

DOCKET NO. 596277

IN RE ANTONIO PRADO GAUNA, JR.
D/B/A DOS AMIGOS
PERMIT NO. BG487498
LICENSE NO. BL487499

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BEFORE THE

TEXAS ALCOHOLIC

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-1156)

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 Tanya Cooper. The hearing convened and adjourned February 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 4, 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

TEG/bc

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

Antonio Prado Gauna, Jr.
d/b/a Dos Amigos
RESPONDENT
3717 McCart
Fort Worth, TX 76110-4616
VIA CERTIFIED MAIL NO. 7001 0320 0003 0147 5360

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-02-1156

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

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BEFORE THE STATE OFFICE

VS.

OF

ANTONIO PRADO GAUNA, JR.
D/B/A DOS AMIGOS, Respondent
TARRANT COUNTY, TEXAS
(TABC CASE NO. 596277)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Antonio Prado Gauna, Jr. d/b/a Dos Amigos, Respondent. Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated of committing three violations of the Texas Alcoholic Beverage Code (the Code). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. PROCEDURAL HISTORY

On August 21, 2001, Staff sent Respondent written notice of its intention to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative Hearings (SOAH) to conduct the requested hearing. On December 31, 2001, Staff issued a notice of hearing informing all parties of the hearing. On February 20, 2002, ALJ Tanya Cooper convened the hearing in this matter with both parties present at the SOAH offices in Fort Worth, Tarrant County, Texas. Timothy Griffith, Staff's attorney, appeared and represented Staff. Respondent appeared *pro se* and represented himself.

There were no contested issues of notice, jurisdiction, or venue in the proceeding. Therefore, those matters are set out in the proposed Findings of Facts and Conclusions of Law without further discussion. Following the presentation of evidence, the record was closed on February 20, 2002.

II. DISCUSSION

A. Applicable Law

The holder of a permit or license must provide the TABC with a surety bond in the amount of \$5,000 conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13. The bond posted by a permittee or licensee may be forfeited if: (1)

the licensee or permittee has been finally adjudicated of three violations of the Code since September 1, 1995; and (2) the TABC notifies the permittee or licensee in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j).

B. Evidence

Staff's evidence consists of two exhibits: the Notice of Hearing issued on December 31, 2001, and the Affidavit of Brian L. Guenther with its attachments. Mr. Guenther is the Director of the TABC's Licensing Department. He is the custodian of all of the TABC's records and files. Mr. Guenther identified the attachments to his Affidavit as true and correct copies of Respondent's permit and license, violation history, Conduct Surety Bond, and correspondence concerning the bond.

Attached to Mr. Guenther's affidavit are Wine and Beer Retailer's Permit BG487498 and Retail Dealer's On Premise Late Hours License BL487499. The holder named on the permit and license is Respondent. The licensed premises is located at 3717 McCart, Fort Worth, Texas. This address is also listed as Respondent's mailing address. TABC Conduct Surety Bond XTM04119 is attached to Mr. Guenther's affidavit. The Bond is executed by Respondent as principal. The Bond is dated January 25, 2001. Also attached are a Waiver Order and an Agreement and Waiver of Hearing in TABC Docket No. 595257, styled *In re Antonio Prado Gauna, Jr. d/b/a Dos Amigos*. The Waiver Order is dated July 18, 2001, and was issued by the TABC. The Agreement and Waiver of Hearing is dated July 11, 2001, and was signed by Leigh W. Davis, Respondent's attorney for that proceeding. The Waiver Order states that Respondent was found to have committed the following violations:

Possession of a narcotic (cocaine) by permittee¹ on June 1, 2001;

Possession of distilled spirits on the licensed premises by permittee² on June 1, 2001;

Permitting an employee to be intoxicated on the licensed premises³ on June 1, 2001;
and

Permitting a minor to possess or consume alcoholic beverage on the licensed premises⁴ on June 21, 2001.

These violations were admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

¹TEX. ALCO. BEV. CODE § 104.01(9).

²TEX. ALCO. BEV. CODE §§ 25.09 and 11.61(b)(15).

³TEX. ALCO. BEV. CODE § 11.61(b)(13).

⁴TEX. ALCO. BEV. CODE § 106.13.

Finally, Staff's letter dated August 21, 2001, addressed to Respondent at his mailing address states:

[W]e are notifying you of our intention to seek forfeiture of the full amount of your surety bond.

Respondent requested a hearing to determine if his bond should be forfeited by signing the August 21, 2001 letter and returning it to TABC's Staff. At the hearing, Respondent did not present any evidence.

C. Analysis, Conclusion, and Recommendation

Staff has met its burden of proof for forfeiture of Respondent's conduct surety bond. Respondent provided the TABC a conduct surety bond, as required. Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j). Therefore, the ALJ recommends that Respondent's Conduct Surety Bond XTM04119 be forfeited.

III. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Antonio Prado Gauna, Jr. d/b/a Dos Amigos (Respondent) Wine and Beer Retailer's Permit BG487498 and Retail Dealer's On Premise Late Hours License BL487499.
2. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond XTM04119. Respondent executed the bond as Principal.
3. On July 11, 2001, Respondent, acting through his attorney, admitted that four violations of the Texas Alcoholic Beverage Code (the Code) occurred on the licensed premises.
4. On July 18, 2001, the TABC issued its Waiver Order in TABC Docket No. 595257, styled *In re Antonio Prado Gauna, Jr. d/b/a Dos Amigos*. The Waiver Order found that Respondent was responsible for the following violations on the licensed premises:
 - a. Possessing narcotics (cocaine) on June 1, 2001;
 - b. Possessing distilled spirits on June 1, 2001;
 - c. Permitting an employee to be intoxicated on June 1, 2001; and
 - d. Permitting a minor to possess or consume alcoholic beverage on June 21, 2001.
5. Respondent committed three or more violations of the Code since September 1, 1995.
6. On August 21, 2001, TABC Staff sent Respondent written notice of its intent to seek forfeiture of the bond. Respondent requested a hearing on this matter.
7. On December 31, 2001, Staff issued a notice of hearing informing all parties of the hearing

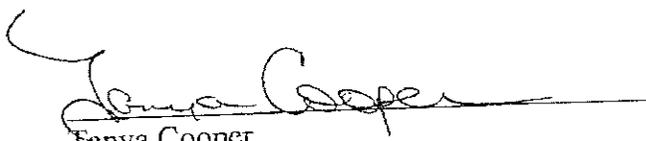
in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and include a short, plain statement of the matters asserted.

- 8. On February 20, 2002, the hearing was convened by Tanya Cooper, Administrative Law Judge, at the State Office of Administrative Hearings, Fort Worth, Tarrant County, Texas. Both parties were present. After receiving evidence, the hearing was adjourned and the record was closed.

IV. PROPOSED CONCLUSIONS OF LAW

- 1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2).
- 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 fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. §§ 2003.021 and 2003.042.
- 3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE §§ 155.25 and 155.27.
- 4. Based on the foregoing findings and conclusions, Texas Alcoholic Beverage Commission Conduct Surety Bond XTM04119 should be forfeited. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 and 16 TEX. ADMIN CODE § 33.24(j).

SIGNED March 4, 2002.



Tanya Cooper
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS