

DOCKET NO. 593245

IN RE MARIA OLIMPIA BRENSIKE	§	BEFORE THE
D/B/A LAS ISABELLE'S NIGHT CLUB	§	
PERMIT NO. BG414431	§	
LICENSE NO. BL414432	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-2803)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1ST day of April 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened and adjourned on February 21, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 6, 2002. 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 April 22, 2002, 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 1st day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Don Smith
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

John Hannon
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Maria Olimpia Brensike
d/b/a Las Isabelle's Night Club
RESPONDENT
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Houston, TX 77087
VIA CERTIFIED MAIL NO. 7001 2510 0000 7279 0254

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

DOCKET NO. 458-01-2803

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.

**MARIA O. BRENSIKE D/B/A
LAS ISABELLE'S NIGHT CLUB
PERMIT NO. BG414431
HARRIS COUNTY, TEXAS
(TABC CASE NO. 593245)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC or the Commission) brought this action seeking forfeiture of the conduct surety bond posted by Maria O. Brensike d/b/a Las Isabelle's Night Club (Respondent) because Respondent was found to have committed three violations of the Alcoholic Beverage Code (the Code) since September 1, 1995. The violations of the Code have been adjudicated. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There were no contested issues of notice or jurisdiction in this proceeding; therefore they are addressed herein in the findings of fact and conclusions of law without further discussion in the text of this proposal.

On February 21, 2002, a hearing convened before Administrative Law Judge Don Smith at the State Office of Administrative Hearings (SOAH) at 2020 North Loop West, Suite 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Lindy To, TABC Staff Attorney. Respondent was represented at the hearing by John Hannon, Attorney. The contested issue is whether the settlement of each of the three violations is a final adjudication of a violation in the Code. The record closed on February 21, 2002.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. §11.11 and/or §61.13 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of the Code. Commission rule found at 16 TEX. ADMIN. CODE §33.24, governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

Petitioner introduced Exhibit TABC 1, which is the affidavit of Brian L. Guenther, Custodian of Records, with Respondent's TABC records (the records) attached. The records state that the Wine and Beer Retailer's Permit, BG-414431 and Retail Dealer's On-Premise Late Hours License, BL-414432 were issued to Maria Olimpia Brensike, doing business as Las Isabelle's Night Club, 6307 Dixie Drive, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission, on June 16, 1997. The records contain a Waiver Order, and a Agreement and Waiver of Hearing, indicating that Respondent had committed at least three violations under the Code. The Order finds that Respondent waived hearing on the violations listed on the waiver. The Agreement and Waiver of Hearing set out four violations of the Code. The Order finds that Respondent violated Sections 11.61 (b)(2), 47.03, 47.04, 47.06, and 104.01 (4) of the Code. The Order assessed a penalty to Respondent, as agreed by Respondent in the adopted Agreement and Waiver of Hearing.

On January 4, 2001, the Commission mailed a notice to Respondent that the Commission intended to forfeit the conduct surety bond. Respondent requested a hearing. Petitioner mailed a Notice of Hearing to the Respondent, notifying Respondent of the allegations and date of hearing. Respondent filed a Motion for Continuance, which was granted, and SOAH sent the parties an Order re-setting the hearing for February 21, 2002. Respondent introduced Exhibit DEF 1, which is the Motion to Dismiss from SOAH Docket No. 458-00-0874, filed by TABC after the parties entered a settlement on the violations. Respondent alleges the violations are not final adjudications because the parties reached a settlement on the violations and agreed that the case be dismissed from the SOAH docket without prejudice.

III. RECOMMENDATION

Respondent agreed in the Agreement and Waiver of Hearing 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." The Agreement and Waiver set out four violations under the Code. The Agreement and Waiver is attached to the Order. And the Order finds violations of the Code. The ALJ finds that there has been a final adjudication that Respondent committed at least three violations of the Code since September 1, 1995. The Respondent has forfeited the full amount of the conduct surety bond.

IV. FINDINGS OF FACT

1. Maria Olimpia Brensike, doing business as Las Isabelle's Night Club, 6307 Dixie Drive, Houston, Harris County, Texas, was issued a Wine and Beer Retailer's Permit (BG-414431) and a Retail Dealer's On-Premise Late Hours License (BL-414432) by the Texas Alcoholic Beverage Commission.
2. Respondent posted Texas Alcoholic Beverage Commission Conduct Surety Bond Number 4224-44613, dated May 30, 1997. The bond was executed by Maria O. Brensike d/b/a Las Isabelle's Night Club, as Principal, and Gramercy Insurance Company, as Surety. The bond is in the amount of \$5,000.00, and is payable to the State of Texas.

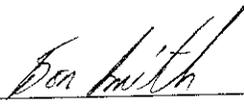
3. On December 20, 2000, Respondent through her attorney, signed an Agreement and Waiver of Hearing regarding violations of the Code alleged to have occurred on June 13, 1997; June 4, 1997; June 20, 1997; and June 19, 1997.
4. The Agreement and Waiver of Hearing states that Respondent was neither admitting nor denying that the violations occurred.
5. The Agreement and Waiver of Hearing states that Respondent understands that the permits will be suspended/canceled unless the licensee or permittee elects to pay a civil penalty of \$3,750.00 in lieu of a suspension.
6. The Agreement and Waiver of Hearing states that 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.
7. On December 21, 2000, the Assistant Administrator of the Texas Alcoholic Beverage Commission signed an order stating "it is found that Respondent violated Sections 11.61 (b) (2), 47.03, 47.04, 47.06 and 104.01 (4)" of the Code, and imposed the penalty as agreed.
8. Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond by letter dated January 4, 2001.
9. Respondent requested a hearing to determine if the conduct surety bond should be forfeited.
10. On May 9, 2001, Petitioner issued its Notice of Hearing, directed to Maria Olimpia Brensike d/b/a Las Isabelle's Night Club.
11. On February 21, 2002, a hearing convened before ALJ Don Smith, SOAH, at 2020 North Loop West, Suite 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by TABC Staff Attorney Lindy To. Respondent was represented at the hearing by Attorney John Hannon.
12. Respondent has committed at least three violations of the Code since September 1, 1995, and there is a final adjudication on the violations in an Order dated December 21, 2000.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
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. TEX. ALCO. BEV. CODE ANN. §11.11 and/or §61.13 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of the code. Commission rule found at 16 TEX. ADMIN. CODE § 33.24, governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.
5. Based on the Findings of Fact and the above Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 6th day of March, 2002.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS