**DOCKET NO.** 614176

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| IN RE CAROLYN HAWTHORNE | § | BEFORE THE TEXAS |
| D/B/A CLUB MARQUIS | § | |
| PERMIT/LICENSE NOS. BG525027, | § | |
| BL525028 | § | ALCOHOLIC |
| | § | |
| HARRIS COUNTY, TEXAS | § | |
| **(SOAH DOCKET NO. 458-05-4845)** | § | BEVERAGE COMMISSION |

**ORDER**

**CAME ON FOR CONSIDERATION** this **5th** day of **October, 2005**, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy Horan. The hearing convened on July 22, 2005 and adjourned on that same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 16, 2005. 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** **October 26, 2005**, unless a Motion for Rehearing is filed **before** that date.

SOAH DOCKET NO. 458-05-4845

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| TEXAS ALCOHOLIC BEVERAGE COMMISSION<br>Petitioner | §<br>§<br>§<br>§ | BEFORE THE STATE OFFICE |
| V. | §<br>§ | OF |
| CAROLYN HAWTHORNE<br>D/B/A CLUB MARQUIS<br>TABC CASE NO. 614176<br>Respondent | §<br>§<br>§<br>§ | ADMINISTRATIVE HEARINGS |

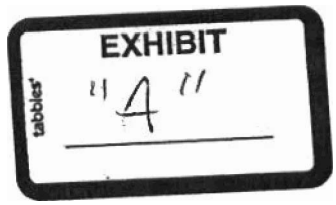
## PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (the Commission or Staff) initiated this action against Carolyn Hawthorne d/b/a Club Marquis (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 (Code) after September 1, 1995, in violation of § 11.11, of the Code 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 recommended penalty.

## 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 22, 2005, a public hearing was held before Roshunda Pringle, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 2020 North Loop West, Suite # 111, Houston, Texas. The Commission appeared through its attorney, Christopher Gee, via telephone



conference from the Commission's headquarters in Austin, Texas. Respondent was represented by attorney Albert Van Huff, who appeared on behalf of attorney Ronald A. Monshaugen. Evidence and argument were heard, and the record closed the same day. After the hearing, the case was reassigned to ALJ Timothy Horan, who reviewed the record in the case, including the tape of the proceedings and the exhibits admitted into evidence, and who issues this Proposal For Decision.

## 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, in writing, 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 without objection and the Respondent rested without putting on any additional evidence.

Commission's Exhibit No. 1, which includes copies of the Respondent's permit, violation history, and conduct surety bond, reveals that on August 25, 2004, the Respondent, 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 July 2, 2004, the Respondent had committed two violations of the Code: "Place or Manner of Operation-Gambling," and "Possession Distilled Spirits by BG ." In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. This agreement became final and enforceable

by the order signed by the Commission Administrator on August 30, 2004, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing."

According to the Commission's Exhibit No. 1, on November 29, 2004, the Respondent, 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 September 31, 2004, the Respondent had committed one violation of the Code: "Cash law Violation (1) NSF Checks." In this waiver 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 this waiver agreement, the Commission Administrator entered an order on December 1, 2004, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty reflected in that agreement.

There was no evidence that the Respondent appealed the Commission's orders. Therefore, based on the foregoing, the Respondent's conduct surety bond should be forfeited.

## IV. FINDINGS OF FACT

1. The Respondent is the holder of Wine and Beer Retailer's Permit BG-525027 and Retail Dealer's On Premise Late Hours License BL-525028 issued to Carolyn Hawthorne, d/b/a Club Marquis, 3317 Bennington Street, Houston, Harris County, Texas, issued by the Commission, on October 23, 2002. The permits have been continuously renewed.

2. On July 26, 2002, the Respondent executed a conduct surety bond for the Club Marquis in the amount of $5000.00.

3. On August 25, 2004, the Respondent 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 July 2, 2004, the Respondent committed two violations of the Code: "Place or Manner of Operation-Gambling," and "Possession Distilled Spirits by BG ." 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 August 25, 2004, waiver agreement, the Commission Administrator entered an order on August 30, 2004, finding that

the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing,"

4. On November 29, 2004 the Respondent 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 September 31, 2004, the Respondent committed one violation of the Code: "Cash law Violation (1) NSF Checks." 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 November 29, 2004, waiver agreement, the Commission Administrator entered an order on December 1, 2004, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing,"

5. The Respondent has committed three violations of the Code since September 1, 1995.

6. The Respondent did not appeal the Commission's orders of August 30, 2004 and December 1, 2004.

7. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on March 17, 2005.

8. This Notice of Hearing informed the Respondent of the date, time, and place of the hearing; the statues and rules involved; and the legal authorities under which the hearing was to be held.

9. The case was continued and an Order was faxed to Respondent's attorney of record Ronald A. Monshaugen on May 20, 2005, setting the hearing date for July 22, 2005.

10. The hearing on the merits convened on July 22, 2005, in the SOAH offices at 2020 North Loop West, Suite # 111, Houston, Texas. The Commission appeared by its attorney, Christopher Gee, via telephone conference from the Commission's headquarters in Austin, Texas. The Respondent was represented by attorney Albert Van Huff. ALJ Roshunda Pringle presided. Evidence and argument were heard and the record closed on the same date.

## V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over 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 under the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.

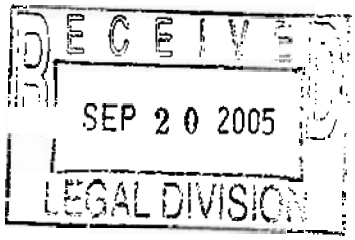
4. Based on the foregoing findings and conclusions, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.11, and 16 TEX. ADMIN. CODE § 33.24.

5. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

**SIGNED September 16, 2005.**

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

# State Office of Administrative Hearings




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

September 16, 2005

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

**VIA REGULAR MAIL**

**RE: Docket No. 458-05-4845; TABC v. Carolyn Hawthorne d/b/a Club Marquis**

Dear Mr. Steen:

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,

Timothy Horan
Administrative Law Judge

TH/mc
Enclosure
xc: Christopher Gee, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, TX 78711- **VIA REGULAR MAIL**
Albert T. Van Huff, Attorney at Law, 1225 North Loop West, Suite 640, Houston, TX 77008 -**VIA REGULAR MAIL**

**2020 North Loop West, Suite 111 ◆ Houston, Texas 77018**
**(713) 957-0010 Fax (713) 812-1001**

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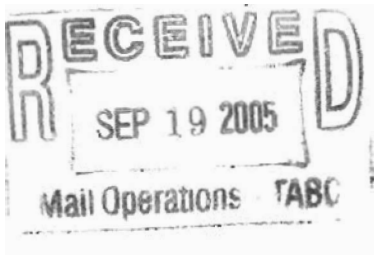
# State Office of Administrative Hearings

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

September 16, 2005

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2020 North Loop West, Suite 111 ◆ Houston, Texas 77018
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