

DOCKET NO. 611598

IN RE BILLY JO TURNER	§	BEFORE THE TEXAS
D/B/A 2500 CLUB	§	
PERMIT NO. BG522140	§	
LICENSE NO. BL522141	§	ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1980)	§	BEVERAGE COMMISSION

SECOND AMENDED ORDER

This order is amended to reflect the correct permit and license number as indicated above.

CAME ON FOR CONSIDERATION this 10th day of February, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Craz. The hearing convened on November 30, 2004 and adjourned on November 30, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 13, 2004. The Proposal For Decision, attached hereto, 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.

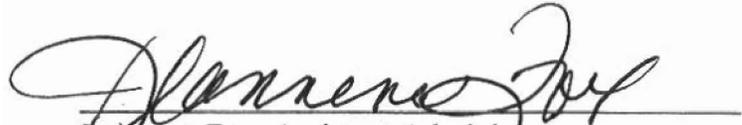
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on FEBRUARY 2, 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 10th day of February, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

Billy Jo Turner
d/b/a 2500 Club
RESPONDENT
3205 Greenridge
Fort Worth, Tx. 76133
CERTIFIED MAIL RRR #7000 1530 0003 1930 0503

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 611598

IN RE BILLY JO TURNER	§	BEFORE THE TEXAS
D/B/A 2500 CLUB	§	
PERMIT NO. BG522140	§	
LICENSE NO. BL494904	§	ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1980)	§	BEVERAGE COMMISSION

AMENDED ORDER

This Order is amended to include the Respondent's permit number as indicated above.

CAME ON FOR CONSIDERATION this 7th day of February, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on November 30, 2004 and adjourned on November 30, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 13, 2004. The Proposal For Decision, attached hereto, 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.

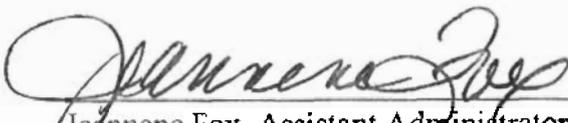
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on FEBRUARY 2, 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 7th day of February, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Phyllis Cranz
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FAX (817) 377-3706

Billy Jo Turner
d/b/a 2500 Club
RESPONDENT
3205 Greenridge
Fort Worth, Tx. 76133
CERTIFIED MAIL RRR #7000 1530 0003 1930 0442

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 611598

IN RE BILLY JO TURNER	§	BEFORE THE TEXAS
D/B/A 2500 CLUB	§	
LICENSE NO. BL494904	§	ALCOHOLIC
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1980)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of January, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on November 30, 2004 and adjourned on November 30, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 13, 2004. The Proposal For Decision, attached hereto, 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.

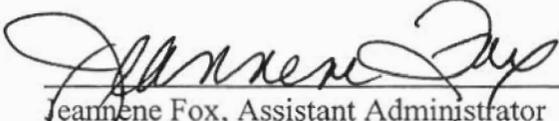
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on FEBRUARY 2, 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 12th day of January, 2005, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Phyllis Cranz
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FAX (817) 377-3706

Billy Jo Turner
d/b/a 2500 Club
RESPONDENT
3205 Greenridge
Fort Worth, Tx. 76133
CERTIFIED MAIL RRR #7000 1530 0003 1930 0220

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 13, 2004

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

Billy Jo Turner
d/b/a 2500 Club
3205 Greenridge
Fort Worth, Texas 76133

VIA REGULAR MAIL

RE: Docket No. 458-05-1980; Texas Alcoholic Beverage Commission vs Billy Jo Turner
d/b/a 2500 Club (TABC Case No. 611598)

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Billy Jo Turner, d/b/a 2500 Club, Respondent. The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Billy Jo Turner, d/b/a 2500 Club (Respondent). Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated for committing three violations of the Texas Alcoholic Beverage Code (the Code) or rules promulgated by the TABC (The Rules). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phyllis Cranz".

Phyllis Cranz
Administrative Law Judge

attachments

6777 Camp Bowie Blvd., Suite 400 ♦ Fort Worth, Texas 76116
(817) 731-1733 Fax (817) 377-3706
<http://www.soah.state.tx.us>

DOCKET NO. 458-05-1980

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
BILLY JO TURNER	§	
D/B/A 2500 CLUB	§	
PERMIT NO. BG522140	§	
LICENSE NO. BL522141	§	
TARRANT COUNTY, TEXAS	§	
(TABC CASE NO. 611598)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Billy Jo Turner d/b/a the 2500 Club (Respondent). Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated for committing three violations of the Texas Alcoholic Beverage Code (the Code) or rules promulgated by the TABC (The Rules). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. PROCEDURAL HISTORY

On July 16, 2004, Staff sent Respondent written notice of its intention to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative hearings (SOAH) to conduct the requested hearing. On November 10, 2004, Staff issued a notice of hearing informing all parties of the hearing. On November 30, 2004, ALJ Phyllis Cranz convened the hearing in this matter with the Respondent present at the SOAH hearing site in Fort Worth, Texas, and the Petitioner appearing by telephone. Gayle Gordon, Staff's attorney, appeared and represented Staff. Respondent appeared and represented herself.

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PROPOSAL FOR DECISION

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There were no contested issues of notice, jurisdiction, or venue in the proceeding. Therefore, those matters are set out in the proposed Findings of Facts and Conclusions of Law without further discussion. Following the presentation of evidence, the record closed on November 30, 2004.

II. DISCUSSION

A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5000 surety bond, conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13. The bond may be forfeited if: (1) the licensee has provided the TABC a conduct surety bond; (2) the licensee has been finally adjudicated of three violations of the Code since September 1, 1995; and (3) the TABC notifies the licensee in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN. CODE §33.24(j).

B. Evidence

Staff's evidence consists of two exhibits: (1) An affidavit from Amy Harrison, Director of the Licensing Division of the TABC and Custodian of Records, which describes and includes the following items from the records of the TABC: copies of the Notice of Intention to Seek Forfeiture, the surety bond, the three separate orders resulting from violations and enforcement actions, a history of violations compiled from the Records for TABC, and the current license and permit; and (2) the U.S. Postal Service return card with the Respondent's signature from the delivery of the Notice of Hearing to the Respondent.

Details concerning the enforcement actions are as follows:

1. TABC Docket No. 610779, styled *In Re Billy Jo Turner d/b/a 2500 Club*. The Waiver Order is dated June 30, 2004, and was signed by Billie Jo Turner, owner at the time. The Waiver Order

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PROPOSAL FOR DECISION

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states that Respondent was found to have committed the following violation:

Breach, Fail to Report¹ on March 14, 2004.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

2. TABC Docket No. 608686, styled *In Re Billy Jo Turner d/b/a 2500 Club*. The Waiver Order is dated February 18, 2004, and was issued by the TABC. The Agreement and Waiver of Hearing is dated February 11, 2004, and was signed by Billie Jo Turner, owner at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Possession of drug paraphernalia by employee² on December 31, 2003.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

3. TABC Docket No. 610633, styled *In Re Billy Jo Turner d/b/a 2500 Club*. The Waiver Order is dated June 30, 2004, and was issued by the TABC. The Agreement and Waiver of Hearing is dated June 28, 2004, and was signed by Billie Jo Turner, owner at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Cash Law Violation; Issued (5) NSF Checks³ on September 25, 2003.

¹TEX. ALCO. BEV. CODE §§ 11.61 (b) (21), 61.71 (a) (31).

²TEX. ALCO. BEV. CODE § 104.01.

³TEX. ALCO. BEV. CODE §§ 61.73, 102.31.

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PROPOSAL FOR DECISION

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This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

Exhibit 1 contains the Notice of Intention to Seek Forfeiture of the Surety Bond dated July 16, 2004. Respondent requested a hearing to determine if its bond should be forfeited by signing the July 16, 2004 letter and returning it to TABC's Staff. At the hearing, Billie Jo Turner testified on behalf of the Respondent. Ms. Turner did not deny the enforcement actions nor signing the waivers.

C. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted in favor of TABC by license and permit holders to encourage compliance with the provisions of the Code and Rules. Respondent, by her own admissions, committed three violations of the Code and Rules since 1995.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Further, Staff's evidence shows that Respondent posted a conduct surety bond in favor of the TABC, as was required prior to Respondent's latest application renewal. Respondent was finally adjudicated of three or more violations of the Code or Rules between February, 2004 and June, 2004, by its execution of Agreements and Waivers of Hearing on those violations. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN. CODE § 33.24 (j). Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. PROPOSED FINDINGS OF FACTS

1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent, Billie Jo Turner d/b/a 2500 Club, a Wine and Beer Retailer's Permit, BG522140, and a Retail Dealer's On Premise Late Hours License, BL522141.
2. As principal, the Respondent executed and posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond MB 39275.

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PROPOSAL FOR DECISION

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3. Respondent admitted that three violations of the Texas Alcoholic Beverage Code (the Code) occurred on the licensed premises by executing Agreements and Waivers of hearing with TABC Staff on June 30, 2004, February 11, 2004, and June 28, 2004.
4. On July 12, 2004, the TABC issued a Waiver Order in TABC Docket No. 610779, styled *In re Billie Jo Turner d/b/a 2500 Club*. The Waiver Order found that Respondent was responsible for a violation of failure to report a breach of the peace on March 14, 2004.
5. On February 18, 2004, the TABC issued a Waiver Order TABC Docket No. 608686, styled *In re Billie Jo Turner d/b/a 2500 Club*. The Waiver Order found that Respondent was responsible for a violation of possession of drug paraphernalia by an employee on December 31, 2003.
6. On June 30, 2004, the TABC issued a Waiver Order TABC Docket No. 610633, styled styled *In re Billie Jo Turner d/b/a 2500 Club*. The Waiver Order found that Respondent was responsible for a violation of the cash law on September 25, 2003.
7. Respondent has committed three or more violations of the Code or Rules since September 1, 1995.
8. On July 16, 2004, the Staff of TABC (Staff) sent Respondent written notice of its intent to see forfeiture of the bond. Respondent requested a hearing on this matter.
9. On November 10, 2004, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to parties contained the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
10. On November 30, 2004, the hearing was convened by Phyllis Cranz, Administrative Law Judge, at the State Office of Administrative Hearings, Fort Worth, Tarrant County, Texas. Both parties appeared and presented evidence. The record closed on November 30, 2004.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Ch. 5 and §§ 11.11, 11.61, 61.13, and 61.71, 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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021.

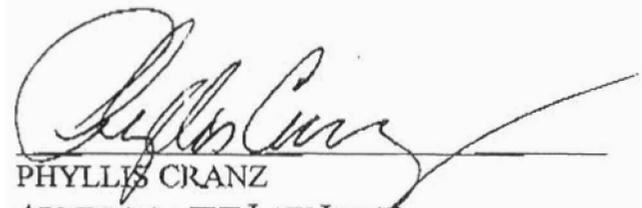
SOAH DOCKET NO. 458-05-1980

PROPOSAL FOR DECISION

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3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE ANN. § 2001.051 and 1 TEX. ADMIN. CODE §§ 155.25 and 155.27
4. Based on the foregoing findings and conclusions, Texas Alcoholic Beverage Commission Conduct Surety Bond, MB 39275, should be forfeited. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 and 16 TEX. ADMIN. CODE § 33.24 (j).

SIGNED December 13, 2004.



PHYLIS CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS