

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	§	
STUDIO 69, INC.	§	
D/B/A STUDIO	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 597220)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff; Commission) brought this forfeiture action against Studio 69, Inc. d/b/a Studio (Respondent). Staff sought forfeiture of Respondent's conduct surety bond, alleging that Respondent's permits were canceled for cause on or about July 14, 2001; and that the Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (the Code) or Commission's rules since September 1, 1995. Staff also alleges that the cancellation and violations have been finally adjudicated. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. NOTICE, JURISDICTION AND PROCEDURAL HISTORY

On September 24, 2001, Staff sent Respondent written notice of it's intention to seek forfeiture of Respondent's conduct surety bond. The notice indicates Respondent's desire for a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative Hearings (SOAH).

On April 12, 2002, Staff issued its notice of hearing, directed to Respondent at Respondent's mailing address, as listed in Commission records, at 3851 Cedar Springs, Dallas, Texas, 75219-4137, via certified mail, return receipt requested. This notice was stamped "Return to Sender" and received by the Commission on April 18, 2002. Also on April 12, 2002, Staff issued a copy of its notice of hearing to Respondent's attorney, Stephen F. Shaw, Attorney at Law, at 8700 North Stemmons Freeway, Suite 470, Dallas, Texas, 75247, via certified mail, return receipt requested. This notice was received by Respondent's attorney on April 15, 2002.

The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also included a disclosure, in at least 12-point, bold-face type, that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.



There were no contested issues of jurisdiction or venue in this proceeding. Those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On June 20, 2002, a hearing convened before ALJ Brenda Coleman. Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on June 20, 2002.

II. THE ALLEGATIONS AND APPLICABLE LAW

Staff alleges that (1) Respondent had been issued permits; (2) Respondent's permits were canceled, and Respondent was found to have committed three violations of the Code or Commission's rules since September 1, 1995; (3) the cancellation and violations have been finally adjudicated; and (4) Respondent has forfeited the full amount of the conduct surety bond.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree 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 the Code.

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE §§ 6.01 and 61.71. The Commission's rule, found at 16 TEX. ADMIN. CODE § 33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or when there has been a final adjudication that the license or permittee has committed three violations of the Code since September 1, 1995.

III. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Findings of Fact below. The facts deemed admitted establish all requirements for forfeiture of Respondent's conduct surety bond.

The ALJ recommends forfeiture of Respondent's conduct surety bond.

IV. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Staff; Commission) issued mixed beverage permit, MB 445824, and mixed beverage late hours permit, LB 445825, to Studio 69, Inc. d/b/a Studio (Respondent) on February 4, 1999.
2. Respondent's licensed premise is located at 3851 Cedar Springs, Dallas, Dallas County,

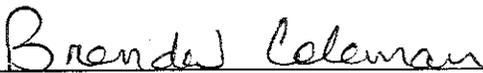
Texas.

3. Respondent has posted a conduct surety bond. The bond is Commission Conduct Surety Bond Number XTL02752, dated October 25, 2000. Respondent, acting through Kenneth W. Leathers, executed the bond as Principal. Inwood National Bank is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.
4. On May 16, 2001, the Commission issued a final order canceling Respondent's permits for the violation of at least three provisions of the Texas Alcoholic Beverage Code (the Code), for which Respondent waived its right to a hearing. Each violation occurred after September 1, 1995.
5. On July 21, 2000, the Commission issued an order assessing an administrative penalty against Respondent for two violations of the Code, for which Respondent waived its right to a hearing. Each violation occurred after September 1, 1995.
6. On September 24, 2001, Staff notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on the Commission's final adjudication of Respondent's violations of the Code. Respondent requested a hearing on the matter.
7. On April 12, 2002, Staff served its notice of hearing on Respondent by certified mail. It informed Respondent the hearing would be held on June 20, 2002, at 10:00 a.m., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. This notice was stamped "Return to Sender" and received by the Commission on April 18, 2002.
8. Also on April 12, 2002, the Staff served a copy of its notice of hearing on Respondent's attorney, Stephen F. Shaw, by certified mail. This notice was received on April 15, 2002.
9. The notice alleged Respondent had violated the Code and Commission rules. . The notice made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
10. The notice of hearing also included a disclosure, in at least 12-point, bold-faced type, that upon failure of Respondent to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.
11. On June 20, 2002, a hearing convened before Administrative Law Judge Brenda Coleman, State Office of Administrative Hearings (SOAH). Staff was represented at the hearing by Timothy E. Griffith, Staff Attorney. Respondent did not appear and was not represented at the hearing. The record closed on June 20, 2002.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. The State Office of Administrative Hearings (SOAH) 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. ch. 2003.
3. Notice of the proceedings was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. The factual allegations in the notice are deemed true. 1 TEX. ADMIN. CODE § 155.55.
5. Based on Findings of Fact Nos. 4 - 11, Respondent's conduct surety bond should be forfeited. §§ 11.11 and 61.13 of the Code; 16 TEX. ADMIN. CODE § 33.24.

ISSUED this 19th day of August, 2002.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 597220

IN RE STUDIO 69 INC.	§	BEFORE THE
D/B/A STUDIO	§	
PERMIT NOS. MB445824, LB445825	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2479)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of September 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on June 20, 2002, and adjourned on June 20, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 19, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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 October 1, 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 or through the U.S. Mail, as indicated below.

SIGNED this the 10th day of September, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Stephen F. Shaw
ATTORNEY FOR RESPONDENT
8700 N. Stemmons Frwy., Ste. 470
Dallas, TX 75247
VIA FAX (214) 920-2498

STUDIO 69 INC.
D/B/A STUDIO
RESPONDENT
3851 Cedar Springs
Dallas, TX 75219-4137
CERTIFIED MAIL NO. 7001 2510 0000 7277 6555

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office