

DOCKET NO. 594009

IN RE KRIS ERIK SPRADLING
D/B/A BOB'S LIQUOR STORE
PERMIT NO. P-467008
LICENSE NO. BF467009

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-2795)

§
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§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of June, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on May 31, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 6, 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.

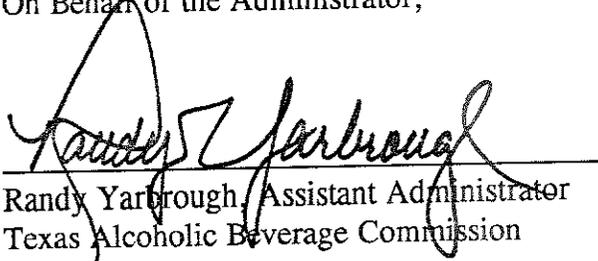
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on July 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 29th day of June, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Kris Erik Spradling
d/b/a Bob's Liquor Store
RESPONDENT
2424 NE 28th St.
Fort Worth, Texas 76106-7505
CERTIFIED MAIL NO. 7000 1530 0002 0152 7216

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABAC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-01-2795

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
	§	OF
V.	§	
	§	
KRIS ERIK SPRADLING	§	ADMINISTRATIVE HEARINGS
D/B/A BOB'S LIQUOR STORE, Respondent		
(TABC CASE NO. 594009)		

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Commission (Staff) brought this forfeiture action against Respondent Kris Erik Spradling d/b/a Bob's Liquor Store. Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent had been finally adjudicated of committing three violations of the Alcoholic Beverage Code since September 1, 1995.¹ This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under Chapter 5, and §§ 6.01, 11.11, 11.61, 61.13, and 61.71 TEX. ALCO. BEV. CODE ANN. ("the Code" or "Code"), and TABC rule, 16 TEX. ADMIN. CODE. § 33.24. 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 findings of fact and conclusions of law, under § 2003.021, TEX. GOV'T CODE ANN. There were no contested issues of notice or jurisdiction in this proceeding.

On May 3, 2001, Staff issued its Notice of Hearing. The notice was directed to Kris Erik Spradling d/b/a Bob's Liquor Store, at his address 2424 NE 28th Street, Fort Worth, Texas 76106. On May 31, 2001, a hearing convened before ALJ Tanya Cooper. Staff was represented by its attorney, Christopher Burnett, appearing by telephone. Respondent appeared in person at the hearing and represented himself. Evidence was received, and the record was closed on May 31, 2001.

¹Section 11.11(b)(2) of the Texas Alcoholic Beverage Code provides:

that 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...

Under the TABC rule construing § 11.11(b)(2), 16 TEX. ADMIN. CODE § 33.24, the permittee must have been finally adjudicated to have committed three violations of the Code since September 1, 1995.

EVIDENCE AND PARTIES' CONTENTIONS

Staff presented one exhibit at the hearing, the administrative records associated with permits issued to Respondent by the TABC. Staff's Exhibit 1 established that:

1. Respondent holds a Package Store Permit P-467008 and Beer Retailer's Off-Premises License BF-467009 for Bob's Liquor Store, 2424 NE 28th Street, Fort Worth, Tarrant County, Texas. These permits were issued by the TABC on March 4, 2000.

2. As required, Respondent posted Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL03801, dated January 24, 2000. The bond was executed by Kris Erik Spradling d/b/a Bob's Liquor Store, as Principal, and First Indemnity of America Insurance Company, 8150 Brookriver S-303, Dallas, Texas, as Surety. The bond was in the amount of \$5,000.00 payable to The State of Texas.

3. On December 21, 2000, an Order was issued in Docket Number 592411, before the TABC, in a case styled *In re Kris Erik Spradling d/b/a Bob's Liquor Store*. The Order recited:

(a) Respondent accepted a penalty for violations stated in "the agreement and waiver of hearing";

(b) Respondent's permits were suspended for ten days, or in lieu of suspension a civil penalty was imposed; and

(c) The "agreement and waiver of hearing" was adopted by the TABC, and the agreement and waiver of hearing recited:

(i) the violations were for the sale of alcoholic beverage to a minor on September 28, 2000, and employing a minor to sell alcoholic beverages on September 28, 2000;

(ii) that Respondent "neither admit[s] or den[ies] that the violations stated above [have] occurred"; and

(iii) that Respondent acknowledged the "signing of this waiver may result in the forfeiture of any related conduct surety bond."

4. On January 17, 2001, an Order was issued in Docket Number 592706, before the TABC, in a case styled *In re Kris Erik Spradling d/b/a Bob's Liquor Store*. The Order recited:

(a) Respondent accepted a penalty for violations stated in "the agreement and waiver of hearing";

(b) Respondent's permits were suspended for five days, or in lieu of suspension a civil penalty was imposed; and

(c) The "agreement and waiver of hearing" was adopted by the TABC, and the agreement and waiver of hearing recited:

(i) the violation was for a cash law violation, issuance of one returned check, on November 4, 2000;

(ii) that Respondent "neither admit[s] or den[ies] that the violation stated above [has] occurred"; and

(iii) that Respondent acknowledged the "signing of this waiver may result in the forfeiture of any related conduct surety bond."

5. Staff sent Respondent written notice of Staff's intent to seek forfeiture of the bond, by a letter dated March 7, 2001, addressed to Kris Erik Spradling d/b/a Bob's Liquor Store. The letter, on page two, is signed by Kris Erik Spradling, and indicates his desire for a hearing to determine if the bond should be forfeited.

Respondent testified at the hearing. During this testimony, Respondent did not deny that any of the violations listed in Staff's Exhibit 1 had occurred, but offered explanations regarding the events. He stated that none of the violations had been intentional acts.

Respondent had worked at Bob's Liquor Store since 1992 and purchased the business from his uncle in December 1999. After purchasing the business, Respondent stated that he normally ran it alone. However, on September 28, 2000, when two violations occurred, his brother was operating the store while he was away from the store for a short time. His brother was underage at that time. Further, despite Respondent instructing his brother to check IDs carefully, a sale to a minor was made. Respondent testified that he did not contest these violations; but that when he entered into the agreement with Staff regarding these violations, he believed that the events were being considered as one violation since they had occurred on the same date.

Respondent stated that until recently, he did not employ a bookkeeper. A check for \$68.00 had been returned unpaid due to an error in monitoring his bank account balance. He also discussed that he had attempted to deposit additional monies into his account using a credit card check. However, the credit card check had expired and these monies were never credited into his account, which resulted in another check being dishonored.

ANALYSIS AND RECOMMENDATION

It is uncontroverted that Respondent committed three violations of the Code since September 1, 1995. On September 28, 2000, two violations occurred. Section 106.03 of the Code makes it a violation to sell an alcoholic beverage to a minor and Section 106.09 of the Code makes it unlawful to employ a minor in the sale of alcoholic beverages. Sections 61.73 and 102.31 of the Code require payment for beer be in cash, which also includes a valid check or draft payable on demand. On November 4, 2000, Respondent had a check returned for insufficient funds, in violation of these Code provisions.

In each instance, Respondent elected to not contest the violations. He entered into agreements with Staff and waived hearings where the facts associated with each violation and any mitigating circumstances might have been considered. In so doing, Respondent acknowledged by signing the Agreement and Waiver of Hearing forms that suspensions of his permits or civil penalties were being assessed for these violations and that his conduct surety bond might be forfeited as a result.

Based upon these factors, the ALJ recommends that Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL03801, dated January 24, 2000, in the amount of \$5,000.00 be forfeited to the State of Texas.

FINDINGS OF FACT

1. Respondent was issued a Package Store Permit P-467008 and Beer Retailer's Off-Premises License BF-467009. The permits were issued or renewed on March 4, 2000.
2. Respondent's licensed premises is located at 2424 NE 28th Street, Fort Worth, Tarrant County, Texas.
3. Respondent has posted Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL 03801, dated January 24, 2000. The bond was executed by Kris Erik Spradling d/b/a Bob's Liquor Store, as Principal, and First Indemnity of American Insurance Company, 8150 Brookriver S-303, Dallas, Texas, as Surety. The bond is in the amount of \$5,000.00, and is payable to the State of Texas.
4. Respondent has committed three violations of the Texas Alcoholic Beverage Code ("the Code" or "Code") since September 1, 1995:
 - (a) the sale of alcoholic beverage to a minor on September 28, 2000, a violation of § 106.03 of the Code;
 - (b) employing a minor to sell alcoholic beverage on September 28, 2000, a violation of § 106.06 of the Code; and

(c) paying for beer with an insufficient funds check on November 4, 2000, in violation of §§ 61.73 and 102.31 of the Code.

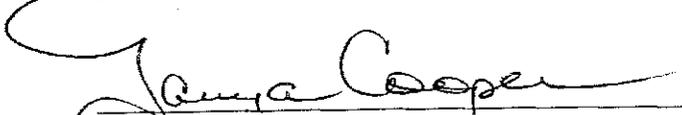
5. The Staff of the Texas Alcoholic Beverage Commission (Staff) sent Respondent written notice of Staff's intention to forfeit the bond by a letter dated March 7, 2001, addressed to Kris Erik Spradling d/b/a Bob's Liquor Store. Respondent's receipt of the letter was evidenced by Respondent's signature on page two of the letter.
6. On May 3, 2001, Staff issued its Notice of Hearing. The notice was directed to Kris Erik Spradling d/b/a Bob's Liquor Store at 2424 NE 28th Street, Fort Worth, Texas 76106.
7. On May 31, 2001, a hearing convened before Tanya Cooper, an administrative law judge for the State Office of Administrative Hearings. Staff was represented at the hearing by Christopher Burnett, Staff Attorney. Respondent appeared and represented himself at the hearing.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapter 5 and §§ 6.01, 11.11(b)(2), 11.61, 61.13, and 61.71.
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.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE ANN. § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 3, Respondent holds Package Store Permit P-467008 and Beer Retailer's Off-Premises License BF-467009, and has posted a conduct surety bond in compliance with TEX. ALCO. BEV. CODE ANN. § 11.11, AND 16 TEX. ADMIN. CODE § 33.24.
5. Based on Finding of Fact No. 4, Respondent has violated the Texas Alcoholic Beverage Code or a rule of the TABC, and the TABC has made a final adjudication that Respondent has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.
6. Based on Finding of Fact No. 5 and Conclusions of Law Nos. 4 and 5, and pursuant to 16 TEX. ADMIN. CODE § 33.24(j), the criteria for forfeiture of Respondent's conduct surety bond have been met.

7. Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL03801, dated January 24, 2000, in the amount of \$5,000.00 should be forfeited.

SIGNED on the 6th day of June, 2001.


TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS