

DOCKET NO. 616114

IN RE NAIROBI GRILL L.L.C.	§	BEFORE THE
D/B/A NAIROBI GRILL	§	
	§	
PERMIT NOS.MB520302, LB520303	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-6642)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 15th day of September, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on June 29, 2005 and adjourned on June 29, 2005. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 26, 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, 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 be **FORFEITED**.

This Order will become final and enforceable on OCTOBER 7, 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 15th day of September, 2005.

On Behalf of the Administrator,


Jeannere Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Kyle Groves
Administrative Law Judge
State Office of Administrative Hearings
Dallas, Texas
VIA FAX (214) 956-8611

David C. Hill
ATTORNEY FOR RESPONDENT
VIA FAX (214) 706-3023

Nairobi Grill L.L.C.
d/b/a Nairobi Grill
Respondent
2656 Main Street
Dallas, Tx. 75226-1410
CERTIFIED MAIL RRR #7005 0390 0005 7550 2149

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

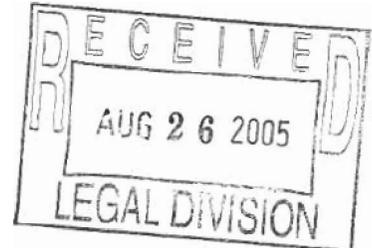
Licensing Division
Dallas District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 26, 2005



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

RE: TABC vs. Nairobi Grill LLC. D/B/A Nairobi Grill
SOAH Docket No. 458-05-6642
TABC Case No. 616114

Dear Mrs. Fox:

Enclosed please find the Proposal for Decision in the above reference cause for the consideration of the Texas Alcoholic Beverage Commission. 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,

A handwritten signature in black ink, appearing to read "Kyle Groves".

Kyle Groves
Administrative Law Judge

KG/SC
Enclosure

CC: Gayle Gordon, Staff Attorney for Texas Alcoholic Beverage Commission, Via Fax; David C. Hill, Respondent's Attorney, Via Fax

DOCKET NO. 458-05-6642

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	
NAIROBI GRILL LLC. D/B/A NAIROBI GRILL PERMIT NOS. MB-520302, LB-520303 DALLAS COUNTY, TEXAS (TABC CASE NO. 616114)	§	OF
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Nairobi Grill, LLC., d/b/a Nairobi Grill (Respondent) seeking forfeiture of the full amount of Respondent's conduct surety bond. TABC alleged Respondent's conduct surety bond should be forfeited because Respondent committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission rules since September 1, 1995. Respondent presented no evidence. This Proposal for Decision finds Respondent's conduct surety bond should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on June 29, 2005. Attorney Gayle Gordon represented TABC. Respondent was represented by Attorney David Hill. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. EVIDENCE

The staff of TABC (the Staff) offered documentary evidence from the TABC files. Those documents show:

(a) On November 3, 2004, Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting it would faithfully conform to the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.

(b) On October 21, 2004, Respondent was issued Mixed Beverage Permit MB-520302 and Mixed Beverage Late Hours Permit LB-520303.

(c) On April 5, 2005, Respondent signed an Agreement and Waiver of Hearing. The document alleged the violation of "local distributor stamp not mutilated."

(d) On March 11, 2005, Respondent signed another Agreement and Waiver of Hearing. This document alleged "cash law violation."

(e) On December 29, 2004, Respondent signed a third Agreement and Waiver of Hearing. This document alleged another cash law violation.

(f) The documents stated the signing of the waivers may result in the forfeiture of any related conduct surety bond.

(g) On May 31, 2005, Petitioner sent a Notice of Hearing to Respondent asserting that the TABC was seeking to forfeit Respondent's surety bond.

Respondent offered no evidence.

III. STATUTORY AUTHORITY

The rules of the TABC at 16 TEX. ADMIN. CODE §33.24(j) provide:

(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 licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may . . . request a hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13 and this rule have been satisfied....

The applicable statutory provision of the code §§11.11(b)(2), states:

(b) . . . 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. . . .

IV. RECOMMENDATION

Based on a preponderance of the evidence, Respondent's conduct surety bond should be forfeited because Respondent committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission rules since September 1, 1995.

V. FINDINGS OF FACT

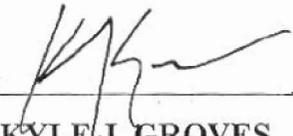
1. Nairobi Grill LLC d/b/a Nairobi Grill (Respondent) is the holder of Mixed Beverage Permit MB-520302 and Mixed Beverage Late Hours Permit LB-520303.
2. On November 3, 2004, Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting it would faithfully conform to the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.
3. On May 31, 2005, the staff of TABC (the Staff) sent a Notice of Hearing to Respondent asserting that TABC was seeking to forfeit Respondent's surety bond.
4. The hearing on the merits was held on June 29, 2005. Gayle Gordon appeared and represented the Staff. Respondent was represented by Attorney David Hill. Kyle J. Groves, Administrative Law Judge, presided.
5. On April 5, 2005, Respondent signed an Agreement and Waiver of Hearing. The document alleged the violation of "local distributor stamp not mutilated."

6. On March 11, 2005, Respondent signed another Agreement and Waiver of Hearing. This document alleged "cash law violation."
7. On December 29, 2004, Respondent signed a third Agreement and Waiver of Hearing. This document alleged another cash law violation.
8. By signing these documents, Respondent waived his right to hearings on the alleged violations. Respondent neither admitted nor denied the allegations. The documents stated the signing of the waiver may result in the forfeiture of any related conduct surety bond.

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
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. GOVT CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Respondent has committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission rules since September 1, 1995.
5. TABC is permitted by TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24 to forfeit the conduct surety bonds of permittees that have committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission rules since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the state.

SIGNED this 26th day of August, 2005.



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS