

DOCKET NO. 590342

IN RE JOHN PAUL BAKER
D/B/A THE CORRAL
PERMIT NO. BG408311
LICENSE NO. BL408312

BEXAR COUNTY, TEXAS
(SOAH DOCKET NO. 458-00-2362)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 9th day of January, 2001, 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 telephonically on October 10, 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 December 11, 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.

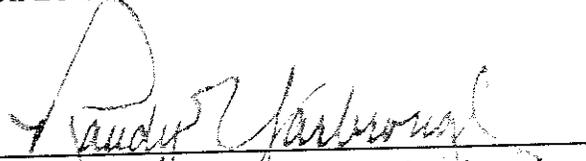
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on January 30, 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 9th day of January, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

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

Holly Wise, Docket Clerk
State Office of Administrative Hearings
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VIA CERTIFIED MAIL Z 280 626 802

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

A. Evidence.

1. Evidence Received at the Hearing.

The staff of TABC (the Staff) offered documentary evidence from the TABC files. Those documents show:

(a) On February 11, 1998, the Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting it would faithfully conform with the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.

(b) Respondent was issued Wine and Beer Retailer's Permit BG-408311 and Retail Dealer's on Premise Late hours License BL-408312 by TABC on March 7, 1999.

(c) On April 7, 1999, the Respondent signed a document entitled "Agreement and Waiver of Hearing" which includes the following language, "Respondent, without admitting the violations described herein occurred, waives hearing in the matter and accepts the penalty... and acknowledges that the signing of this waiver may result in the forfeiture of any related conduct surety bond."

(d) The waiver document listed five alleged separate violations of paying for beer with checks later returned for insufficient funds.

(e) On April 8, 1999, TABC entered a waiver order stating that Respondent violated the Code as set out in the waiver signed by Respondent and imposed a 3 day suspension or a civil penalty of \$750.00 on the Respondent.

Respondent offered no evidence.

III. STATUTORY AUTHORITY

The rules of TABC, at 16 TEX. ADMIN. CODE CODE (TAC) §33.24(j) provide:

(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 . . . 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 applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. §§11.11(b)(2) state:

(b) . . . the holder of the permit agrees 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 this code. . . .

III. RECOMMENDATION

Based on a preponderance of the evidence, the Respondent committed at least three violations of the Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission rules, 16 TAC §33.24. As a consequence, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

IV. FINDINGS OF FACT

1. John Paul Baker d/b/a The Corral(the Respondent) is the holder of Wine and Beer Retailer's Permit BG-408311 and Retail Dealer's on Premise Late hours License BL-408312, issued by the Texas Alcoholic Beverage Commission (TABC) on March 7, 1999.
2. On February 11, 1998, the Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On August 29, 2000, the staff of TABC (the Staff) sent a Notice of Hearing by certified mail, return receipt requested, to the Respondent asserting that TABC was seeking to forfeit the Respondent's surety bond. The Respondent timely received the notice letter.
4. The hearing on the merits was held on by telephone October 10, 2000. Christopher Burnett appeared and represented the Staff. The Respondent through attorney Oscar Tamez. John H. Beeler, Administrative Law Judge (ALJ) presided.
5. On April 7, 1999, the Respondent signed an "Agreement and Waiver of Hearing" regarding five alleged violations of the Texas Alcoholic Beverage Code (the Code), for which TABC entered an Order finding the Respondent committed three violations of the Code and imposed a 3 day suspension or a civil penalty of \$750.00 on the Respondent.
6. The Respondent has committed five violations of the Code since September 1, 1995.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing 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 by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Respondent violated the rules of TABC found at 16 TEX. ADMIN. CODE §33.24 by committing three violations of the Texas Alcoholic Beverage Code (the Code) since September 1, 1995.
5. TABC is permitted by TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24 to forfeit the conduct surety bonds of permittees who commit three or more violations of the Code since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by the Respondent should be forfeited to the State.

SIGNED this 11th day of December, 2000.



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