

Section 11.11 of the Code and the Commission's rule at 16 TEX. ADMIN. CODE §33.24 require the holder of permits issued under Chapter 25 of the Code to file with the Commission a conduct surety bond in the amount of \$5,000 unless the permit holder meets certain exceptions not applicable here. Respondent obtained and filed with the Commission a \$5,000 conduct surety bond.

III. EVENTS LEADING TO THE REQUEST TO FORFEIT RESPONDENT'S CONDUCT SURETY BOND

On August 1, 1998, Respondent signed an "Agreement and Waiver of Hearing" which reflected that Respondent had been charged with the following two violations of the Code: "Subterfuge" and "Prohibited Interest". The agreement contained the following language:

My name is Linda Joyce Smith. I am the holder of the above license. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. . . . "The signing of this waiver may result in the forfeiture of any related conduct surety bond". (Emphasis added)

As a result of this waiver agreement, the Commission's Assistant Administrator found Respondent in violation of the Code for the allegations set out in the waiver of hearing and entered an order canceling Respondent's permit and license. The order did not offer the Respondent the option to pay a civil penalty in lieu of the cancellation.

On September 16, 1998, the Commission notified Respondent of its intent to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing on the proposed forfeiture, as permitted by 16 TEX. ADMIN. CODE §33.24(j)(2). There is no evidence that Respondent appealed the foregoing order or the violation notice.

IV. FORFEITURE OF THE BOND

The basis for the forfeiture of a conduct surety bond is set out in §11.11 of the Code and in the Commission's rule at 16 TEX. ADMIN. CODE §33.24. According to §11.11(b) of the Code, the permit holder must agree on the face of the bond that the amount of the bond will be paid to the state if the permit holder is finally adjudicated as having violated any provision of the Code. Section 33.24(j)(1) states that "When a license or permit is canceled... the Commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond".

Respondent argued at the hearing that the Respondent allowed the permit and license to be canceled because of violations at other licensed premises and that does not permit forfeiture of the conduct surety bond at the subject Jeff's Place as the violations did not occur on these premises.

At the time Respondent signed the waiver of hearing, the Respondent was also put on notice that the signing of the waiver could result in the forfeiture of the conduct surety bond: the conduct surety bond filed by the Respondent plainly states, "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state..." (emphasis added). Section 11.11 of the Code contains similar language stating that the bond "shall be paid to the state" if violations of the Code are finally adjudicated.

A final order was entered against Respondent pertaining to two separate violations of the Code. Contrary to Respondent's assertions that Respondent allowed the permit and license to be canceled because of violations at other licensed premises and that does not permit forfeiture of the conduct surety bond for Jeff's Place because the violations did not occur on these premises, the Administrative Law Judge notes the following: Respondent waived any right to a hearing on that assertion and agreed with the terms of the waiver of hearing which plainly stated that the conduct surety bond was subject to forfeiture. Therefore, it is recommended that Respondent's conduct surety bond be forfeited.

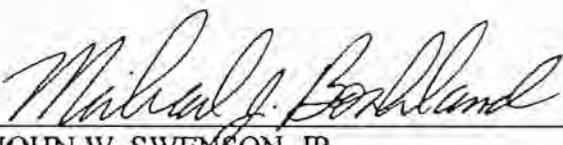
V. FINDINGS OF FACT

1. Linda Joyce Smith, d/b/a Jeff's Place (Respondent) holds Wine And Beer Permit No. BG-408531 and Retail Dealer's On Premise Late Hours License No. BL-408532 for the premises known as Jeff's Place located at 1901 Vaughn Boulevard, Fort Worth, Tarrant County, Texas. Respondent's permit and license were issued on March 3, 1997, by the Texas Alcoholic Beverage Commission under the authority of Chapters 25 and 70 of the Texas Alcoholic Beverage Code and were continuously renewed until canceled by a Commission order dated August 6, 1998.
2. Respondent received proper and timely notice of the hearing from the Commission in a notice of hearing dated December 31, 1998, and proper and timely notice from the Administrative Law Judge in the order setting the hearing and establishing prehearing requirements dated January 6, 1999.
3. The hearing was convened on January 22, 1999. All parties appeared and participated in the hearing.
4. Respondent obtained and filed with the Commission a \$5,000 conduct surety bond in accordance with §11.11(a)(1) of the Code.
5. The conduct surety bond referred to in Finding of Fact No. 4 states that if the holder of the permit or license violates a law of the state relating to alcoholic beverages or a rule of the Commission, the amount of the conduct surety bond is to be paid to the state [State of Texas].
6. On August 1, 1998, Respondent signed an "Agreement and Waiver of Hearing" waiving Respondent's right to a hearing on charges of "Subterfuge" and "Prohibited Interest" which were alleged to have occurred on July 16, 1998.
7. By signing the waiver agreement, Respondent accepted the terms stated in the agreement that Respondent's conduct surety bond could be forfeited.
8. As a result of the waiver agreement described in Finding of Fact No. 6, the Commission's Assistant Administrator found that Respondent had violated the Code with regard to the allegations set out in Finding of Fact No. 6 and entered an order dated August 6, 1998, canceling Respondent's permit and license.
9. Respondent did not appeal the Commission's orders described in Findings of Fact No. 8.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. ANN. Subchapter B of Chapter 5 and §61.73(b).
2. The State Office of Administrative Hearings 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 Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Pursuant to 16 TEX. ADMIN. CODE §33.24(j) and TEX. ALCO. BEV. Code §11.11(b)(2), a conduct surety bond may be forfeited if the permit has been revoked.
5. Based upon the Findings of Fact, Conclusion of Law No. 4, TEX. ALCO. BEV. CODE ANN. §11.11 and TEX. ADMIN. CODE §33.24, Respondent's conduct surety bond should be forfeited because Respondent's permit and license were canceled on August 6, 1998.

SIGNED this 23rd day of March, 1999.


for JOHN W. SWENSON, JR.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS