

DOCKET NO. 596279

IN RE LEGEND'S GRILLE SOCIAL CLUB §
D/B/A LEGEND'S GRILLE CLUB §
PERMIT NOS. N-446413, PE446414 §
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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

SMITH COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-0955)

ORDER

CAME ON FOR CONSIDERATION this 25th day of April 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 and adjourned on January 10, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 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.

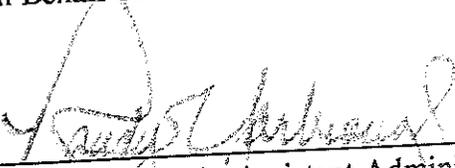
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on May 16, 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 25th day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Legend's Grille Social Club
d/b/a Legend's Grille Club
RESPONDENT
2843 N. NW Loop 323
Tyler, Texas 75702
CERTIFIED MAIL NO. 7001 2510 0000 7278 9241

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Longview District Office

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

LEGEND'S GRILLE SOCIAL CLUB
D/B/A LEGEND'S GRILLE CLUB
F/K/A KHAN'S MONGOLIAN
GRILL CLUB
SMITH COUNTY, TEXAS
(TABC CASE NO. 596279)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) sought forfeiture of the conduct surety bond posted by Khan's Mongolian Grill Club, Respondent, because the Respondent committed three or more violations of the Texas Alcoholic Beverage Code since September 1, 1995. This proposal for decision recommends forfeiture of the bond.

I. Jurisdiction, Notice, and Procedural History

There are no contested issues of jurisdiction or notice in the proceeding and therefore those matters are set out in the findings of fact and conclusions of law without further discussion here.

On January 10, 2002, hearing was held at the Tyler office of the State Office of Administrative Hearings before Richard Farrow, Administrative Law Judge. Timothy Griffith, attorney for the Texas Alcoholic Beverage Commission, appeared by telephone representing the Staff. Roger Golden, Manager, appeared in person for Respondent. After the testimony and exhibits were received, along with argument, the hearing was adjourned and the record was closed January 10, 2002.

II. Discussion of the Evidence

On February 25, 1999, the Respondent was issued a Private Club Registration Permit, N-446413, and a Beverage Cartage Permit, PE-446414. The Respondent provided a conduct surety bond, issued by Old Republic Insurance Company as surety, made payable to the State of Texas in the amount of five thousand dollars effective from date of issuance of license or permits by the Texas Alcoholic Beverage Commission and payable in the event that Respondent should violate a law of the state relating to alcoholic beverages or a rule of the Commission.

Thereafter, on June 3, 1999, the Texas Alcoholic Beverage Commission entered an order, based on an agreement and waiver of hearing signed by the TABC and the Respondent, finding that on April 24, 1999, the Respondent had violated TEX ALCO. BEV. CODE § 32.20 (a)(1) in that Respondent had possessed distilled spirits without local distributor stamps and TEX ALCO. BEV. CODE § 26.08 in that Respondent had possessed un invoiced alcoholic beverages in violation of its permit. On August 6, 2001, the Texas Alcoholic Beverage Commission, again based on agreement and waiver of hearing, entered an order finding that the Respondent had violated the TEX ALCO. BEV. CODE §106.13, in that Respondent had sold alcoholic beverages to a minor in violation of its permit. The Respondent did not dispute that the agreements were entered into and that the findings were made.

III. Analysis

The Code and Commission rule §33.24 require the filing of a conduct surety bond of either \$5000 or \$10,000 as specified in Code §11.11 unless the holder of the permit meets a specified exception. Respondent did not qualify for any exception and properly filed the appropriate conduct surety bond in the required amount of \$5,000. Code §11.11 specifies that the bond state on its face that the amount of the bond will be paid to the state in the event the permit holder violates any provision of the Code. Rule 33.24 requires the Commission to notify the holder of a permit or license of its intent to seek forfeiture of the bond after final adjudication that it has committed three violations of the Code since September 1, 1995. The Respondent entered into waiver agreements and agreed orders that it had violated the Code or the Rules as regards alcoholic beverages three times as set out above and final orders were entered for each of those violations.

On August 23, 2001, the Texas Alcoholic Beverage Commission sent to Respondent notice that it intended to seek forfeiture of the entire amount of the conduct surety bond. A hearing was requested and scheduled to be heard by an Administrative Law Judge of the State Office of Administrative Hearings in accordance with the Administrative Procedures Act.

IV. Findings of Fact

1. Respondent, Legend's Grille Social Club d/b/a Legend's Grille Club f/k/a Khan's Mongolian Grill Club, was issued a Private Club Registration Permit, N-446413 and a Beverage Cartage Permit, PE-446414, on February 25, 1999.
2. On January 25, 2000, Old Republic Insurance Company, as surety for Respondent, issued a \$5,000.00 conduct surety bond payable to the State of Texas.
3. A final order was entered by the Texas Alcoholic Beverage Commission on June 3, 1999 imposing the sanctions that had been agreed to by Respondent for violation of TEX ALCO. BEV. CODE §26.08.
4. A final order was entered by the Texas Alcoholic Beverage Commission on June 3, 1999 imposing the sanctions that had been agreed to by Respondent for violation of TEX ALCO. BEV. CODE §32.20 (a)(1)

5. The Respondent did not a file motion for rehearing and did not appeal the order imposing the agreed penalties.
6. The order became final 21 days after it was entered.
7. A final order was entered on August 6, 2000, imposing the sanctions and penalties to which the Respondent had agreed for violation of TEX ALCO. BEV. CODE §106.13.
8. The Respondent did not file a motion for rehearing and did not file an appeal of the order imposing the agreed penalty.
9. The order became final 21 days after it was entered.
10. On August 23, 2001, Staff notified Respondent of its intent to seek forfeiture of the full amount of the conduct surety bond and Respondent timely requested a hearing.
11. Notice of hearing was sent to Respondent on November 28, 2001, and was received December 1, 2001.
12. On January 10, 2002, hearing was held in Tyler, Texas, before an Administrative Law Judge of the State Office of Administrative Hearings.

VI. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX ALCO. BEV. CODE, Subchapter B of Chapter 5 and §§ 11.61 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX ALCO. BEV. CODE §§2003.021(b) and 2003.042 (5).
3. The parties received proper and timely notice of hearing pursuant to TEX ALCO. BEV. CODE §2001.051.
4. Based on the foregoing Findings and Conclusions, and in compliance with the TEX ALCO. BEV. CODE §11.11, the Respondent's conduct surety bond should be forfeited.

SIGNED this 3rd day of April, 2002



John H. Beeler
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS