

**DOCKET NO. 610848**

IN RE NEW POINT CORPORATION	§	BEFORE THE TEXAS
D/B/A VIP HOSTESS LOUNGE	§	
PERMIT NO. BG508697	§	
LICENSE NO. BL508698	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0007)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 1st day of March, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on December 3, 2004 and adjourned on December 17, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 11, 2005. The 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.

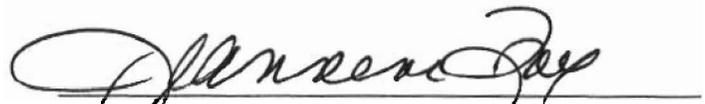
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on MARCH 22, 2005**, 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 March, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Timothy J. Horan  
Administrative Law Judge  
State Office of Administrative Hearings  
Houston, Texas  
**VIA FAX (713) 812-1001**

Paul Decuir  
**ATTORNEY FOR RESPONDENT**  
**VIA FAX (281) 452-9187**

New Point Corporation  
d/b/a VIP Hostess Lounge  
**RESPONDENT**  
P. O. Box 1996  
Alief, Tx. 77411-1996  
**CERTIFIED MAIL RRR #7000 1530 0003 1930 0619**

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

Licensing Division  
Houston District Office



Alan Steen  
Administrator

John T. Steen, Jr.  
Chairman-San Antonio

Gail Madden  
Member-Dallas

Jose Cuevas, Jr.  
Member-Midland

## FACSIMILE COVER SHEET

Date: March \_\_\_\_\_, 2005

<i>To:</i>	<i>Fax No:</i>	<i>No. Of Pages:</i> <i>(including fax cover)</i>
<i>Hon. Tim Horan Administrative Law Judge SOAH - Houston</i>	<i>(713) 812-1001</i>	<i>8</i>
<i>Paul Decuir Attorney for Respondent</i>	<i>(281) 452-9187</i>	<i>8</i>

**From:** Gayle Gordon, Legal Division, Fax No. (512) 206-3498

**Comments:** Please see attached Order re: SOAH Docket No. 458-05-0007 (TABC Docket No. 610848); TABC vs. New Point Corporation d/b/a VIP Hostess Club.

**CONFIDENTIALITY NOTICE:**

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# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

February 11, 2005

RECEIVED  
FEB 14 2005

EXECUTIVE OFFICE  
TABC  
RECEIVED  
FEB 15 2005  
LEGAL DIVISION

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

VIA REGULAR MAIL

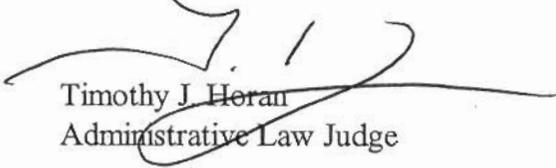
**RE: Docket No. 458-05-0007; TABC v. New Point Corporation d/b/a VIP Hostess Club**

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

Sincerely,

  
Timothy J. Heran  
Administrative Law Judge

TJH/mc  
Enclosure

xc: Gayle Gordon, TABC, P.O. Box 13127, Austin, Texas 78711 - VIA REGULAR MAIL  
Paul Decuir, Attorney at Law, P.O. Box 9687, Houston, Texas 77213 - VIA REGULAR MAIL

**DOCKET NO. 458-05-0007**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>NEW POINT CORPORATION D/B/A VIP HOSTESS CLUB HARRIS COUNTY, TEXAS (TABC CASE NO. 610848)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by New Point Corporation d/b/a VIP Hostess Club (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 on December 3, 2004 and the record was closed on December 17, 2004. Petitioner was represented by Gayle Gordon, staff attorney. Respondent appeared and was represented Paul Decuir, attorney at law. Administrative Law Judge Timothy J. Horan presided.

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### III. DISCUSSION

#### A. Background

On March 11, 2004, Petitioner, represented by staff attorney Lindy To and Respondent, represented by attorney Paul Decuir, executed a document entitled "Agreement and Waiver of Hearing" pertaining to four violations of §61.71(a) of the Texas Alcoholic Beverage Code (the Code). All violations occurred after September 1, 1995. The agreement included the following language "Respondent, without admitting said violations described herein occurred, waives hearing in this matter and accepts the penalty assessed.... the signing of this waiver may result in the forfeiture of any related conduct surety bond." Respondent's license was "canceled, effective immediately" per the Agreement and Waiver of Hearing executed by the parties on March 11, 2004.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct surety bond based upon this agreement. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

#### B. Legal Standards

When a license or permit is canceled, Petitioner may seek forfeiture of the licensee's or permittee's bond.

The applicable statutory provision at TEX. ALCO. BEV. CODE § 11.11(b)(2) states "... 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 . . . ."

Petitioner's rule at 16 TEX. ADMIN. CODE (TAC) §33.24(j) is more lenient, and provides, "(1) When a license or permit is canceled, or 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 of the bond.”

### **C. Analysis**

The Petitioner’s one exhibit was admitted. This exhibit includes copies of the Respondent’s permit, violation history, correspondence and conduct surety bond. This exhibit also includes an “Agreement and Waiver of Hearing” executed by the parties on March 11, 2004, wherein it was agreed that Respondent’s permits be “canceled, effective immediately.”

Catherine Pao, representative for New Point Corporation d/b/a VIP Hostess Club, testified that she did not believe that forfeiture of the conduct surety bond was part of the agreement entered into on March 11, 2004.

The “Agreement and Waiver of Hearing” executed by the parties is clear and states that signing the waiver may result in the forfeiture of any conduct surety bond.

### **D. 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 Administrative Law Judge recommends Respondent’s conduct bond be forfeited.

## **IV. PROPOSED FINDINGS OF FACT**

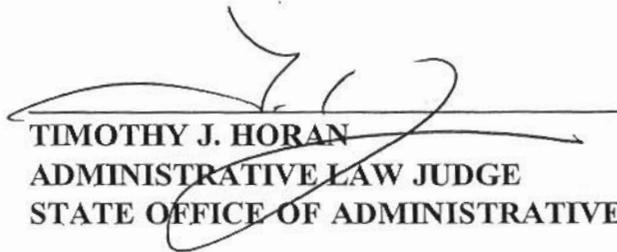
1. On March 11, 2004, Respondent, New Point Corporation d/b/a VIP Hostess Club, signed an Agreement and Waiver of Hearing. In this agreement, the Respondent waived its right to a hearing pertaining to four violations of §61.71(a) Texas Alcoholic Beverage Code (Code) and agreed to have their permits canceled immediately.

2. Respondent holds Wine and Beer Retailer's Permit No. BG-508697 and Retail Dealer's On-Premise Late Hours License BL-508698.
3. Staff notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on Petitioner's final adjudication of Respondent's four violations of the Texas Alcoholic Beverage Code, per the Agreement and Waiver of Hearing executed by the parties on March 11, 2004. All violations occurred after September 1, 1995.
4. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of the conduct surety bond, resulting in the December 3, 2004, hearing in this case.

#### V. PROPOSED 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.
5. Based on Conclusion of Law No. 4, Respondent's conduct surety bond should be forfeited.

**SIGNED February 11, 2005.**

  
**TIMOTHY J. HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**