

DOCKET NO. 598644

IN RE BEVERAGE INVESTMENT	§	BEFORE THE
GROUP LLC D/B/A THE DRINK	§	
ON SIXTH	§	
PERMIT NO. MB479535	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2720)	§	BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge Stephen J. Pacey. The hearing convened on May 8, 2002, and adjourned on May 8, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 17, 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.

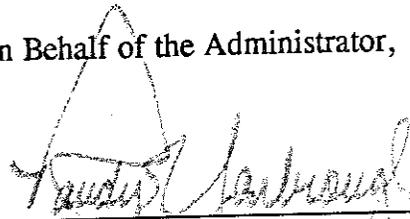
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on JULY 31, 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 10th day of July, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

Hon. Stephen J. Pacey
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FAX (512) 475-4994

Beverage Investment Group LLC
d/b/a The Drink On Sixth
RESPONDENT
325 E. 6th St
Austin, Tx. 78701
CERTIFIED MAIL RRR #7001 2510 0000 7277 7989

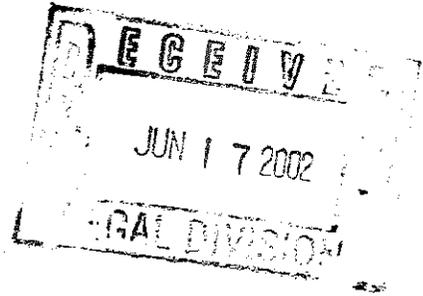
Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Austin District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge
June 17, 2002



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

HAND DELIVERY

RE: Docket No. 458-02-2720; Texas Alcoholic Beverage Commission vs. Beverage Investment Group LLC dba The Drink on Sixth Permit No(s). MB479535 Travis County, Texas (TABC Case No. 598644)

Dear Mr. Garza:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. A copy of the Proposal for Decision is being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Beverage Investment Group LLC d/b/a The Drink on Sixth Permit No. MB479535 (Respondent). For reasons discussed in the Proposal for Decision, the Administrative Law Judge (ALJ) recommends Petitioner's proposed action be sustained and Respondent's 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,

A handwritten signature in cursive script that reads "Stephen J. Pacey".

Stephen J. Pacey
Administrative Law Judge

SJP/sb
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY
Beverage Investment Group LLC d/b/a The Drink on Sixth, 325 E. 6th Street, Austin TX 78701 - VIA REGULAR MAIL
Rommel Corro, Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY

DOCKET NO. 458-02-2720

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
BEVERAGE INVESTMENT GROUP LLC	§	OF
D/B/A THE DRINK ON SIXTH	§	
PERMIT NO(S). MB479535	§	
	§	
TRAVIS COUNTY, TEXAS	§	
(TABC CASE NO. 598644)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Beverage Investment Group LLC (Respondent) d/b/a The Drink on Sixth. Respondent failed to appear at the May 8, 2002, hearing held in this case, and Petitioner moved for a default judgment. The Administrative Law Judge (ALJ) recommends Petitioner's proposed action be sustained and Respondent's conduct surety bond be forfeited.

Procedural History, Notice, and Jurisdiction

The hearing in this case was convened on May 8, 2002, at the State Office of Administrative Hearings (SOAH) in Austin, Texas, before Stephen J. Pacey, ALJ. Petitioner appeared through Gayle Gordon, staff attorney. Respondent did not appear at the hearing. Petitioner presented evidence relating to notice and jurisdiction, then moved that a proposal for decision be issued based on Respondent's default.

Petitioner has jurisdiction over the subject matter of this appeal pursuant to TEX. ALCO. BEV. CODE §§6.01 and 11.11. SOAH has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with proposed findings of fact and proposed conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.

Petitioner sent a Notice of Hearing to Respondent on April 19, 2002. The Notice was mailed to Respondent's last known address by certified mail return receipt requested, and was received by Respondent on April 30, 2002, as evidenced by Respondent's signature on the green card. The Notice complied with all requirements of 1 TEX. ADMIN. CODE §155.55; accordingly, all of the allegations in Petitioner's pleadings were deemed true without need of any testimony or additional evidence by Petitioner.

Reasons For Decision

1. Legal Standard

The applicable statutory provision at TEX. ALCO. BEV. CODE ANN. §11.11(b)(2) states:

(b) . . . 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. . . .

The rules of TABC, at 16 TEX. ADMIN. CODE CODE (TAC) §33.24(j) are more lenient and 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.

2. Petitioner's Pleadings

Petitioner's pleadings allege that it has made a final adjudication that Respondent committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995, and that Respondent's conduct surety bond should be forfeited.

Proposed Findings of Fact

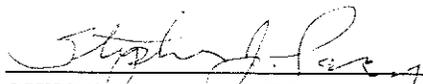
1. The hearing in Docket No. 458-02-2720 was convened on May 8, 2002, before Administrative Law Judge Stephen J. Pacey at the State Office of Administrative Hearings in Austin, Texas. The Texas Alcoholic Beverage Commission (Petitioner) appeared through Gayle Gordon, staff attorney. Beverage Investment Group LLC (Respondent) d/b/a The Drink on Sixth (Respondent) did not appear at the hearing.
2. Respondent was notified of the date, time, and location of the scheduled hearing by Petitioner's Notice of Hearing of April 19, 2002.

3. Petitioner sent a Notice of Hearing to Respondent on April 19, 2002. The Notice was mailed to Respondent's last known address by certified mail return receipt requested, and was received by Respondent on April 30, 2002, as evidenced by Respondent's signature on the green card. The Notice complied with all requirements of 1 TEX. ADMIN. CODE §155.55.
4. The Notice of Hearing contained a disclosure, in 10-point, bold-faced type, of the fact that upon failure of the 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."
5. Respondent holds Permit No. MB479535 and License No. LB479536, issued by Petitioner.
6. Petitioner had made a final adjudication that Respondent committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.

Proposed Conclusions of Law

1. Petitioner has jurisdiction over the subject matter of this appeal pursuant to TEX. ALCO. BEV. CODE §§6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including issuing this Proposal for Decision with proposed findings of fact and proposed conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Respondent received proper and timely notice of the hearing in this case pursuant to TEX. GOV'T CODE ANN. chapter 2001 and 1 TEX. ADMIN. CODE (TAC) § 155.55.
4. Based on the above Findings of Fact, Petitioner is entitled to a default judgment pursuant to 1 TEX. ADMIN. CODE §155.55.
5. Based on the above Findings of Fact, Respondent's conduct surety bond should be forfeited pursuant to TEX. ALCO. BEV. CODE ANN. §11.11(b)(2).

SIGNED THE 17th DAY OF JUNE 2002.



STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS