

DOCKET NO. 587321

IN RE CHERYL LEE DEHRING	§	BEFORE THE
D/B/A WAGON WHEEL	§	
PERMIT NO. BG-418856	§	
	§	TEXAS ALCOHOLIC
	§	
GREGG COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1704)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of July 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Richard Farrow. The hearing convened on August 15, 2000 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 28, 2001. 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.

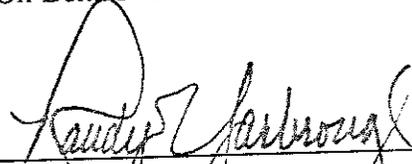
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on August 15, 2001, 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 26th day of July, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Richard Farrow
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (903) 534-7076

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
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Cheryl Lee Dehring
d/b/a Wagon Wheel
RESPONDENT
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Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Longview District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	
	§	OF
CHERYL LEE DEHRING	§	
D/B/A WAGON WHEEL	§	
PERMIT NO. BG-418856	§	
GREGG COUNTY, TEXAS	§	
(TABC CASE NO. 587321)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) sought forfeiture of the conduct surety bond posted by Cheryl Dehring, d/b/a/ Wagon Wheel, Respondent, because Respondent committed three or more violations of the Texas Alcoholic Beverage Code since September 1, 1995. This proposal for decision recommends forfeiture of the bond.

Procedural History

Notice of hearing was sent to Respondent at its last known address on June 19, 2000, and was unclaimed by Respondent although attempts were made to deliver on June 21, 2000, and June 26, 2000. The notice was sent back to Petitioner on July 6, 2000, and received July 11, 2000. Such notice set out the allegations of violation, the possible penalty or penalties, and that a hearing on the allegations would be held on August 15, 2000, at the Tyler office of the State Office of Administrative Hearings at 1:00 p.m. The notice contained a statement in bold-face 10-point type that upon failure of a party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and the relief sought in the notice may be granted by default.

On August 15, 2000, at 1:00 p.m. the hearing commenced at the Tyler office of the State Office of Administrative Hearings. Appearing for the Petitioner was Christopher Burnett, attorney for the Staff. The Respondent failed to appear in person or by attorney and wholly made default. The hearing was conducted by Richard Farrow, Administrative Law Judge for the State Office of Administrative Hearings. The evidence was presented, argument made and the record was closed that same date.

Discussion of the Evidence

The notice of hearing was admitted into evidence showing that the Staff had made allegations

that Respondent had committed three violations of the Alcoholic Beverage Code since September 1, 1995, and containing the consequences of a party's failure to appear at the hearing. Also admitted into evidence was the letter and envelope showing that it was sent certified mail to Respondent's last known address.

The affidavit of Brian L. Guenther, Licensing Department Director for the Texas Alcoholic Beverage Commission, was admitted setting out the licensing and violation history of the Respondent.

Findings of Fact

1. On August 28, 1997, Respondent was issued Permits No. BG- 418856 by the Texas Alcoholic Beverage Commission.
2. On August 12, 1997, First Indemnity of America Insurance Company, as surety for Respondent, issued a \$5,000.00 conduct surety bond payable to the State of Texas.
3. On September 22, 1999, Respondent entered into an agreement waiving the right to a hearing concerning allegations that Respondent had violated TEX. ALCO. BEV. CODE §§ 11.05, 109.53, 11.61 (b) (13) and agreeing that the license would be canceled.
4. On October 5, 1999, the Texas Alcoholic Beverage Commission entered an order finding that Respondent had violated TEX. ALCO. BEV. CODE §§ 11.05, 109.53, 11.61 (b) (13) and that Respondent's license was canceled effective October 26, 1999.
5. Notice of hearing was sent to Respondent's last known address on June 19, 2000,.
6. The notice of hearing contained a short statement of the factual allegations and included, in 10-point bold-face type, a statement that if a party failed to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and that the relief sought in the notice of hearing may be granted by default.
7. The notice of hearing stated that the hearing would be held at the Tyler office of the State Office of Administrative Hearings on August 15, 2000, at 1:00 p.m.
8. Respondent failed to appear at the hearing on August 15, 2000.

Conclusions of Law

1. Service of proper and timely notice of hearing was effected on the Respondent pursuant to TEX. GOV'T. CODE ANN. § 2001.
2. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX.

ALCO. BEV. CODE ANN. §§ 32.01, 6.01, and 11.61 (Vernon 2000).

3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. ALCO. BEV. CODE § 5.43 and TEX. GOV'T. CODE ANN. §§ 2003, 2001 (Vernons 2000).

4. Based on Findings 5-8, Respondent defaulted and the allegations contained in the notice of hearing are deemed true pursuant to § 155.55 of the State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE, § 155.55 (WEST 2000).

5. Based on Conclusion 4 and Findings 1-4, Respondent's conduct surety bond should be forfeited.

Signed this 28th day of June, 2001.



Richard Farrow
Administrative Law Judge Presiding