for Respondent
VIA FAX (214) 891-7071

Houston Hospitality Corporation
d/b/a Houston Hospitality
RESPONDENT
5910 N Central Expy, Ste 1475
Dallas, TX 75206
CERTIFIED MAIL RRR #7000 1530 0003 1930 2453

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

September 17, 2004

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

VIA REGULAR MAIL

RE: Docket No. 458-04-7563; Houston Hospitality Corporation

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 cursive script that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/mc
Enclosure

xc: **Lindy To**, TABC, 427 W. 20th Street, Suite 600, Houston, Texas 77008 - VIA REGULAR MAIL
Rebecca J. Manuel, Attorney at Law, 5910 North Central Expressway, Suite 1475, LB 63, Dallas, Texas 75206 -VIA REGULAR MAIL



DOCKET NO. 458-04-7563

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
HOUSTON HOSPITALITY CORPORATION PERMIT NO. MB-212877 HARRIS COUNTY, TEXAS (TABC CASE NO. 609682)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Petitioner or TABC) brought this forfeiture action against Houston Hospitality Corporation (Respondent or Permittee). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permit had been canceled for cause. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction in this proceeding, and those issues are addressed only in the Finding of Fact and Conclusions of Law.

On July 15, 2004, Petitioner issued its notice of hearing, directed to Houston Hospitality Corporation, 5910 N. Central Espy., Ste. 1475, Dallas, Texas 75206. On September 10, 2004, a hearing convened before ALJ Don Smith (SOAH) at 2020 North Loop West, Suite 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent was represented at the hearing by Rebecca Manuel, Attorney. Evidence was received and the record was closed on September 10, 2004.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 11.11(b)(2) of the Code to forfeit the amount of a conduct surety bond if the permit is revoked. Pursuant to 16 TEX. ADMIN. CODE § 33.24, TABC must notify the Permittee, in writing, of its intent to seek forfeiture of the bond once a permit has been canceled. The Permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act. *Id.*

EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent was the holder of a Mixed Beverage Permit, issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit 3 establish that Mixed Beverage Permit MB-212877 was issued to Houston Hospitality Corporation, 9090 SW Freeway, Houston, Harris County, Texas, on February 9, 1990, and was continuously renewed until canceled for cause on December 10, 2003.

Petitioner alleged that Respondent's permit was canceled for cause, subjecting the conduct surety bond to forfeiture. TABC Exhibit 3 contains an Agreement and Waiver of Hearing, signed by Rebecca Manuel, Officer of Respondent, on December 9, 2003, wherein Respondent agreed to cancellation of the permit based on allegations that "Permittee ... allowed or consented to an unauthorized person using or displaying the permits. Respondent agrees that the .. Permits be CANCELED FOR CAUSE." Further, the Agreement and Waiver of Hearing sets out that "Respondent acknowledges that the signing of this waiver may result in the forfeiture of any related conduct surety bond." TABC Exhibit 3 also contains an Order, executed by TABC Assistant Administrator Jeannene Fox on December 9, 2003, wherein TABC found that the alleged violations occurred, and the agency canceled Respondent's permits for cause.

Respondent asserts that the Agreement and Waiver of Hearing were negotiated very quickly and that the forfeiture clause should not be considered. TABC asserts that the Order is final and enforceable.

Petitioner offered evidence of its compliance with the notice requirements of 16 TEX. ADMIN. CODE § 33.24. TABC Exhibit 3 contains a letter dated January 27, 2004, addressed to Houston Hospitality Corporation, stating that “we [TABC] are notifying you of our intention to seek forfeiture of the full amount of your conduct surety bond.” The letter references Conduct Surety Bond Number 103830026 and Mixed Beverage Permit MB-212877. The second page of the letter contains the Respondent’s request for a hearing to determine if the bond should be forfeited.

ANALYSIS

The only issue is whether Respondent has legitimate grounds to stop the forfeiture of the conduct surety bond. The answer is no. It is clear from the evidence that Respondent holds a Mixed Beverage Permit, and that this permit was canceled for cause by TABC. Respondent acknowledged in the Agreement and Waiver of Hearing that “this waiver may result in the forfeiture” of the conduct surety bond. Respondent received notice and requested a hearing regarding the proposed bond forfeiture. Essentially, Respondent wants to re-negotiate its agreement, but the agreement has become final.

RECOMMENDATION

The ALJ recommends that Texas Alcoholic Beverage Commission Conduct Surety Bond Number 103830026, dated February 6, 2003, in the amount of five thousand dollars, be forfeited.

PROPOSED FINDINGS OF FACT

1. Respondent, Houston Hospitality Corporation, holds a Mixed Beverage Permit, MB-212877, issued by the Texas Alcoholic Beverage Commission on February 9, 1990, for the premises located at 9090 SW Freeway, Houston, Harris County, Texas.
2. Respondent has posted Texas Alcoholic Beverage Commission Conduct Surety Bond Number 103830026, dated February 6, 2003. The bond was executed by Houston Hospitality Corporation, as Principal, and Travelers Casualty and Surety Company of America, 225 Lennon Ln., #200, Walnut Creek, CA, as Surety.
3. The bond is in the amount of five thousand dollars, and is payable to the State of Texas.
4. The bond references "MB 212877" as the type of permit or license for which it is posted
5. Respondent signed an Agreement and Waiver of Hearing on December 9, 2003, wherein it agreed to cancellation of the permit based on "Permittee ... allowed or consented to an unauthorized person using or displaying the permits. Respondent agrees that the ... permits be CANCELED FOR CAUSE."
6. TABC executed an Order on December 9, 2003, finding that the alleged violations occurred and canceling Respondent's Mixed Beverage Permit for cause.
7. Petitioner sent Respondent written notice of its intent to seek forfeiture of Conduct Surety Bond Number 103830026, by letter dated January 27, 2004.
8. Respondent requested a hearing to determine if the conduct surety bond should be forfeited.
9. On July 15, 2004, Petitioner issued its notice of hearing, directed to Houston Hospitality Corporation d/b/a Houston Hospitality Corporation, 5910 N. Central Espy., Ste. 1475, Dallas, Texas 75206. The notice of hearing alleges that Respondent's Mixed Beverage Permit was canceled for cause.
10. On September 10, 2004, a hearing convened before ALJ Don Smith, SOAH, at 2020 North Loop West, Suite 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by TABC Staff Attorney Lindy To. Respondent was represented at the hearing by Attorney Rebecca Manuel.

11. The TABC Order on December 9, 2003 canceling Respondent's Mixed Beverage permit for cause has become final.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24.
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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received timely notice of hearing.
4. Based upon the Proposed Findings of Fact, Texas Alcoholic Beverage Commission Conduct Surety Bond Number 103830026, dated February 6, 2003, in the amount of five thousand dollars, should be forfeited.

SIGNED September 17, 2004.



**DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**