

DOCKET NO. 611600

IN RE HADI ALI YASSINE	§	BEFORE THE
D/B/A KROME AT PLATINUM	§	
DANCE CLUB	§	
PERMIT NOS.MB458482, LB458483	§	
	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-0166)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 20th day of June, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carol Wood. The hearing convened on October 26, 2004 and adjourned on November 18, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 18, 2005. This 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, Petitioner and Respondent's Post-Hearing Briefs, and Exhibits, adopts the Findings of Fact and all 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, with the exception of Conclusions of Law 4, 5 and 6, which are expressly rejected, in that they are based on an incorrect interpretation and application of the law. I reform and adopt Conclusions of Law 4, 5 and 6 to conform with the law as follows:

Conclusion of Law No. 4:

Based on Findings of Fact Nos. 2 and 3, there is a final adjudication that Respondent committed a violation of the Code as a result of the June 15, 2004 Commission Order.

Conclusion of Law No. 5:

Based on Findings of Fact Nos. 10 and 11, there are final adjudications that Respondent committed two more violations of the Code as a result of Commission Orders dated November 21, 2000 and February 22, 2001.

Conclusion of Law No. 6:

Based on the above Findings of Fact and Conclusions of Law, Respondent's conduct surety bond should be forfeited.

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 **JULY 11, 2005**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this the 20th day of June, 2005.

On Behalf of the Administrator,



Jearhene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Carol Wood
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE (512) 475-4994

Don E. Walden
ATTORNEY FOR RESPONDENT
VIA FAX (512) 795-8079

Hadi Ali Yassine
d/b/a Krome At Platinum Dance Club
RESPONDENT
419-419 ½ E. 6th St
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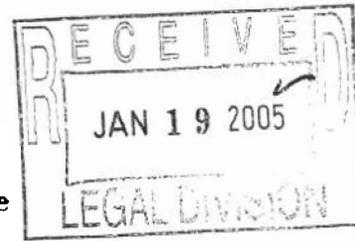
Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



January 18, 2005

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

HAND DELIVERY

**RE: Docket No. 458-05-0166; TABC v. Hadi Ali Yassine
D/B/A Krome at Platinum Dance Club; Permit Nos. MB-458482 & LB-458483
Travis County, Texas (TABC Case No. 611600)**

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,

Carol Wood

Carol Wood
Administrative Law Judge

CW/ib
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Gayle Gordon, TABC Legal Division, 5806 Mesa, Suite 160, Austin, Texas - **VIA HAND DELIVERY**
Don E. Walden, Attorney for Respondent, 7200 N. Mopac, Suite 300, Austin, TX 78731 -**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-05-0166

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		
HADI ALI YASSINE D/B/A KROME AT PLATINUM DANCE CLUB, Respondent [TABC Case No. 611600]		OF
		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (Commission/Petitioner) brought this forfeiture action against Hadi Ali Yassine d/b/a Krome at Platinum Dance Club (Respondent). Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent "has three or more adjudicated violations of the Alcoholic Beverage Code." Respondent argues the three settlement agreements and suspensions of his permits did not result from adjudicated violations. For reasons discussed in this proposal for decision, the Administrative Law Judge (ALJ) recommends that Respondent's conduct surety bond not be forfeited.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice and jurisdiction in this proceeding. Therefore, these matters are addressed in the proposed Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened October 26, 2004, before ALJ Carol Wood. Staff was represented by Gayle Gordon, Staff Attorney. Respondent was represented by Don E. Walden, Attorney. The record closed November 18, 2004, upon submission of the parties' written final arguments.

II. DISCUSSION

A. Background

On June 11, 2004, Respondent entered into an Agreed Order with the Commission. The Order alleged that Respondent on various occasions violated the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Code) § 1.01 *et seq.*, and the Texas Alcoholic Beverage Commission Rules, 16 TEX. ADMIN. CODE (TAC) § 31.1 *et seq.* Petitioner agreed to dismiss certain of the allegations and Respondent, without admitting any unlawful conduct, agreed to a 60-day suspension of his permits. On June 15, 2004, the Commission signed an Order (Docket Nos. 598275 and 599131) adopting the Agreed Order.

On July 28, 2004, Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct surety bond, contending the following violations, Allegations I-III set out in the Agreed order of June 11, 2004, were adjudicated under the June 15, 2004, Order:

12-20-2001	Permitting Minor to Pos/Cons - 18 Years or More
12-20-2001	Soliciting An A/B Lic/Perm/Employee
02-15-2002	Permitting Minor to Poss/Cons - 18 Years or More.

Respondent requested a hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

At hearing, Petitioner introduced Exhibit No. 1 that included not only the Commission's Order of June 15, 2004, but also the Commission's Waiver Orders in Docket Nos. 593197 and 588417. In Docket No. 588417, Respondent, without admitting the violation occurred, waived hearing in the matter and accepted a 20-day suspension for allowing, on February 13, 2000, a breach of the peace on the licensed premises that was not beyond Respondent's control. In Docket No. 593197, Respondent, without admitting the violation occurred, waived hearing in the matter and accepted a 35-day suspension of his permit for offering to sell or delivering an alcoholic beverage

on February 16, 2001, while his permit was suspended. In both Waiver Orders, Respondent acknowledged that his signing of an Agreement and Waiver of Hearing “may result in the forfeiture of any related conduct surety bond.” Exhibit No. 1 was admitted in the record without objection.

2. Applicable Law

Code § 61.13(b)(2) reads in pertinent part as follows:

... the holder of the license agrees that the amount of the bond shall be paid to the state if the license is revoked or *on final adjudication* that the holder violated a provision of this code, regardless of whether the actions of an employee of a holder are not attributable to the holder under Section 106.14. (Emphasis added.)

Section 33.24(j)(1) of Commission Rules states the following:

When a license or permit is cancelled, *or a final adjudication* that the licensee or permittee has committed three violations of the [Code] since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

3. Analysis

The issue in this case is determining how to construe the term “final adjudication” as used in Section 61.13(b)(2) of the Code and Section 33.24(j)(1) of the Commission Rules. “Adjudication” is neither defined in the Code nor in the Commission Rules. However, *Black’s Law Dictionary*¹ includes the following definitions:

¹ *Black’s Law Dictionary*, 5th ed. (West 1983).

Adjudge. To pass on judicially; to decide, settle, or decree, or to sentence or condemn. Judgment of a court of competent jurisdiction, equivalent of convicted and sentenced. Implies a *judicial determination of a fact*, and the entry of a judgment. (Emphasis added.)

Adjudicate. To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense.

Adjudication. The formal giving or pronouncing a judgment or decree in a cause; also the judgment given. . . *It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved.* The equivalent of “determination.” (Emphasis added.)

Taking the above definitions in consideration, the issue becomes the following: Whether there has been a final adjudication that Respondent has committed three violations of the Code. Respondent argues that, because he had no contested hearing before he signed the settlement agreements contained in Exhibit No. 1, no adjudication took place and no adjudicated violation resulted from any of them.

The ALJ, however, notes that Respondent in Docket Nos. 588417 and 593197 specifically *waived hearing*. Also, the Commission in the Waiver Orders in both those matters made findings of fact and conclusions of law that Respondent violated various sections of the Code. Clearly, in both cases, an adjudication occurred in that facts were determined by the Commission after notice of a hearing was given but which was waived by Respondent. Moreover, Respondent acknowledged that his signing of the Agreement and Waiver of Hearing in Docket Nos. 588417 and 593197 “may result in the forfeiture of any related conduct surety bond.”

The Commission’s Order signed on June 15, 2004, however, is a different matter. Although Staff asserts that the Order that was “a final adjudication of all matters covered by the June 11, 2004, Agreed Order”, the ALJ disagrees. The purported violations are recited as “Allegations,” Petitioner agreed to dismiss various Allegations, and Respondent agreed to a suspension of his permits without

admitting violations occurred. Nowhere in the Agreed Order did Respondent waive hearing or acknowledge that his signing of the agreement may result in forfeiture of any conduct surety bond. Most importantly, the Commission in its Order made no findings of fact or conclusions of law that Respondent had violated any sections of the Code. For these reasons, the ALJ finds that no final adjudication took place and no adjudicated violation resulted from the Commission's Order of June 15, 2004.

Because, within the meaning of the Code and Commission Rules, there are final adjudications that Respondent has committed only *two*, rather than three, violations of the Code (one violation each in Docket Nos. 588417 and 593197), the ALJ recommends that Conduct Surety Bond No. XTL03249 not be forfeited.

III. PROPOSED FINDINGS OF FACT

1. Respondent, Hadi Ali Yassine d/b/a Krome at Platinum Dance Club, is the holder of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (Commission/Petitioner) for the premises located at 419 E. 5th Street, Austin, Travis County, Texas.
2. On June 11, 2004, Respondent entered into an Agreed Order with the Commission.
 - a. The Order alleged that Respondent on various occasions violated the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. (Code) § 1.01 *et seq.*, and the Texas Alcoholic Beverage Commission Rules, 16 TEX. ADMIN. CODE (TAC) § 31.1 *et seq.*
 - b. Petitioner agreed to dismiss certain of the allegations and Respondent, without admitting any unlawful conduct, agreed to a 60-day suspension of his permits.
3. On June 15, 2004, the Commission signed an Order adopting the Agreed Order. Respondent did not waive hearing or acknowledge that his signing of the Agreed Order may result in forfeiture of any conduct surety bond.
4. On July 28, 2004, the Commission issued its notice of hearing to Respondent regarding the forfeiture of Conduct Surety Bond No. XTL03249.

5. 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.
6. The notice stated the following violations, Allegations I-III set out in the June 11, 2004, Agreed Order, were adjudicated under the June 15, 2004, Commission Order (Docket Nos. 598275 and 599131):

12-20-2001	Permitting Minor to Pos/Cons - 18 Years or More
12-20-2001	Soliciting An A/B Lic/Perm/Employee
02-15-2002	Permitting Minor to Poss/Cons - 18 Years or More
7. A hearing convened October 26, 2004, before ALJ Carol Wood. Staff and Respondent appeared and were represented by counsel.
8. The record closed November 18, 2004, upon submission of the parties' written final arguments.
9. The Waiver Orders in Docket Nos. 598275 and 599131 were tried by consent.
10. On November 21, 2000, the Commission signed the Waiver Order in Docket No. 588417.
 - a. The Commission found that Respondent, without admitting a violation occurred, waived hearing in the matter and accepted a 20-day suspension for allowing, on February 13, 2000, a breach of the peace on the licensed premises that was not beyond Respondent's control.
 - b. The Commission found that Respondent violated Sections 11.61(b)(2), 28.11, 61.71(a)(17), and 105.06 of the Code.
 - c. Respondent acknowledged that his signing of the Agreement and Waiver of Hearing "may result in the forfeiture of any related conduct surely bond."
11. On February 22, 2001, the Commission signed the Waiver Order in Docket No. 593197.
 - a. The Commission found that Respondent, without admitting the violation occurred, waived hearing in the matter and accepted a 35-day suspension of his permit for offering to sell or delivering an alcoholic beverage on February 16, 2001, while his permit was suspended.
 - b. The Commission found that Respondent violated Section 11.68 of the Code.

- c. Respondent acknowledged that his signing of the Agreement and Waiver of Hearing "may result in the forfeiture of any related conduct surely bond."

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. (Code) ch. 5 and §§ 61.13(b)(2) and 29.03.
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. Based on the above Findings of Fact, Petitioner issued its notice of hearing in compliance with 1 TAC § 155.27 and 155.55 and CODE § 11.63.
4. Based on Findings of Fact Nos. 2 and 3, there was no final adjudication that Respondent committed any violation of the Code as the result of the June 15, 2004, Commission Order.
5. Based on Findings of Fact Nos. 10 and 11, it was finally adjudicated that Respondent committed only two violations of the Code since September 1, 1995.
6. Based on the above Findings of Fact and Conclusions of Law, Respondent's conduct surety bond should not be forfeited.

SIGNED January 18, 2005.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Carol Wood

CAROL WOOD
ADMINISTRATIVE LAW JUDGE