

**DOCKET NO. 612265**

IN RE CHARLES EDWARD SILCOX	§	BEFORE THE TEXAS
D/B/A MY O MY	§	
PERMIT NO. BG505503	§	
	§	ALCOHOLIC
	§	
TRINITY COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1986)	§	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,



Jeannene 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**

Charles Edward Silcox  
d/b/a My O My  
**RESPONDENT**  
2146 Hwy. 287 East  
Groveton, TX. 75845  
**CERTIFIED MAIL RRR #7000 1530 0003 1930 0602**

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

Licensing Division  
Houston District Office

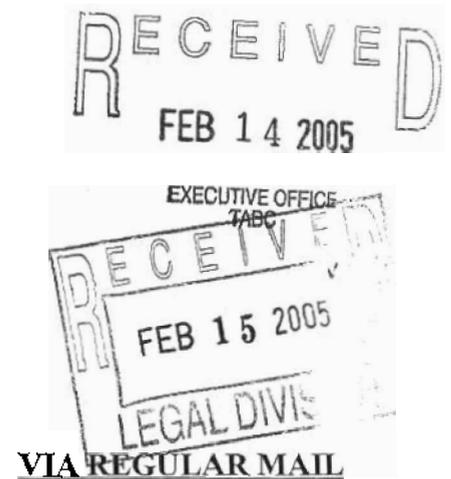
# State Office of Administrative Hearings



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

February 11, 2005

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



**RE: Docket No. 458-05-1986; TABC v. Charles Edward Silcox d/b/a My O My**

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,

A handwritten signature in black ink, appearing to read "Timothy J. Horan".

Timothy J. Horan  
Administrative Law Judge

TJH/mc

Enclosure

xc: **Gayle Gordon, TABC, P.O. Box 13127, Austin, Texas 78711 - VIA REGULAR MAIL**  
**Charles Edward Silcox d/b/a My O My, 2146 Hwy 287 East, Groveton, Texas 75845 -VIA REGULAR MAIL**

**DOCKET NO. 458-05-1986**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**V.**

**CHARLES EDWARD SILCOX  
D/B/A MY O MY  
PERMIT NO. BG-505503  
TRINITY COUNTY, TEXAS  
(TABC CASE NO. 612265)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Charles Edward Silcox d/b/a My O My (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 ALJ 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, Charles Edward Silcox, appeared and represented himself. ALJ Timothy J. Horan presided.

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### III. DISCUSSION

#### A. Background

On June 20, 2002, December 2, 2002 and on July 22, 2004, Petitioner issued orders assessing administrative penalties against Respondent for three violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent waived its right to a hearing. The orders constituted final adjudications of the violations. All violations occurred after September 1, 1995.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct surety bond based on its final adjudication of Respondent's Code violations. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

#### B. Legal Standards

Upon final adjudication that a licensee or permittee has committed three Code violations since September 1, 1995, 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 §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. 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 ALJ recommends Respondent's conduct bond be forfeited.

**IV. PROPOSED FINDINGS OF FACT**

1. On June 20, 2002, December 2, 2002 and July 22, 2004, the Texas Alcoholic Beverage Commission (Petitioner) issued final orders assessing administrative penalties against Charles Edward Silcox d/b/a My O My (Respondent), for three violations of the Texas Alcoholic Beverage Code. All violations occurred after September 1, 1995.
2. Respondent holds Wine and Beer Retailer's Permit No. BG-505503.
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 violations of the Texas Alcoholic Beverage Code
4. Respondent initiated an administrative appeal of Staff's stated intention to seek forfeiture of his conduct surety bond, resulting in the December 3, 2004, hearing in this case.

**V. PROPOSED CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission (Petitioner) 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.**



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