

DOCKET NO. 609683

IN RE HERMENEGILDO CERVANTES	§	BEFORE THE TEXAS
MEZA D/B/A JD'S BAR	§	
	§	
LICENSE NO. BE541450	§	ALCOHOLIC
	§	
TOM GREEN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-5488)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 19th day of October, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tommy L. Broyles. The hearing convened on August 6, 2004 and adjourned on August 6, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 22, 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.

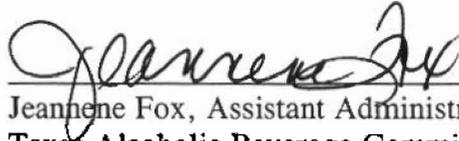
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on NOVEMBER 9, 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 19th day of October, 2004, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FAX (512) 475-4994

Randol L. Stout
ATTORNEY FOR RESPONDENT
VIA FAX (325) 658-6114

Hermenegildo Cervantes Meza
RESPONDENT
d/b/a JD's Bar
26 N. Main St.
San Angelo, Tx. 76903
CERTIFIED MAIL RRR #7000 1530 0003 1930 0015

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Abilene District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

SEP 22 2004

September 22, 2004

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

HAND DELIVERY

RE: Docket No. 458-04-5488; Texas Alcoholic Beverage Commission vs. Hermenegildo Cervantes Meza d/b/a JD's Bar, Tom Green County, Texas (TABC No. 609683)

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 "Tommy L. Broyles".

Tommy L. Broyles
Administrative Law Judge

TLB/lis
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**
Randol Stout, Attorney, 202 W. Beauregard Avenue, San Angelo, Texas 76903 - **VIA REGULAR MAIL**

DOCKET NO. 458-04-5488

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	
HERMENEGILDO CERVANTES MEZA D/B/A JD'S BAR, Respondent	§	OF
TOM GREEN COUNTY, TEXAS (TABC No. 609683)	§	
	§	ADMINISTRATIVE HEARINGS

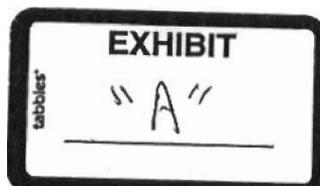
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff (Petitioner) brought this forfeiture action against Hermenegildo Cervantes Meza d/b/a JD's Bar (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's license or permit was canceled for cause. Respondent argues that he did not understand the documents he signed agreeing to the cancellation of his license or permit. For reasons discussed in this proposal for decision, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11(b)(2). The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the 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.

Petitioner issued its notice of hearing to Respondent containing a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. On August 6, 2004, a hearing was convened before SOAH ALJ Tommy L. Broyles in Austin, Texas.



Petitioner was represented at the hearing by Gayle Gordon, TABC Attorney. Respondent appeared and was represented by Randal L. Stout, Attorney. The record closed on that same date.

II. DISCUSSION

On January 7, 2004, Respondent signed an Agreement and Waiver of Hearing (Waiver), accepting the cancellation of his license. In this waiver, Respondent neither admitted nor denied the allegations of "Subterfuge/Application for Benefit of Another," but accepted the penalty of cancellation of his license. Based upon the Waiver, Respondent's license was canceled by order of the TABC on January 12, 2004. Respondent now argues that he did not understand the Waiver because he did not have an attorney at the time it was signed. Further, he now contests the facts that led TABC Staff to bring the action resulting in the cancellation of his license.

The ALJ has not found, nor has Respondent presented, any basis for a collateral attack of the January 12, 2004 TABC Order. The issues in this case are limited to those regarding conduct surety bonds, as set out in the Texas Alcoholic Beverage Code §§ 11.11 and 61.13, and 16 TEX. ADMIN. CODE § 33.24.¹ In particular, conduct surety bonds are conditioned upon the applicant's or holder's conformance with alcoholic beverage law.² As required by statute, Respondent's surety bond states that, "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state."³ Given the January 12, 2004 Order, canceling Respondent's license for violation of TABC rules, forfeiture of Respondent's surety bond is appropriate.

¹ TEX. ALCO. BEV. CODE ANN. §§ 11.11, 61.13 (Vernon Supp. 2004).

² TEX. ALCO. BEV. CODE ANN. §§ 11.11(a)(1) (Vernon Supp. 2004).

³ TEX. ALCO. BEV. CODE ANN. §§ 11.11(b)(2) (Vernon Supp. 2004).

Respondent's contention that he needed an attorney to understand the consequences of signing the Waiver (resulting in forfeiture of the surety) is rebutted by the language in the Waiver itself. In bold, all capital font, the waiver states: "**THE SIGNING OF THIS WAIVER MAY RESULT IN THE FORFEITURE OF ANY RELATED CONDUCT SURETY BOND.**" For these reasons, the ALJ recommends forfeiture of the Conduct Surety Bond No. 804472.

III. PROPOSED FINDINGS OF FACT

1. Respondent, Hermenegildo Cervantes Meza d/b/a JD's Bar, held a Beer Retailer's On Premise License, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 26 N. Main Street, San Angelo, Tom Green County, Texas 76903.
2. On January 7, 2004, Respondent signed an Agreement and Waiver of Hearing, waiving his right to a hearing on the charges of "Subterfuge/Application for the Benefit of Another" and agreeing to the cancellation, for cause, of his permit.
3. The Agreement and Waiver of Hearing states in bold type, "**THE SIGNING OF THIS WAIVER MAY RESULT IN THE FORFEITURE OF ANY RELATED CONDUCT SURETY BOND.**"
4. On January 12, 2004, by Order of the TABC, Respondent's license was canceled for cause.
5. On May 25, 2004, the TABC issued its notice of hearing to Respondent regarding the forfeiture of his conduct surety bond.
6. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
7. A hearing convened before Tommy L. Broyles, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on August 6, 2004. Respondent and TABC appeared and were represented by counsel. The record closed that same day.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11(b)(2) and 29.03.
2. SOAH 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. Based upon the above Findings of Fact, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon the above Findings of Fact, Respondent's conduct surety bond should be forfeited, as authorized by TEX. ALCO. BEV. CODE ANN. §§ 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24.

SIGNED September 22, 2004.



TOMMY V. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS