

DOCKET NO. 583052

IN RE PATRICIA IBARRIA ORNELAS
D/B/A CLUB DEL TORO
PERMIT NO. BG-411715
LICENSE NO. BL-411716

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

TRAVIS COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-1535)

ORDER

CAME ON FOR CONSIDERATION this 30th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on October 14, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 3, 1999. 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 is hereby **FORFEITED**.

This Order will become final and enforceable on January 21, 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 30th day of December, 1999.

On Behalf of the Administrator,



Randy Yarbrough
Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

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

Patricia Ibarria Ornelas
d/b/a Club del Toro
RESPONDENT
2916 Prado
Austin, Texas 78702
CERTIFIED MAIL/RRR NO. Z 473 039 193

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section
Licensing Division

Z 473 039 193

US Postal Service
Receipt for Certified Mail
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Sent to	<i>Patricia Ornelas</i>	
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Post Office, State, & ZIP Code	<i># 583052</i>	
Postage	\$	
Certified Fee	\$	
Special Delivery Fee	\$	
Restricted Delivery Fee	\$	
Return Receipt Showing to Whom & Date Delivered		
Return Receipt Showing to Whom, Date, & Addressee's Address		
TOTAL Postage & Fees	\$	
Postmark or Date	<i>12/30/99</i>	

PS Form 3800, April 1995

FOR

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

December 03, 1999

Mr. Doyme Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78711

HAND DELIVERY

RE: Docket No. 458-99-15357; TABC vs. Patricio Ibarria Ornelas, d/b/a Club Del Toro;
TABC Case No. 583052; Travis County, Texas

Dear Mr. Bailey:

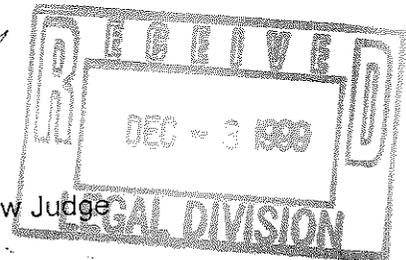
Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and to Patricio Ibarria Ornelas, Respondent. For reasons discussed in the Proposal for Decision, I have recommended that the Respondent's conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John Beeler".

John Beeler
Administrative Law Judge



JB:es

Enclosure

cc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY
Patricio Ibarria Ornelas d/b/a Club Del Toro, 2916 Prado, Austin, TX 78702 - VIA CERTIFIED MAIL NO. Z 332 923 730.
RETURN RECEIPT REQUESTED
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - VIA HAND DELIVERY

DOCKET NO. 458-99-1535
(TABC CASE NO. 583052)

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

vs.

PATRICIO IBARRIA ORNELAS
D/B/A CLUB DEL TORO
PERMIT NO. BG-411715
LICENSE NO. BL-411716
TRAVIS COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Patricio Ibarria Ornelas d/b/a Club Del Toro (Respondent). Respondent renewed a conduct surety bond¹ on March 28, 1997, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). The Staff recommended that the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing in this matter convened on October 14, 1999, before ALJ John H. Beeler, at the offices of the State Office of Administrative Hearings in Austin, Travis County, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. The Respondent did not appear and was not represented at the hearing; therefore, the hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. Conduct Surety Bond

¹Respondent provided a conduct surety bond, Bond Number XTL 00239, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewal of the permit or license have expired." Exhibit 1.

On April 25, 1997, the Commission issued a Wine and Beer Retailer's Permit No. BG-411715 and a Retail Dealer's On-Premise Late Hours License, BL-411716 to Respondent for the premises known as Club Del Toro, 2316 Webberville Road, Austin, Travis County, Texas. On March 1, 1997, Respondent posted a conduct surety bond for Club Del Toro for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On June 2, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on May 3, 1998, Respondent permitted a juvenile to consume/possess an alcoholic beverage in violation of TEX. ALCO BEV. CODE ANN. §§ 106.13(a) and 11.61(b)(6). As a result of this waiver agreement, the Commission Administrator entered an order on June 10, 1998, suspending Respondent's license and permit for 7 days unless Respondent paid \$1050.00 as a civil penalty.

On December 2, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. The waiver agreement stated that on October 16, 1998, Respondent's employee sold drugs in violation of TEX. ALCO BEV. CODE ANN. § 104.01(9), and that on November 22, 1998, Respondent sold alcoholic beverages to an intoxicated person in violation of TEX. ALCO BEV. CODE ANN. § 11.61(b)(14). As a result of this waiver agreement, the Commission Administrator entered an order on December 14, 1998, suspending Respondent's license and permit for 37 days unless Respondent paid \$5550.00 as a civil penalty.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 61.71. The Commission's rule found at 16 TAC § 33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been cancelled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree 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 the Code.

Respondent admitted in the two Agreements and Waivers of Hearing that he has violated the provisions of the Code three times since September 1, 1995.

V. Proposed Findings of Fact

1. On April 25, 1997, the Commission issued a Wine and Beer Retailer's Permit No. BG-411715 and a Retail Dealer's On-Premise Late Hours License, BL-411716 to Respondent for the premises known as Club Del Toro, 2316 Webberville Road, Austin, Travis County, Texas. On March 1, 1997, Respondent posted a conduct surety bond for Club Del Toro for \$5,000 as required by Sections 11.11 and 61.13 of the Code.
2. On January 19, 1999, the Commission sent Respondent a notice of its intent to seek forfeiture of the full amount of his conduct surety bond.
3. The Commission sent a notice of hearing dated September 10, 1999, to Respondent at the address provided in Finding of Fact No. 1. The notice of hearing was returned to the Commission unclaimed.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing also contained the following language in capital letters in 10-point or larger boldface type:

If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
6. The hearing was convened on October 14, 1999, at the offices of the State Office of Administrative Hearings in Austin, Travis County, Texas. Respondent did not appear and was not represented at the hearing.
7. On June 2, 1998, Respondent signed a waiver agreement admitting that he had permitted a juvenile to consume/possess an alcoholic beverage.
8. On December 2, 1998, Respondent signed a waiver agreement admitting that his employee had sold drugs and that Respondent had sold alcoholic beverages to an intoxicated person.
9. On June 10, 1998, and December 14, 1998, the Commission Administrator entered orders finding Respondent had committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact Nos. 7 and 8.
10. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

VI. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, and 61.71 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon Supp. 1999) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d) (1998), which provides that service of notice of hearing shall be complete and effective if the document to be served is sent by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Respondent holds Permit Number BG-411715 and License No. BL-411716 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE (TAC) § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code: permitting a juvenile to consume/possess an alcoholic beverage in violation of TEX. ALCO BEV. CODE ANN. §§ 106.13(a) and 11.61(b)(6); allowing an employee to sell drugs in violation of TEX. ALCO BEV. CODE ANN. § 104.01(9); and selling alcoholic beverages to an intoxicated person in violation of TEX. ALCO BEV. CODE ANN. § 11.61(b)(14).
6. Respondent violated 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding Permit Number BG-411715 and License No. BL-411716, issued by the Commission, and the conduct surety bond renewed by Respondent should be forfeited to the State.

SIGNED and entered this 3rd day of December 1999.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS