

**DOCKET NO. 595790**

IN RE 3901 ENTERTAINMENT CORP.	§	BEFORE THE
D/B/A BABES BY THE BAY	§	
PERMIT NOS. MB461791; LB461792,	§	
& PE461793	§	TEXAS ALCOHOLIC
	§	
CAMERON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1029)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of August, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened on May 31, 2002 and adjourned on May 31, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 29, 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.

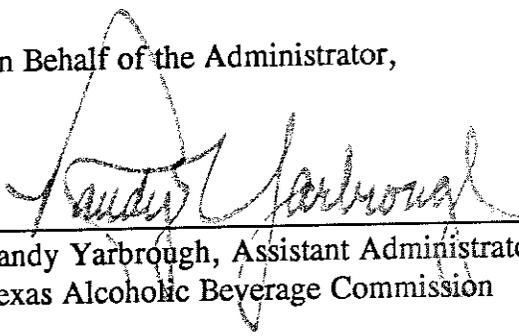
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's Conduct Surety Bond No. XTL03713 in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on SEPTEMBER 19, 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.

**SIGNED** this the 29th day of August, 2002.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

Hon. John H. Beeler  
Administrative Law Judge  
State Office of Administrative Hearings  
Austin, Texas  
**VIA FAX (512) 475-4994**

Mr. Luis Hernandez  
**ATTORNEY FOR RESPONDENT**  
**VIA FAX (956) 982-0943**

3901 Entertainment Corp.  
d/b/a Babes By The Bay  
**RESPONDENT**  
3901 Padre Blvd.  
South Padre Island, Tx. 78597-7229  
**VIA CERTIFIED MAIL NO. 7001 2510 0000 7277 6890**

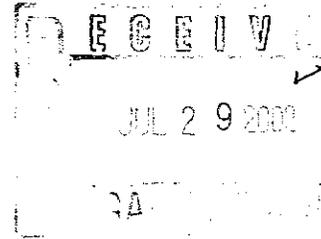
Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge



July 29, 2002

Mr. Roland Garza, Administrator  
*Texas Alcoholic Beverage Commission*  
5806 Mesa, Suite 160  
Austin, Texas 78711

HAND DELIVERY

**RE: Docket No. 458-02-1029; Texas Alcoholic Beverage Commission vs. 3901 Entertainment Corp. d/b/a Babes by the Bay**

Dear Mr. Garza:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Dewey Bracken, Attorney representing the Texas Alcoholic Beverage Commission, and to Luis Hernandez, attorney representing Respondent. For reasons discussed in the Proposal for Decision, this proposal finds the Respondent's conduct surety bond should be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2001), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Beeler".

John H. Beeler  
Administrative Law Judge

JHB/sb  
Enclosure

xc: Dewey Bracken, Attorney, *TABC*, 5806 Mesa, Suite 160, Austin, Texas 78711- REGULAR MAIL  
Luis Hernandez, Attorney, 1650 Padres Line Road, Suite 102, Brownsville, Texas 78521 - REGULAR MAIL  
Rommel Corro, Docket Clerk, *State Office of Administrative Hearings*- HAND DELIVERY

**DOCKET NO. 458-02-1029**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	<b>§</b>	
	<b>§</b>	
<b>VS.</b>	<b>§</b>	
	<b>§</b>	
<b>3901 ENTERTAINMENT CORP.</b>	<b>§</b>	<b>OF</b>
<b>D/B/A BABES BY THE BAY</b>	<b>§</b>	
<b>PERMIT NOS. MB461791, LB461792</b>	<b>§</b>	
<b>PE461793,</b>	<b>§</b>	
<b>BEXAR COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC NO. 595789)</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against 3901 Entertainment Corp. d/b/a Babes by the Bay (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 appeared but did not contest the allegations. 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 May 31, 2002. Dewey Bracken represented TABC. Respondent was represented by Luis Hernandez, attorney. Administrative Law Judge John H. Beeler (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**

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

(a) On November 16, 2000, 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 Permit Nos. MB461791, LB461792 and PE461793 by TABC on November 16, 1999.

(c) On June 4, 2001, 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 May 31, 2001, 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." The waiver concerned two separate violations of the Code.

### 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:

. . . 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. 3901 Entertainment Corp. d/b/a Babes by the Bay (the Respondent) is the holder of Permit Nos. MB461791, LB461792 and PE461793, issued by the Texas Alcoholic Beverage Commission (TABC) on November 16, 1999.
2. On November 16, 2000, the Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. The staff of TABC (the Staff) timely sent 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 May 31, 2002. Dewey Bracken appeared and represented the Staff. Attorney Luis Hernandez appeared for Respondent. John H. Beeler, Administrative Law Judge (ALJ) presided.
5. On June 4, 2001, 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 21-day suspension or a civil penalty of \$3,150.00 on the Respondent.
6. On May 31, 2001, the Respondent signed an "Agreement and Waiver of Hearing" regarding two 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 21-day suspension or a civil penalty of \$3,150.00 on the Respondent.
7. 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 29<sup>th</sup> day of July, 2002.**

  
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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**