

DOCKET NO. 589923

IN RE MARIA ROSA RIVERA
D/B/A CASA BLANCA 2000
PERMIT NOS. MB429010, LB429011

CAMERON COUNTY, TEXAS
(SOAH DOCKET NO. 458-00-2355)

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§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 27th day of February, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened and adjourned on November 22, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 3, 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.

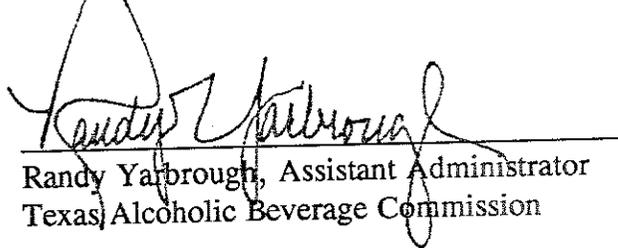
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on March 20, 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 27th day of February, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

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

Maria Rosa Rivera
d/b/a Casa Blanca 2000
RESPONDENT
11 Casa De Palmas
Brownsville, Texas 78521
CERTIFIED MAIL NO. Z 280 627 027

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
McAllen District Office

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
V.	§	
	§	OF
MARIA ROSA RIVERA	§	
D/B/A CASA BLANCA 2000	§	
(TABC CASE NO. 589923)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Staff) requested forfeiture of the conduct surety bond posted by Maria Rosa Rivera d/b/a Casa Blanca 2000 (Respondent). Staff alleged that Respondent's alcoholic beverage permit and license were canceled or suspended three times since September 1, 1995, justifying the forfeiture of Respondent's conduct surety bond pursuant to §11.11 of the TEX. ALCO. BEV. CODE ANN. (the Code) and 16 TEX. ADMIN. CODE §33.24. Respondent presented no evidence or argument at the hearing. The Administrative Law Judge recommends Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

On June 8, 2000, Staff notified Respondent of its intent to seek forfeiture of her conduct surety bond. The notification was sent to Respondent at 11 Casa De Palmas, Brownsville, Texas, the address she had given the Commission and the one reflected in her liquor permits. (TABC Exh. 1.) Respondent received the notification and requested a hearing.

On September 15, 2000, Staff issued a notice of hearing to Respondent at 11 Casa De Palmas, Brownsville, Texas 78521, by certified mail, return receipt requested. On September 21, 2000, Staff filed a Motion to Appear by Telephone and on October 13, 2000, Administrative Law Judge Kyle Groves issued an Order Resetting to a telephone hearing. Pursuant to the notices of hearing and the Administrative Law Judge's Order of October 13, 2000, the hearing convened on November 22, at 1:00 p.m. The Administrative Law Judge Leah Bates dialed the telephone number available for Respondent, and spoke with a child. The child told the Court that Respondent was not home at that time. The Administrative Law Judge tried the number again after ten minutes, and the child answered again, stating that the Respondent was not in, that she had gone shopping in Mexico.

Pursuant to 1 TEX. ADMIN. CODE §§155.27 and 155.55, and case law notices of hearing properly addressed, stamped, and mailed to a licensee's last known address constitute legally sufficient notice,¹ the hearing proceeded on a default basis, and the record was closed at its

¹ *Morris v. State*, 894 S.W.2d 22 (Tex. App.--Austin 1994, writ denied w.o.j.); *Texas Real Estate Comm'n v. Howard*, 538 S.W.2d 429 (Tex. Civ. App.--Houston [1st Dist.] 1976, writ ref'd n.r.e.).

conclusion the same day. Staff was represented by Christopher Burnett, Assistant Attorney General. Respondent did not appear and was not represented. The record closed on November 22, 2000.

II. CONDUCT SURETY BOND

Respondent holds a Mixed Beverage Permit MB429010 and a Mixed Beverage Late Hours permit LB429011 for premises known as Casa Blanca 2000 at 2223 Central Boulevard, Brownsville, Cameron County, Texas. Respondent's permits were issued under the authority of Chapter 25 of the Code on April 5, 2000 and expire on April 4, 2001.

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 \$5,000² 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 April 28, 2000, Respondent signed an "Agreement and Waiver of Hearing" waiving a hearing on allegations; that she had permitted consumption of alcoholic beverages during prohibited hours by an employee; and delivery of alcoholic beverages during prohibited hours. As a result of this waiver agreement, the Commission's Assistant Administrator entered an order suspending Respondent's permits for six days unless she paid a civil penalty of \$900, and finding her in violation of the Code for the allegations set out in the waiver of hearing. There is no evidence she appealed the order.

On May 17, 2000, Respondent signed a second "Agreement and Waiver of Hearing" waiving a hearing on the allegations of Cash Law Violations, Section 61.73 and 102.31 of the Alcoholic Beverage Code. As a result of this waiver agreement, the Commission's Assistant Administrator entered an order suspending Respondent's permits for ten days unless she paid a civil penalty of \$1,500, and finding her in violation of the Code for the allegations set out in the waiver of hearing. There is no evidence she appealed the order.

As noted earlier, Staff notified Respondent on June 8, 2000, of its intent to seek forfeiture of her conduct surety bond. Respondent requested a hearing on the proposed forfeiture, as permitted by 16 TEX. ADMIN. CODE §33.24(j)(2).

IV. FORFEITURE OF THE BOND

² Section 11.11(a)(2) of the Code requires the bond to be in the amount of \$10,000 if the permittee's place of business is within 1,000 feet of a public school. There is no evidence that this subsection is applicable here.

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 is more lenient, requiring three violations of the Code after September 1, 1995, before the Staff seeks to forfeit the conduct surety bond.

The Conduct Surety Bond Respondent signed states plainly, "If the holder of this permit...violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the certificate of deposit *shall* be paid to the state." (TABC Exh. 1.) Section 11.11 of the Code contains similar language: the bond "*shall* be paid to the state" if violations of the Code are finally adjudicated. Three violations have been finally adjudicated and there is no evidence or argument from Respondent that the provisions quoted from the letter of credit and §11.11 of the Code should not be enforced. Therefore, Respondent's conduct surety bond should be revoked.

V. FINDINGS OF FACT

1. Maria Rosa Rivera d/b/a Casa Blanca 2000 (Respondent) holds Mixed Beverage Permit MB429010 and a Mixed Beverage Late Hours License LB429011 for premises known as Casa Blanca 2000, 2223 Central Boulevard, Brownsville, Cameron, County, Texas. Respondent's permits were issued under the authority of Chapter 25 of the Texas Alcoholic Beverage Code (the Code) on April 5, 2000, and expires on April 4, 2001.
2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (the Staff) in a notice of hearing dated September 14, 2000, and an Order Resetting to Telephone Hearing, dated October 13, 2000, from the Administrative Law Judge.
3. The hearing was convened on November 22, 2000. Staff was represented by Christopher Burnett, Assistant Attorney General. Respondent did not appear and was not represented.
4. Respondent obtained and filed with the Commission a \$5,000 conduct surety bond.
5. The conduct surety bond referred to in Finding of Fact No. 4 stated that if Respondent violated a law of the state relating to alcoholic beverages or a rule of the Commission, the amount of the bond was to be paid to the State of Texas.
6. On April 28, 2000, Respondent signed an "Agreement and Waiver of Hearing" waiving a hearing on allegations; that she had permitted consumption of alcoholic beverages during prohibited hours by an employee; and delivery of alcoholic beverages during prohibited hours.
7. As a result of the waiver agreement described in Finding of Fact No. 6, the Commission's

Assistant Administrator entered an order suspending Respondent's permits for six days unless she paid a civil penalty of \$900, and finding her in violation of the Code for the allegations set out in the waiver of hearing.

8. Respondent did not appeal the Commission's order described in Finding of Fact No. 7.
9. On May 17, 2000, Respondent signed a second "Agreement and Waiver of Hearing" waiving a hearing on the allegations of Cash Law Violations.
10. As a result of this waiver agreement, the Commission's Assistant Administrator entered an order suspending Respondent's permits for ten days unless she paid a civil penalty of \$1,500, and finding her in violation of the Code for the allegations set out in the waiver of hearing.
11. Respondent did not appeal the Commission's order described in Finding of Fact No. 9.

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), a conduct surety bond, or a letter of credit in lieu thereof, as permitted by TEX. ALCO. BEV. CODE ANN. §11.11, may be forfeited when there is a final adjudication that a permittee has committed three violations of the Code since September 1, 1995.
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 had three violations of the Code since September 1995.

SIGNED this 3rd day of January, 2001


LEAH DAVIS BATES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS