

**DOCKET NO. 592447**

IN RE KAPOHF CORPORATION	§	BEFORE THE
D/B/A THE BLARNEY STONE	§	
PERMIT NOS. MB440733, LB440734	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1897)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 20th day of June 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened and adjourned on February 21, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 24, 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.

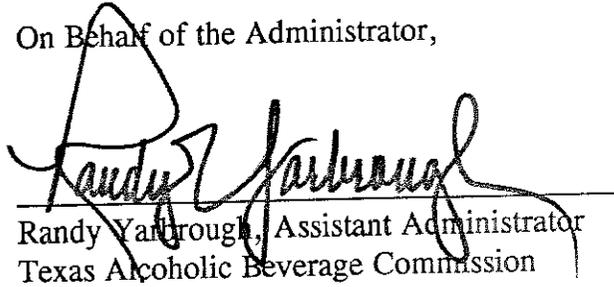
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on July 11, 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 20th day of June, 2001.

On Behalf of the Administrator,

  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (214) 956-8611**

James Apostle  
**ATTORNEY FOR RESPONDENT**  
500 N. Akard St., Ste. 2960  
Dallas, Texas 75201  
**VIA CERTIFIED MAIL NO. 7000 1530 0002 0152 7070**

Kapohf Corporation  
d/b/a The Blarney Stone  
**RESPONDENT**  
P.O. Box 940486  
Plano, Texas 75094-0486  
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Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

SOAH DOCKET NO. 458-01-1897

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

KAPOHF CORPORATION d/b/a  
THE BLARNEY STONE  
PERMIT NOS. MB440733, LB440734  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 592447)

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 Kapohf Corporation d/b/a The Blarney Stone (Respondent). The Staff recommended that the bond be forfeited because Respondent had committed three violations of the Texas Alcoholic Beverage Code (the Code) since September 1, 1995. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that the Respondent's bond be forfeited.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

There are no contested issues of jurisdiction, venue or notice in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On February 5, 2001, the Staff issued its Notice of Hearing. The notice was directed to Kapohf Corporation d/b/a The Blarney Stone. The hearing in this matter convened on February 21, 2001, before ALJ Brenda Coleman at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent was represented by James Apostle, Attorney at Law. Evidence was received from both parties on that date. The hearing concluded on the same day, but the record remained open until March 23, 2001, for receipt of proposed findings of fact and briefs from the parties. Neither party submitted any writing to the ALJ after the hearing.

**II. DISCUSSION**

**A. Background:**

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.

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. Texas Alcoholic Beverage Commission's (TABC) rule found at 16 TEX. ADMIN. CODE § 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 canceled, or when there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

On October 16, 1998, the Commission issued Mixed Beverage Permit, MB440733, and Mixed Beverage Late Hours Permit, LB440734, to Respondent for the premises known as Kapohf Corporation d/b/a The Blarney Stone at 2116 Greenville Avenue, Dallas, Dallas County, Texas. The permits have been continuously renewed. On September 11, 1998, Respondent, as holder of a permit, posted a conduct surety bond, numbered XTL02703 and in the amount of \$5,000.00, as required by Sections 11.11 and 61.13 of the Code.

#### **B. Staff's Case:**

1. On August 31, 1999, Respondent signed an "Agreement and Waiver of Hearing" in TABC Docket Number 583739 regarding two violations of the Code. The waiver agreement stated that on March 4, 1999, Respondent, with criminal negligence, sold an alcoholic beverage to a minor in violation of section 106.13 of the Code, and also engaged in conduct which was lewd, immoral or offensive to public decency in violation of section 107.01(9) of the Code. The agreement contained the following language:

My name is Stephen F. Shaw, Attorney for Respondent, authorized to represent Respondent in the styled and numbered cause above. Respondent, without admitting the violation described herein occurred, waives hearing in the matter and accepts the penalty assessed and agrees the two charges be considered one violation for enhancement purposes. Respondent agrees that the above-referenced permits be suspended for a period of ten days starting 12:01 A.M. on the 13th day of October, 1999, unless a civil penalty in the amount of \$1500.00 is paid on or before the 6th day of October, 1999. Respondent agrees that this agreement becomes final and enforceable on the date the Order is signed, and acknowledges that the signing of this waiver may result in the forfeiture of any related conduct surety bond. Respondent declares its understanding of the terms of this AGREEMENT and accepts the penalty assessed for this violation.

As a result of this waiver agreement, the Commission Administrator entered an Order on August 31, 1999. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for ten days unless Respondent paid \$1500.00 as a civil penalty.

2. On February 7, 2000, Respondent signed an "Agreement and Waiver of Hearing" in TABC Docket Number 587325 regarding several violations of the Code. The waiver agreement stated that between August 26, 1999, and October 22, 1999, Respondent gave six checks for

payment which were returned for insufficient funds in violation of section 61.73(b) of the Code. The agreement contained the following language:

I am an authorized representative of the Respondent<sup>1</sup> in the styled and numbered cause above. Respondent, without admitting the violations described herein occurred, waives hearing in the matter and accepts the penalty assessed. Respondent agrees that the above-referenced permits/licenses be suspended for a period of five days starting 12:01 A.M. on the 17th day of April, 2000, unless a civil penalty in the amount of \$750.00 is paid on or before the 10th day of April, 2000. Respondent declares its understanding of the terms of this AGREEMENT and accepts the penalty assessed for this violation.

As a result of this waiver agreement, the Commission Administrator entered an Order on March 6, 2000. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for five days unless Respondent paid \$750.00 as a civil penalty, and that the Order is final and enforceable at the time that it is signed by agreement of the parties.

3. On November 1, 2000, Respondent signed an "Agreement and Waiver of Hearing" in TABC Docket Number 590348 regarding a violation of the Code. The waiver agreement stated that on March 17, 2000, Respondent, with criminal negligence, sold an alcoholic beverage to a minor in violation of section 106.03 of the Code. The agreement contained the following language:

My name is Kevin Keane. I am officer. I neither admit nor deny that the violations stated above occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1500.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on November 6, 2000. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were suspended for ten days unless Respondent paid \$1500.00 as a civil penalty.

On December 6, 2002, the Commission notified Respondent in writing of its intent to seek forfeiture of the Conduct Surety Bond as required by Section 11(d)(1) of the Code.

### **C. Respondent's Case:**

Respondent presented the oral testimony of Grant Kreft, manager of The Blarney Stone. Mr. Kreft stated that when he entered into a settlement agreement with the TABC representative with

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<sup>1</sup>The ALJ is unable to make out the signature of the authorized representative of respondent on the agreement and waiver of hearing signed on February 7, 2000.

regard to Docket Number 590348<sup>2</sup>, he was informed that the alleged violation was The Blarney Stone's second violation and that a third violation would result in a problem with the bond. Mr. Kreft also stated that had he been told that entering into a settlement agreement would result in forfeiture of the bond, The Blarney Stone would have done something differently, i.e., gone to trial. According to Mr. Kreft, The Blarney Stone, after consideration, opted to pay the fine just for time and convenience, and expected no further action by the Commission concerning the particular violation.

### III. CONCLUSION

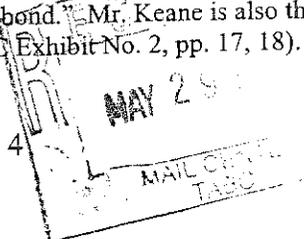
Respondent has committed at least three violations of the Code and had three final adjudications regarding these violations since September 1, 1995; therefore, the ALJ recommends that the Respondent's bond be forfeited.

### IV. FINDINGS OF FACT

1. On September 11, 1998, Respondent posted a conduct surety bond numbered XTL02703 in the amount of \$5,000.00 for Kapohf Corporation d/b/a The Blarney Stone.
2. On October 16, 1998, the Commission issued Mixed Beverage Permit, MB440733, and Mixed Beverage Late Hours Permit, LB440734, to Respondent for the premises known as Kapohf Corporation d/b/a The Blarney Stone at 2116 Greenville Avenue, Dallas, Dallas County, Texas.
3. On August 31, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583739 regarding two violations of the Code. By signing the waiver agreement, Respondent declared that on March 4, 1999, Respondent sold an alcoholic beverage to a minor and also engaged in conduct which was lewd, immoral or offensive to public decency. Respondent acknowledged two violations of the Code had occurred and that his permits would be suspended by the Commission unless he paid a civil penalty. Respondent agreed that the agreement would become final and enforceable on the date the Waiver Order was signed, and further acknowledged that the signing of the waiver agreement may result in the forfeiture of any related conduct surety bond.
4. On August 31, 1999, the Commission Administrator entered an order finding Respondent had violated §§ 106.13 and 107.01(9) of the Code consistent with Respondent's admissions in Findings of Fact No. 3.

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<sup>2</sup>The Agreement and Waiver form with regard to Docket Number 590348, TABC Exhibit No. 2, p. 7, is signed by Kevin Keane, an officer of The Blarney Stone, and includes the language, "The signing of this waiver may result in the forfeiture of any related conduct surety bond." Mr. Keane is also the person who executed the Conduct Surety Bond on September 11, 1998 (See TABC Exhibit No. 2, pp. 17, 18). Although present at the hearing, Mr. Keane did not testify.



5. On February 7, 2000, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 587325 regarding several violations of the Code. By signing the waiver agreement, Respondent declared that between August 26, 1999, and October 22, 1999, Respondent gave six checks for payment which were returned for insufficient funds. Respondent acknowledged the violations of the Code had occurred and that his permits would be suspended by the Commission unless he paid a civil penalty.
6. On March 6, 2000, the Commission Administrator entered an order finding Respondent had violated § 61.73(b) of the Code consistent with Respondent's admissions in Findings of Fact No. 5. The Order further provided that the Order is final and enforceable at the time it is signed by agreement of the parties.
7. On November 1, 2000, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 590348 regarding a violation of the Code. By signing the waiver agreement, Respondent declared that on March 17, 2000, Respondent sold an alcoholic beverage to a minor. Respondent acknowledged the violation of the Code had occurred and that his permits would be suspended by the Commission unless he paid a civil penalty. Respondent acknowledged that the signing of the waiver agreement may result in the forfeiture of any related conduct surety bond.
8. On November 6, 2000, the Commission Administrator entered an order finding Respondent had violated §§ 106.13 and 107.01(9) of the Code consistent with Respondent's admissions in Findings of Fact No. 7.
9. Respondent has committed three violations of the Code and had three final adjudications regarding these violations since September 1, 1995.
10. Staff sent Respondent written notice of Staff's intent to forfeit the bond by a letter dated December 6, 2000.
11. On February 5, 2001, the Staff issued its Notice of Hearing.
12. On February 21, 2001, a hearing was convened at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent was represented by James Apostle, Attorney at Law. Evidence was received from both parties on that date. The record was closed on March 23, 2001.

## **V. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (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 findings of facts and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021 (Vernon 2000).
3. Based on Findings of Fact Nos. 1 and 2, Respondent holds Mixed Beverage Permit, MB440733, and Mixed Beverage Late Hours Permit, LB440734, and posted a conduct surety bond in the amount of \$5,000.00 in accordance with the requirements set forth in 16 TEX. ADMIN. CODE § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 2000).
4. Based on Findings of Fact Nos. 3-9, the conduct surety bond posted by Respondent should be forfeited. TEX. ALCO BEV. CODE §§ 11.11(b)(2) and 11.11(d)(1) (Vernon 2000).

SIGNED this 24th day of May, 2001.

Brenda Coleman  
Brenda Coleman  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS