

**DOCKET NO. 594917**

IN RE ALBERT GENE GILLENWATER  
D/B/A THE HIDE OUT  
PERMIT NO. BG-430451

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BEFORE THE

TEXAS ALCOHOLIC

COMAL COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-1032)

BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 30th day of May, 2002, 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 by telephone on February 28, 2002 and adjourned on February 28, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 3, 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 JUNE 20, 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 30th day of May, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

Hon. Leah Davis Bates  
State Office of Administrative Hearings  
10300 Heritage, Suite 250  
San Antonio, Texas 78216  
Via Facsimile (210) 308-6854

Albert Gene Gillenwater  
d/b/a The Hide Out  
**RESPONDENT**  
15740 Cranes Mill Rd.  
Canyon Lake, Texas 78133  
Certified Mail No. 7001 2510 0000 7278 8640

Gayle Gordon  
**ATTORNEY FOR PETITIONER**

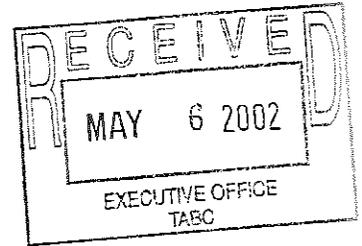
Licensing Division  
San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 3, 2002



Rolando Garza  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

RE: Docket No. 458-02-1032; Texas Alcoholic Beverage Commission vs.  
Albert Gene Gillenwater, d/b/a The Hide Out  
TABC Case No. 594917

Dear Administrator:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Albert Gene Gillenwater, d/b/a The Hide out, Respondent. For reasons discussed in the proposal, I recommend that the Respondent's conduct surety bond be forfeited.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script that reads "Leah Davis Bates".

Leah Davis Bates  
Administrative Law Judge

LDB:msw

Enclosure

xc: Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission -  
FACSIMILE, 512-206-3498  
Albert Gene Gillenwater, d/b/a The Hide Out, Respondent, USPS 15740 Cranes  
Mill Road, Canyon Lake, Texas 78133.

Castle Hills Executive Center  
1015 Jackson Keller, Suite 102B ♦ San Antonio, Texas 78213  
(210) 308-6681 Fax (210) 308-6854

**DOCKET NO. 458-02-1032**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**Vs.**

**ALBERT GENE GILLENWATER  
d/b/a THE HIDE OUT  
PERMIT NO. BG-430451  
COMAL COUNTY, TEXAS  
(TABC CASE NO. 594917)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**(SAN ANTONIO, TEXAS)**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Albert Gene Gillenwater d/b/a/ The Hideout (the Respondent) seeking forfeiture of the full amount of the Respondent's conduct surety bond. TABC alleged the Respondent committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995. TABC also alleged the violations have been finally adjudicated. This Proposal for Decision finds the Respondent's conduct surety bond should be forfeited.

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

The hearing in this matter convened by telephone on February 28, 2002. Attorney Gale Gordon represented TABC. Respondent appeared and represented himself. Administrative Law Judge Leah Davis Bates (ALJ) presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

**II. EVIDENCE**

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

(a) On February 27, 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-430451 by TABC on April 20, 1998.

(c) On March 23, 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) On January 13, 2000, Respondent signed an Agreement and Waiver of Hearing. On January 20, 2000, the TABC entered a waiver order stating that Respondent violated the Code as set out in the waiver signed by Respondent and imposed a 5 day suspension or a civil penalty of \$750.00 on the Respondent.

(e) On March 12, 2001, Respondent signed an Agreement and Waiver of Hearing. On March 16, 2001, the TABC entered a waiver order stating that Respondent violated the Code as set out in the waiver signed by Respondent and imposed an 18 day suspension or a civil penalty of \$2700.00 on the Respondent.

Respondent offered no evidence. Respondent argued that his attorney had told him to sign the waivers and that he was not told by the attorney of the possibility of the bond forfeiture as a result of the waivers.

### 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. Albert Gene Gillenwater d/b/a The Hide Out (the Respondent) is the holder of Wine and Beer Retailer's Permit BG-430451, issued by the Texas Alcoholic Beverage Commission (TABC) on April 20, 1998.
2. On February 27, 1998, the Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On December 14, 2001, 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 by telephone on February 28, 2002. Gayle Gordon appeared and represented the Staff. The Respondent appeared and represented himself. Leah Davis Bates, Administrative Law Judge (ALJ) presided.
5. On March 23, 1999, January 13, 2000, and March 12, 2001, the Respondent signed "Agreement and Waiver of Hearing" forms regarding 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 either a suspension or a civil penalty on the Respondent.
6. The Respondent has committed three 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. GOVT CODE ANN. §§2001.051 and 2001.052.
4. The Respondent violated the rules of TABC found at 16 TEX. ADMIN. CODE (TAC) §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 TAC §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 3<sup>rd</sup> day of May, 2002.



LEAH DAVIS BATES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# MESSAGE CONFIRMATION

05/30/2002 14:25  
ID=TABC LEGAL

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
05/30	02'55"	912103086854	CALLING	08	OK 0000

05/30/2002 14:21 TABC LEGAL → 912103086854

NO. 462 001



## TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333  
<http://www.tabc.state.tx.us> Fax: (512) 206-3498

### ***FACSIMILE COVER SHEET***

*Date: May 30, 2002*

<b>To:</b>	<b>Fax No:</b>	<b>No. Of Pages (including fax cover)</b>
<i>Hon. Leah Davis Bates Administrative Law Judge San Antonio, Texas</i>	<i>(210) 308-6854</i>	<i>8</i>

***From: Gayle Gordon, Legal Division***

***Comments: See attached Order re: SOAH Docket No. 458-02-1032: TABC vs. Albert Gene Gillenwater d/b/a The Hide Out.***



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

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## FACSIMILE COVER SHEET

Date: May 30, 2002

To:	Fax No:	No. Of Pages (including fax cover)
Hon. Leah Davis Bates Administrative Law Judge San Antonio, Texas	(210) 308-6854	8

From: Gayle Gordon, Legal Division

Comments: See attached Order re: SOAH Docket No. 458-02-1032; TABC vs. Albert Gene Gillenwater d/b/a The Hide Out.

### CONFIDENTIALITY NOTICE:

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