

DOCKET NO. 596949

IN RE RICHARD BUSTAMANTE	§	BEFORE THE
D/B/A SHOOTERS	§	
PERMIT NO. BG466937	§	
LICENSE NO. BL466938	§	TEXAS ALCOHOLIC
	§	
WHARTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1031)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 24th day of April, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy L. Horan. The hearing convened on January 18, 2002, and adjourned on January 28, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 28, 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.

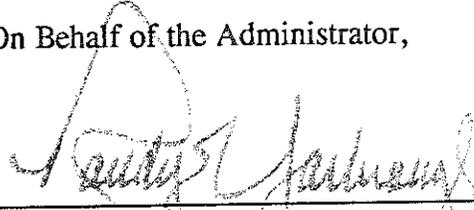
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on MAY 15, 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 24th day of April, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

Hon. Timothy L. Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Richard Bustamante
RESPONDENT
d/b/a Shooters
P. O. Box 934
El Campo, Tx. 77437
VIA CERTIFIED MAIL 7001 2510 0000 7278 6776

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

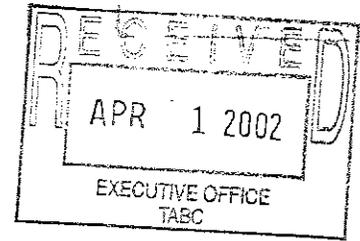
Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 28, 2002



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

VIA REGULAR MAIL

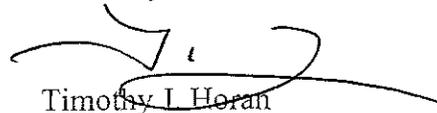
RE: Docket No. 458-02-1031; TABC vs. Richard Bustamante d/b/a Shooters; Permit No. BG-466937

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 Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Richard Bustamante d/b/a Shooters, (Respondent). For reasons discussed in the Proposal for Decision, this proposal recommends that the conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), 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. Exceptions and replies must be filed according to the time limits specified in TABC rules. 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,


Timothy L. Horan
Administrative Law Judge

TJH\mc
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas 78731 - VIA REGULAR MAIL
Richard Bustamante d/b/a Shooters, P.O. Box 934, El Campo, Texas 77437 - VIA REGULAR MAIL

DOCKET NO. 458-02-1031

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
RICHARD BUSTAMANTE	§	
D/B/A SHOOTERS	§	
WHARTON COUNTY, TEXAS	§	
PERMIT NO. BG-466937	§	
(TABC CASE NO. 596949)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this action seeking forfeiture of the conduct surety bond of Richard Bustamante, d/b/a Shooters (Respondent) following final adjudication of three violations by Respondent since September 1, 1995. Following a hearing that Respondent failed to attend, the Administrative Law Judge recommends that the conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing convened January 18, 2002, via telephone conference call initiated by Administrative Law Judge (ALJ) Timothy J. Horan from the State Office of Administrative Hearings, 2020 N. Loop West, Suite 111, Houston, Texas 77018 and the record was closed on January 28, 2002. Respondent did not appear and was not represented at the hearing. The Commission was represented by its staff attorney Gayle Gordon. Staff moved for a default pursuant to 1 TEX. ADMIN. CODE (TAC) §155.55, and the ALJ recommends that it be granted. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge has incorporated those allegations into the findings of fact without discussing the evidence.

II. FINDINGS OF FACT

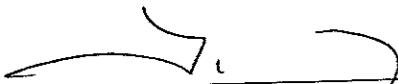
1. Richard Bustamante, d/b/a Shooters (Respondent) held a Wine and Beer Retailer's Permit and a Retail Dealer's On-Premise Late Hours License Permit No. BG 466937, issued by the Texas Alcoholic Beverage Commission (Commission).
2. Notice of the hearing in this matter dated December 7, 2001, was properly addressed and sent by certified mail to Respondent at his El Campo, Texas, mailing address as listed in Commission records.

3. The notice of hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; and the legal authorities under which the hearing is to be held.
4. The notice of hearing also contained language in 10-point type informing Respondent that if he failed to appear at the hearing, the factual allegations against him would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
5. Respondent did not attend and was not represented at the hearing in this matter held January 18, 2002.

III. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 6.01 and 61.71 of the TEX. ALCO. BEV. CODE (the Code).
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. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on Findings of Fact Nos.1 through 5, and the above Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
5. Pursuant to the Code §§ 11.11 and/or 61.13, and 16 TAC § 33.24, Respondent has forfeited the full amount of his conduct surety bond.
6. Based on the foregoing, the full amount of Respondent's conduct surety bond is forfeited.

SIGNED this 28th day of March 2002.



TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS