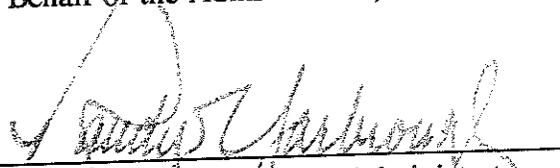


By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 8th day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

Eva Reyna Pardo
RESPONDENT
d/b/a 1-2-3 Bar
802 Shemya
San Antonio, Tx. 78221-3142
VIA CERTIFIED MAIL RRR #7001 2510 0000 7278 6967

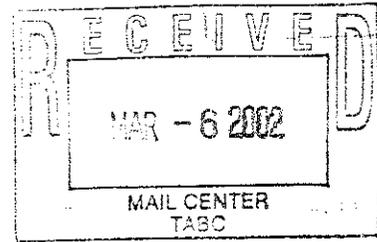
Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

State Office of Administrative Hearings

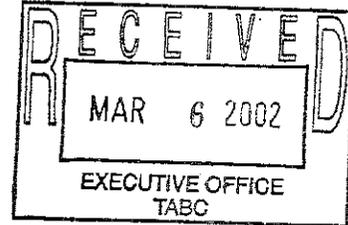


Shelia Bailey Taylor
Chief Administrative Law Judge



March 5, 2002

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



RE: Docket No. 458-02-1033; Texas Alcoholic Beverage Commission vs. Eva Reyna Pardo, d/b/a 1-2-3 Bar, TABC Case No. 595789

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 Eva Reyna Pardo, d/b/a 1-2-3 Bar, 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,

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
Eva Reyna Pardo, d/b/a 1-2-3 Bar, Respondent, USPS 802 Shemya, San Antonio,
Texas 78221-3142.

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	§	
EVA REYNA PARDO	§	ADMINISTRATIVE HEARINGS
D/B/A 1-2-3 BAR	§	
PERMIT NOS. BG448732, BL448724	§	
BEXAR COUNTY, TEXAS	§	
(TABC NO. 595789)	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Eva Reyna Pardo d/b/a 1-2-3 Bar (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. The Respondent did not appear and she presented no evidence. 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 on January 9, 2002, at 9:30 a.m., Dewey Bracken represented TABC. Respondent did not appear. 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.

II. EVIDENCE

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 March 10, 1999, 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 Renewal Permit BG-448723 and Retail Dealer's on Premise Late hours Renewal License BL-448724 by TABC on March 26, 2001.

(c) On June 13, 2000, 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 September 14, 2000, 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."

(e) On June 25, 2001, TABC entered an order stating that Respondent violated the Code as set out a Proposal for Decision signed May 30, 2001, by Administrative Law Judge Kerry Sullivan. TABC imposed a 7 day suspension or a civil penalty of \$1050.00 on the Respondent.

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. Eva Reyna Pardo d/b/a 1-2-3 Bar (the Respondent) is the holder of Wine and Beer Retailer's Permit BG448732 and Retail Dealer's on Premise Late hours License BL448724, issued by the Texas Alcoholic Beverage Commission (TABC) on March 26, 2001 (renewal permits).
2. On February 11, 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 on January 9, 2002, by telephone Dewey Bracken appeared and represented the Staff. The Respondent did not appear, nor was she represented by counsel. Leah Davis Bates, Administrative Law Judge (ALJ) presided.
5. On June 13, 2000, the Respondent signed an "Agreement and Waiver of Hearing" regarding alleged violations of the Texas Alcoholic Beverage Code (the Code), for which TABC entered an Order finding the Respondent committed a violation of the Code and imposed a 5 day suspension or a civil penalty of \$750.00 on the Respondent.
6. On September 14, 2000, the Respondent signed an "Agreement and Waiver of Hearing" regarding an alleged violations of the Texas Alcoholic Beverage Code (the Code), for which TABC entered an Order finding the Respondent committed a violation of the Code and imposed a 10 day suspension or a civil penalty of \$1500.00 on the Respondent.
7. On June 25, 2001, TABC entered an Order stating that Respondent violated the Code as set out in the Proposal for Decision signed May 30, 2001, by ALJ Kerry Sullivan. TABC imposed a 7 day suspension or a civil penalty of \$1050.00 on the Respondent.
8. 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. 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 4th day of March, 2002.


LEAH DAVIS BATES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS