

DOCKET NO. 598651

IN RE BOBBY RAY BROWN
D/B/A QUARTER HORSE SALOON
PERMIT NOS. MB451502

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-2830)

ORDER

CAME ON FOR CONSIDERATION this 12th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kelsie McQuieter. The hearing convened and adjourned on June 12, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 16, 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.

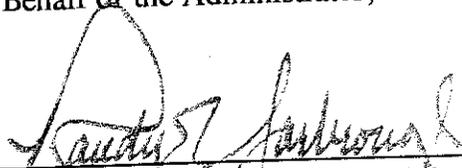
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$10,000.00 be **FORFEITED**.

This Order will become final and enforceable on September 2, 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 12th day of August, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Kelsie McQuieter
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

BOBBY RAY BROWN
D/B/A QUARTER HORSE SALOON
RESPONDENT
129 N Las Vegas Trl.
Fort Worth, TX 76108-2127
CERTIFIED MAIL NO. 7001 2510 0000 7276 5986

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-02-2830

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

V.

BOBBY RAY BROWN
D/B/A QUARTER HORSE SALOON
TARRANT COUNTY, TEXAS
(TABC CASE NO. 598651)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Bobby Ray Brown d/b/a Quarter Horse Saloon (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permits were canceled for cause. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24. 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 proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of notice or jurisdiction in this proceeding.

On May 6, 2002, Petitioner issued its Notice of Hearing to Respondent, Bobby Ray Brown d/b/a/ Quarter Horse Saloon, at Respondent's address of record, 129 N. Las Vegas Trail, Fort Worth, Texas 76108-2127. On June 12, 2002, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared pro se. Evidence was received by both parties on that date. The record closed on June 12, 2002.

LEGAL STANDARDS AND APPLICABLE LAW

Respondent was required to provide a conduct surety bond under TEX. ALCO. BEV. CODE ANN. § 11.11(a). TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) to cause the full amount of a conduct surety bond to be forfeited if Respondent's license was revoked or on final



adjudication that the licensee or permittee had violated a provision of the Code. Pursuant to 16 Tex. Admin. Code § 33.24(j):

(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, within 30 days of the notice specified in paragraph (1) of this subsection, 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. The hearing shall be conducted in accordance with the Administrative Procedure Act.

EVIDENCE AND PARTIES CONTENTION

Petitioner alleged that Respondent is the holder of Mixed Beverage Permits issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit Three establish that a Mixed Beverage Permit, MB-451502, Mixed Beverage Late Hours Permit, LB-451503, and Beverage Cartage Permit, PE-451504, were issued to Bobby Ray Brown d/b/a JB's 50 50 Club, 5908 Lake Worth Boulevard, Lake Worth, Tarrant County, Texas by the TABC on May 17, 1999. Exhibit Three establishes that, on September 11, 2000, a supplemental application was submitted with a Change of Trade Name and a Change of Location Address from JB's 50 50 Club, 5908 Lake Worth Boulevard, Lake Worth, Tarrant, County, Texas to Quarter Horse Saloon, 13325 Highway 287/81, Haslet, Tarrant County, Texas.

In reference to the issued permits, Petitioner alleged that Respondent posted a conduct surety bond. Respondent did not dispute this allegation. TABC Exhibit Two contains a certified copy of Texas Alcoholic Beverage Commission Surety Bond Number XTM03190, dated April 20, 1999. The bond was executed by Bobby Ray Brown d/b/a/ JB's 50 50 Club, as Principal, and First Indemnity of America Insurance Company, 8150 Brookriver, Suite S-303, Dallas, Texas, as Surety. The bond is in the amount of \$5000 and is payable to the State of Texas.

Petitioner alleged that Respondent's permits were canceled for cause on January 2, 2002, subjecting the conduct surety bond to forfeiture. Although Respondent disputed the reasons why his permits were canceled, he did not dispute that his permits had been canceled for cause. TABC Exhibit Four contains an Order, executed by TABC Assistant Administrator Randy Yarbrough on December 12, 2001, canceling Respondent's permits for cause effective January 2, 2002.

Petitioner offered evidence of its compliance with the notice requirements of 16 TEX. ADMIN. CODE § 33.24. Respondent did not dispute Petitioner's compliance with the notice requirement. TABC Exhibit Three contains a letter from TABC dated January 29, 2002, addressed to Quarter Horse Saloon/Bobby Ray Brown. This letter states that "we are notifying you of our intention to

seek forfeiture of the full amount of your conduct surety bond." Respondent's receipt of the letter was evidenced by his signature on page two of the letter, indicating his desire for a hearing in order to determine if the bond should be forfeited.

ANALYSIS

It is clear and undisputed from the evidence that Respondent holds Mixed Beverage Permit, MB-451502, Mixed Beverage Late Hours Permit, LB-451503, and Beverage Cartage Permit, PE-451504, that Respondent has posted a conduct surety bond in relation to those permits, that Respondent's permits were canceled for cause, and that Respondent received notice of the proposed bond forfeiture.

RECOMMENDATION

The ALJ recommends that TABC Conduct Surety Bond Number XTM03190, dated April 30, 1999, in the amount of \$5000 be forfeited

PROPOSED FINDINGS OF FACT

1. Respondent, Bobby Ray Brown d/b/a Quarter Horse Saloon, holds Mixed Beverage Permit, MB-451502, Mixed Beverage Late Hours Permit, LB-451503, and Beverage Cartage Permit, PE-451504, issued on May 17, 1999, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permits were originally issued for J B's 50 50 Club at 5908 Lake Worth Boulevard, Lake Worth, Tarrant County, Texas. On September 11, 2000, a supplemental application was submitted with a Change of Trade Name to Quarter Horse Saloon and a Change of Location Address to 13325 Highway 287/81, Haslet, Tarrant County, Texas.
3. Respondent has posted Texas Alcoholic Beverage Commission Surety Bond Number XTM03190, dated April 30, 1999. The bond was executed by Bobby Ray Brown d/b/a J B's 50 50 Club, as Principal, and First Indemnity of America Insurance Company, 8150 Brookriver, Suite S-303, Dallas, Texas, as Surety. The bond is in the amount of \$5000 and is payable to the State of Texas.
4. Respondent's permits were canceled for cause effective January 2, 2002, as evidenced by

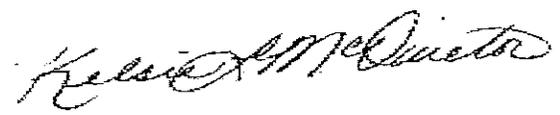
an Order executed by TABC Assistant Administrator Randy Yarbrough on December 12, 2001.

5. Petitioner sent Respondent written notice of its intent to seek forfeiture of Respondent's bond by a letter dated January 29, 2002.
6. Respondent requested a hearing to determine if the conduct surety bond should be forfeited, as evidenced by Respondent's signature on page two of the letter.
7. On May 6, 2002, Petitioner issued its Notice of Hearing to Respondent, Bobby Ray Brown d/b/a/ Quarter Horse Saloon, at Respondent's address of record, 129 N. Las Vegas Trail, Fort Worth, Texas 76108-2127.
8. On June 12, 2002, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared pro se.
9. Respondent did not contest notice or jurisdiction.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24.
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 proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing.
4. Based upon the Proposed Findings of Fact and TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24, Texas Alcoholic Beverage Commission Surety Bond Number XTM03190, dated April 30, 1999, in the amount of \$5000 should be forfeited.

SIGNED this 16th day of July, 2002.



Kelsie L. McQuieter
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS