

DOCKET NO. 610301

IN RE POOL ZONE	§	BEFORE THE TEXAS
D/B/A POOL ZONE	§	
PERMIT NOS. N 495961, NL495962, PE495963	§	ALCOHOLIC
	§	
CORYELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-7280)	§	BEVERAGE COMMISSION

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 Suzan Moon Shinder. The hearing convened on July 26, 2004 and adjourned on July 26, 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.

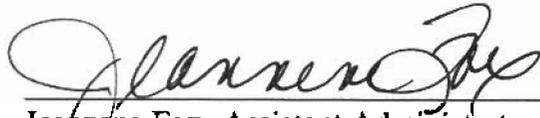
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

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 on this 1st day of September, 2004, at Austin, Texas.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Suzan M. Shinder
Administrative Law Judge
State Office of Administrative Hearings
Waco, Texas
VIA FAX (254) 750-9380

Pool Zone
RESPONDENT
3109 Hwy 36 South
Gatesville, TX. 76528-2721
CERTIFIED MAIL/RRR # 7000 1530 0003 1902 6274

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco 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

REGULAR MAIL

RE: Docket No. 458-04-7280, Pool Zone d/b/a Pool Zone, TABC Case No. 610301

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.

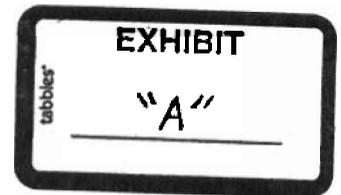
Sincerely,

A handwritten signature in black ink, appearing to read "S. Moon Shinder".

Suzan Moon Shinder
Administrative Law Judge

sms/me
Enclosure

xc: Gayle Gordon, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - **REGULAR MAIL**
Pool Zone d/b/a Pool Zone, 3109 S Hwy 36, Gatesville, Texas 76528-2721 - **REGULAR MAIL**



SOAH DOCKET NO. 458-04-7280
TABC CASE NO. 610301

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
V.	§	OF
	§	
POOL ZONE	§	
D/B/A POOL ZONE	§	
PERMIT NOS. N-495961, NL-495962,	§	
& PE-495963	§	ADMINISTRATIVE HEARINGS
Respondent		

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (the Commission or Staff) initiated this action against PoolZone d/b/a Pool Zone (the Respondent), seeking the forfeiture of the conduct surety bond posted by the Respondent. The Commission recommended that the bond be forfeited because the Respondent has committed three violations of the Texas Alcoholic Beverage Code after September 1, 1995, in violation of TEX. ALCO. BEV. CODE ANN. (Code) §11.11, and 16 TEX. ADMIN. CODE (Rules) §33.24. The undersigned Administrative Law Judge (ALJ) concludes that the Commission's allegations are true and agrees with the Commission's recommendation.

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 July 26, 2004, a public hearing was held before Suzan Shinder, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 801 Austin Avenue, Suite 750, Waco, Texas. The Commission appeared by its attorney, Gayle Gordon, via video-conference from the Commission's headquarters in Austin, Texas. The Respondent appeared *pro se* at the Waco SOAH office, by its

officer, Jim Williams. Evidence and argument were heard, and the record closed the same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code §11.11, 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. Pursuant to Rule §33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond, as established by Code §11.11, and Rule §33.24, have been satisfied.

III. ANALYSIS

The Commission's one exhibit was admitted. The Respondent's one exhibit was admitted. Both parties rested without offering any additional evidence.

Respondent's Exhibit No. 1 is two letters from the Commission to "Guarantee Company of North America USA." The first letter, dated April 13, 2004, requests payment of the full amount of the Respondent's conduct surety bond. The second letter, dated April 22, 2004, asks that the first letter be disregarded, apologizing for the error in sending the earlier letter.

Commission's Exhibit No. 1, includes copies of the Respondent's permit, violation history, correspondence, and conduct surety bond. This exhibit reveals that Private Club Registration Permit, N-495961, Private Club Late Hours Permit, NL-495962, and Beverage Cartage Permit, PE-495963, were issued to an unincorporated association of persons, doing business as Pool Zone, at 3109 Highway 36 South, in Gatesville, Coryell County, Texas, by the Texas Alcoholic Beverage Commission, on June 29, 2001; and these permits have been continuously renewed. This exhibit also reveals that on May 30, 2001, the Respondent executed a conduct surety bond for the Pool Zone, in the amount of \$5000.00.

Commission's Exhibit No. 1 reveals that on February 24, 2004, the Respondent, by its officer, Jim Williams, signed an Agreement and Waiver of Hearing. In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on or about March 10, 2003, the Respondent sold or delivered an alcoholic beverage to an intoxicated person in violation of TEX. ALCO. BEV. CODE ANN. §11.61(b)(14). This agreement became final and enforceable by the Waiver Order signed February 26, 2004.

According to the Commission's Exhibit No. 1, on February 6, 2002, the Respondent, by its officer Rickey Dean Mathews, signed an Agreement and Waiver of Hearing, in which the Respondent waived its right to a hearing to contest the Commission's assertion that on January 12, 2002, the Respondent committed two violations of the Code: "Open Saloon," under Code §32.17(a)(1); and, "Permitting Minor to Possess/ Consume (alcohol)" under Code §106.13. In this February 6, 2002, waiver agreement, the Respondent waived its right to a hearing, and accepted the suspension or cancellation of its permits, unless a civil penalty in the amount of \$1200.00 was paid to the Commission on or before March 20, 2002, (the final due date stated on the administrative order). In the waiver agreement, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of the February 6, 2002, waiver agreement, the Commission Administrator entered an order on February 13, 2002, finding that the Respondent violated the sections of the Code as stated in the Agreement and Waiver of Hearing, and imposing the penalty as stated in the waiver agreement. This became final on March 6, 2002. There was no evidence that the Respondent appealed either of the Commission's orders.

Based on the foregoing, the Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. The Respondent is the holder of the Private Club Registration Permit, N-495961, Private Club Late Hours Permit, NL-495962, and Beverage Cartage Permit, PE-495963, issued to an unincorporated association of persons, doing business as Pool Zone, at 3109 Highway 36 South, in Gatesville, Coryell County, Texas, by the Texas Alcoholic Beverage Commission, on June 29, 2001.
2. On May 30, 2001, the Respondent executed a conduct surety bond for the Pool Zone, in the amount of \$5000.00.

3. On February 24, 2004, the Respondent, by its officer, Jim Williams, signed an Agreement and Waiver of Hearing. In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on or about March 10, 2003, the Respondent sold or delivered an alcoholic beverage to an intoxicated person in violation of TEX. ALCO. BEV. CODE ANN. §11.61(b)(14).
4. The Agreement and Waiver of Hearing became final and enforceable by a Waiver Order signed February 26, 2004, by the Commission's Assistant Administrator.
5. On February 6, 2002, the Respondent, by its officer Rickey Dean Mathews, signed an Agreement and Waiver of Hearing, in which the Respondent waived its right to a hearing to contest the Commission's assertion that on January 12, 2002, the Respondent committed two violations of the Code: "Open Saloon," under Code §32.17(a)(1); and, "Permitting Minor to Possess/ Consume (alcohol)" under Code §106.13.
6. In this February 6, 2002, waiver agreement, the Respondent waived its right to a hearing, and accepted the suspension or cancellation of its permits, unless a civil penalty in the amount of \$1200.00 was paid to the Commission on or before March 20, 2002 (the final due date stated on the administrative order).
7. In the February 6, 2002, waiver agreement, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond.
8. As a result of the February 6, 2002, waiver agreement, the Commission Administrator entered an order on February 13, 2002, finding that the Respondent violated the sections of the Code as stated in the Agreement and Waiver of Hearing, and imposing the penalty as stated in the waiver agreement. This became final on March 6, 2002.
9. The Respondent did not appeal either of the Commission's orders.
10. The Respondent received proper and timely notice of the hearing on the merits by the Commission's Notice of Hearing, sent to the Respondent on July 7, 2004.¹
11. This Notice of Hearing informed the Respondent of the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing was to be held.
12. The hearing on the merits convened on July 26, 2004, in the SOAH offices at 801 Austin Avenue, Suite 750, Waco, Texas. The Commission appeared by its attorney, Gayle Gordon, via video-conference from the Commission's headquarters in Austin, Texas. The Respondent

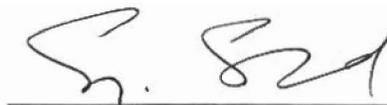
¹ Official Notice was taken of the Commission's Notice of Hearing, and the stipulation of both parties that notice was proper and timely was accepted by the ALJ.

appeared *pro se* at the Waco SOAH offices. Evidence and argument were heard and the record closed on the same date.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Based on the foregoing findings and conclusions, the Respondent violated TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24.
5. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

SIGNED August 12th, 2004.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS