

DOCKET NO. 589728

IN RE RUTH PEREZ BECK
D/B/A MI TIERRA FOOD MART
PERMIT NO. Q-403054
LICENSE NO. BF403055

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-0430)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of February 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica M. Branch. The hearing convened and adjourned November 10, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 8, 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.

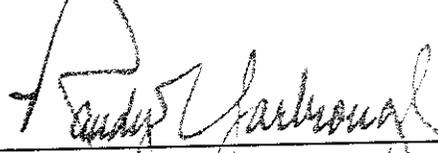
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's Conduct Surety Bond PA6076778, dated February 28, 1999, in the amount of \$10,000.00, **NOT BE FORFEITED**.

This Order will become final and enforceable on March 6, 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 13th day of February, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG\bc

The Honorable Monica M. Branch
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Ruth Perez Beck
d/b/a Mi Tierra Food Mart
RESPONDENT
1310 E. Peach St.
Fort Worth, Texas 76102-1615
VIA CERTIFIED MAIL NO. Z 280 626 975

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-01-0430

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

RUTH PEREZ BECK
D/B/A MI TIERRA FOOD MART
TARRANT COUNTY, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Petitioner) brought this forfeiture action against Ruth Perez Beck d/b/a Mi Tierra Food Mart (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permit had been canceled for cause. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) does not recommend forfeiture of the conduct surety bond.

JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11 (Vernon 2000) and 16 TEX. ADMIN. CODE § 33.24 (Vernon 2000). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000). There were no contested issues of notice or jurisdiction in this proceeding.

On October 11, 2000, Petitioner issued its Notice of Hearing, directed to Ruth Perez Beck d/b/a Mi Tierra Food Mart, 1310 E. Peach St., Fort Worth, Texas 76102-1615. On November 10, 2000, a hearing convened before ALJ Monica Branch (SOAH) at 2100 North Main Street, Suite 10, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received from both parties on that date. The record was closed on November 10, 2000.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 11.11(b)(2) of the Code to forfeit the amount of a conduct surety bond if the permit is revoked. Pursuant to 16 TEX. ADMIN. CODE § 33.24 (Vernon 2000), TABC must notify the permittee, in writing, of its intent to seek forfeiture of the bond once a permit has been canceled. The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act. *Id.*

EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent was the holder of a Wine Only Package Store Permit, issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit Two establish that a Wine Only Package Store Permit, Permit Number Q-403054, was issued to Ruth Perez Beck, doing business as Mi Tierra Food Mart, 3521 Vaughn Boulevard, Fort Worth, Tarrant County, Texas, on November 14, 1996, and was continuously renewed until canceled for cause on April 20, 2000.

In reference to the Wine Only Package Store Permit, Petitioner alleged that Respondent posted a conduct surety bond. Respondent questioned whether the bond for which Petitioner sought forfeiture was in effect at the time the permit was canceled. TABC Exhibit Two contains a certified copy of Texas Alcoholic Beverage Commission Conduct Surety Bond Number PA6076778, dated February 28, 1999. The bond was executed by Ruth Perez Beck d/b/a Mi Tierra Food Mart, as Principal, and The Insurance Company of the State of Pennsylvania, Post Office Box 789, Hatboro, Pennsylvania, as Surety. The bond is in the amount of ten thousand dollars, and is payable to the State of Texas. The bond references a "Wine & Beer Off Premise License" as the type of permit or license for which it has been posted. No evidence was received regarding the posting of a conduct surety bond for the Wine Only Package Store Permit.

Petitioner alleged that Respondent's permit was canceled for cause, subjecting the conduct surety bond to forfeiture. Respondent did not dispute this allegation. TABC Exhibit Two contains an Agreement and Waiver of Hearing, signed by Respondent on April 18, 2000, wherein Respondent agreed to cancellation of her permit based on "false statement" allegations. TABC Exhibit Two also contains an Order, executed by TABC Assistant Administrator Randy Yarbrough on April 20, 2000, wherein TABC made a finding that the alleged violations occurred and canceled Respondent's Wine Only Package Store Permit for cause.

Finally, Petitioner offered evidence of its compliance with the notice requirements of 16 TEX. ADMIN. CODE § 33.24 (Vernon 2000). TABC Exhibit Two contains a letter dated May 24, 2000, addressed to Ruth Perez Beck d/b/a Mi Tierra Food Mart, stating that "we [TABC] are notifying you of our intention to seek forfeiture of the full amount of your conduct surety bond."

The letter references Conduct Surety Bond Number PA6076778 and Wine Only Package Store Permit Number Q-403054. The second page of the letter contains Respondent's signature, indicating her desire for a hearing to determine if the bond should be forfeited.

ANALYSIS

It is clear from the evidence, and undisputed, that Respondent held a Wine Only Package Store Permit, that this permit was canceled for cause by TABC, and that Respondent received notice and requested a hearing regarding the proposed bond forfeiture. The only remaining issue to be determined is whether Conduct Surety Bond Number PA6076778 can be forfeited due to the cancellation for cause of Respondent's Wine Only Package Store Permit.

Regarding the requirement that a permittee or licensee post a conduct surety bond, 16 TEX. ADMIN. CODE § 33.24(c) (Vernon 2000) provides as follows:

A separate surety, in the amount of \$5,000 or \$10,000, shall be obtained, submitted and maintained for each license or permit as set out in the Alcoholic Beverage Code, § 11.11 and § 61.13.

Petitioner seeks forfeiture of Conduct Surety Bond Number PA6076778, which by its own terms has been posted in relation to a Wine & Beer Off Premise License. Although the cancellation for cause of Respondent's Wine & Beer Off Premise License can prompt forfeiture of the aforementioned conduct surety bond, Petitioner did not allege in its Notice of Hearing that it sought forfeiture of Respondent's conduct surety bond due to the cancellation for cause of Respondent's Wine & Beer Off Premise License. Further, Petitioner's letter to Respondent notifying her of the proposed bond forfeiture did not allege cancellation for cause of Respondent's Wine & Beer Off Premise License as grounds for forfeiture. Due to the conflict between Petitioner's pleadings and its proof, the ALJ cannot recommend forfeiture of the conduct surety bond.

RECOMMENDATION

The ALJ recommends that Texas Alcoholic Beverage Commission Conduct Surety Bond Number PA6076778, dated February 28, 1999, in the amount of ten thousand dollars, not be forfeited.

PROPOSED FINDINGS OF FACT

1. Respondent, Ruth Perez Beck d/b/a Mi Tierra Food Mart, holds a Wine Only Package Store Permit, Q-403054, issued by TABC on November 14, 1996, for the premises located at 3521 Vaughn Blvd., Fort Worth, Tarrant County, Texas.

2. Respondent has posted Texas Alcoholic Beverage Commission Conduct Surety Bond Number PA6076778, dated February 28, 1999. The bond was executed by Ruth Perez Beck d/b/a Mi Tierra Food Mart, as Principal, and The Insurance Company of the State of Pennsylvania, Post Office Box 789, Hatboro, Pennsylvania, as Surety. The bond is in the amount of ten thousand dollars, and is payable to the State of Texas. The bond references a "Wine & Beer Off Premise License" as the type of permit or license for which it is posted.
3. No evidence was received regarding the posting of a conduct surety bond in relation to the Wine Only Package Store Permit.
4. Respondent signed an Agreement and Waiver of Hearing on April 18, 2000, wherein she agreed to cancellation of her permit based on "false statement" allegations.
5. TABC executed an Order on April 20, 2000, finding that the alleged violations occurred and canceling Respondent's Wine Only Package Store Permit for cause.
6. Petitioner sent Respondent written notice of its intent to seek forfeiture of Conduct Surety Bond Number PA6076778 by letter dated May 24, 2000. The letter referenced Respondent's Wine Only Package Store Permit.
7. Respondent requested a hearing to determine if the conduct surety bond should be forfeited.
8. On October 11, 2000, Petitioner issued its Notice of Hearing, directed to Ruth Perez Beck d/b/a Mi Tierra Food Mart, 1310 E. Peach St., Fort Worth, Texas 76102-1615. The Notice of Hearing alleged that Respondent's Wine Only Package Store Permit was canceled for cause.
9. On November 10, 2000, a hearing convened before ALJ Monica Branch, SOAH, at 2100 North Main Street, Suite 10, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by TABC Staff Attorney Timothy E. Griffith. Respondent appeared pro se.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2)(Vernon 2000) and 16 TEX. ADMIN. CODE § 33.24 (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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).

3. Respondent received timely notice of hearing.
4. Based upon the Proposed Findings of Fact, Texas Alcoholic Beverage Commission Conduct Surety Bond Number PA6076778, dated February 28 1999, in the amount of ten thousand dollars, should not be forfeited.

SIGNED on this the 8th day of January, 2001.



MONICA BRANCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS