

DOCKET NO. 582875

IN RE WALTER RAY NAIL
D/B/A RUSTY NAIL CLUB
PERMIT NO. MB256808

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

WICHITA COUNTY, TEXAS
(SOAH DOCKET NO. 458-00-0354)

ORDER

CAME ON FOR CONSIDERATION this 10th day of April, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on February 22, 2000 and adjourned February 22, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 6, 2000. 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.

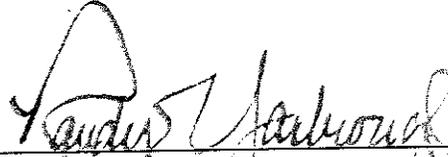
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on May 1, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 10th day of April, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB\bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 626-7448

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Michael Payne
ATTORNEY FOR RESPONDENT
P.O. Box 4608
Wichita Falls, Texas 76308
VIA FACSIMILE (940) 766-4610

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Wichita Falls District Office



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

April 4, 2000

TO: Gayle Gordon, Director of Legal
FROM: Randy Yarbrough, Assistant Administrator
SUBJECT: Docket No. 458-00-0354 TABC Case No. 582875
Walter Ray Nail d/b/a Rusty Nail Club
Wichita County, Texas

I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the Conduct Surety Bond issued for this location should be forfeited. Please prepare an **ORDER** adopting the Proposal for Decision recommendation that the Conduct Surety Bond should be **FORFEITED**.

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

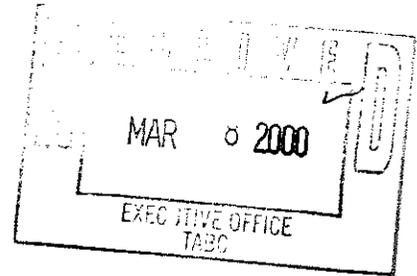
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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

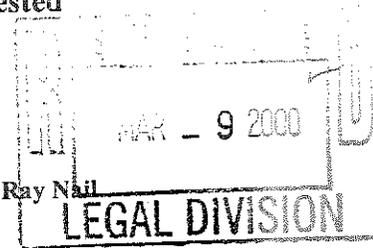
March 6, 2000



Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL Z 283 051 912
Return Receipt Requested

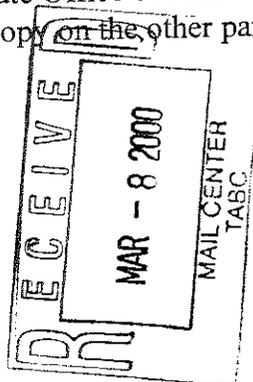
**RE: Docket No. 458-00-0354; Texas Alcoholic Beverage Commission vs. Walter Ray Nail
d/b/a Rusty Nail Club (TABC Case No. 582875)**



Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Christopher Burnett, attorney for Texas Alcoholic Beverage Commission, and to Michael Payne, Attorney for Respondent. For reasons discussed in the proposal, I recommend that Respondent's Texas Alcoholic Beverage Commission Irrevocable Letter of Credit Number 2 (For Conduct Surety Bond Purposes), dated July 18, 1996, issued to the Texas Alcoholic Beverage Commission and executed on behalf of Walter Ray Nail d/b/a Rusty Nail Club, by Union Square Federal Credit Union, 1401 Holliday, Wichita Falls, Texas 76031, in the amount of Five Thousand Dollars (5,000.00) should be forfeited.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.



Sincerely,

Robert F. Jones, Jr.
Administrative Law Judge

TC:ds
Enclosure

xc: Holly Wise, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**; Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; Michael Payne, Attorney for Respondent, P. O. Box 4608, Wichita Falls, Tx. 76306 - **CERTIFIED MAIL NO. Z 283 051 913. RETURN RECEIPT REQUESTED**

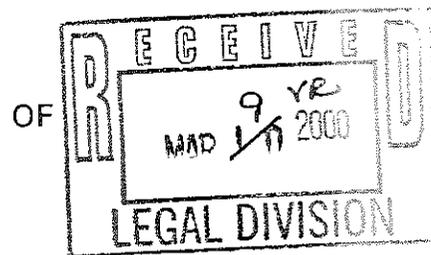
The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

WALTER RAY NAIL D/B/A
RUSTY NAIL CLUB
WICHITA COUNTY, TEXAS
(TABC CASE NO. 582875)

§ BEFORE THE STATE OFFICE
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§ ADMINISTRATIVE HEARINGS



PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Walter Ray Nail d/b/a Rusty Nail Club (Respondent). Staff sought forfeiture of Respondent's letter of credit for conduct surety bond purposes, alleging Respondent had been finally adjudicated of committing three violations of the Alcoholic Beverage Code since September 1, 1995. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the full amount of the letter of credit.

PROCEDURAL HISTORY

On February 22, 2000, a public hearing was convened before ALJ Robert F. Jones Jr., in the at The Vinnedge Building, 2100 North Main Street, Suite 10, Lower Level, Fort Worth, Tarrant County, Texas. Staff was represented by Christopher Burnett, an attorney with the Commission's Legal Division. Respondent failed to appear either personally or through counsel. Staff moved for a default judgment, and the motion was granted.

REASONS FOR DECISION

Respondent failed to appear at the hearing. Staff proved the requisite jurisdictional bases and that Respondent had received proper notice of the hearing, including a short statement of the statutes and rules that are involved and the sanction requested by the Commission. Consequently these issues are addressed in the Findings of Fact and Conclusions of Law without further discussion.

LEGAL STANDARDS AND APPLICABLE LAW

Respondent was required to provide a conduct surety bond under TEX. ALCO. BEV. CODE ANN. §11.11(a) (Vernon 2000)(the Code). The Texas Alcoholic Beverage Commission (TABC) is authorized under §11.11(b)(2) to cause the full amount of a conduct surety bond to be forfeited, if Respondent's license was revoked or on a final adjudication that the licensee had violated a provision of the Code. Under TABC's rule,

16 TEX. ADMIN. CODE §33.24(j),

(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, within 30 days of the notice specified in paragraph (1) of this subsection, request 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 hearing shall be conducted in accordance with the Administrative Procedure Act.

Under §11.11(d)(2) of the Code, "A holder of a permit required to file a surety bond may furnish instead of all or part of the required bond amount . . . [in] one or more letters of credit issued by a federally insured bank or savings institution authorized to do business in this state."

FINDINGS OF FACT

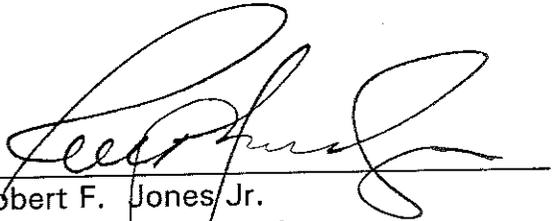
1. Walter Ray Nail d/b/a Rusty Nail Club (Respondent) was issued Mixed Beverage Permit MB-256808 and Mixed Beverage Late Hours Permit LB-256809 on July 26, 1998.
2. Respondent's licensed premises were located at 1205 Lamar Street, Wichita Falls, Wichita County, Texas.
3. To fulfill Respondent's obligation to post a bond under TEX. ALCO. BEV. CODE ANN. §11.11(a), Respondent filed Texas Alcoholic Beverage Commission Irrevocable Letter of Credit Number 2 (For Conduct Surety Bond Purposes) dated July 18, 1996, with the Commission. The letter of credit was executed on behalf of Walter Ray Nail d/b/a Rusty Nail Club, by Union Square Federal Credit Union, 1401 Holliday, Wichita Falls, Texas, 76301. The letter of credit is in the amount of \$5,000.00, and is payable to or in favor of the State of Texas.
4. Defendant, through counsel, executed an Agreement and Waiver of Hearing in TABC Docket Number 574151, styled *In re Walter Ray Nail d/b/a Rusty Nail Club* on October 20, 1998. In the Agreement and Waiver of Hearing, Respondent agreed that Mixed Beverage Permit MB-256808 and Mixed Beverage Late Hours Permit LB-256809 would be canceled for cause at 12:01 A.M. on January 2, 1999.

5. The Waiver Order in that TABC Docket Number 574151, styled *In re Walter Ray Nail d/b/a Rusty Nail Club* on October 20, 1998, executed by Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, on October 22, 1998, ordered Mixed Beverage Permit MB-256808 and Mixed Beverage Late Hours Permit LB-256809 canceled for cause at 12:01 A.M. on January 2, 1999.
6. Respondent's Mixed Beverage Permit MB-256808 and Mixed Beverage Late Hours Permit LB-256809 were canceled for cause at 12:01 A.M. on January 2, 1999.
7. The Staff of the Texas Alcoholic Beverage Commission sent Respondent written notice of Staff's intent seek forfeiture of Respondent's bond by a letter dated January 11, 1999, addressed to Walter Ray Nail d/b/a Rusty Nail Club at 4604 Karla Street, Wichita Falls, Wichita County, Texas 76130. Respondent's receipt of the letter was evidenced by Respondent's signature on page two of the letter.
8. On February 4, 2000, Staff issued its Notice of Hearing. The notice was directed to Walter Ray Nail d/b/a Rusty Nail Club at 1205 Lamar Street, Wichita Falls, Wichita County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. Staff had not, as of the date of the hearing, February 22, 2000, received the certified mail return receipt.
9. On February 22, 2000, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at The Vinnedge Building, 2100 North Main Street, Suite 10, Lower Level, Fort Worth, Tarrant County, Texas. Staff was represented at the hearing by Christopher Burnett, an attorney with the Commission's Legal Division. Respondent failed to appear.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. §11.11(b)(2) (Vernon 2000).
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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §2003.021 (Vernon 2000).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE §2001.051, and 1 TEX. ADMIN. CODE §§155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 7, the full amount of Texas Alcoholic Beverage Commission Irrevocable Letter of Credit Number 2 (For Conduct Surety Bond Purposes) dated July 18, 1996, issued to the Texas Alcoholic Beverage Commission and executed on behalf of Walter Ray Nail d/b/a Rusty Nail Club, by Union Square Federal Credit Union 1401 Holliday, Wichita Falls, Texas, 76031, in the amount of \$5,000.00, should be forfeited.

SIGNED this 6th day of March, 2000.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS