

DOCKET NO. 598824

IN RE VICKEY RUTH COOPER
D/B/A THE CAPROCK
PERMIT NO. BG-457187

GARZA COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-2796)

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§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

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

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on June 3, 2002, and adjourned on June 3, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 12, 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.

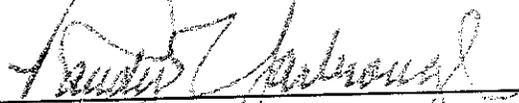
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

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

The Honorable B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (806) 792-0149

Vickey Ruth Cooper
d/b/a The Caprock
RESPONDENT
208 N Ave F
Post, Tx. 79356-3317
CERTIFIED MAIL RRR #7001 2510 0000 7277 8009

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

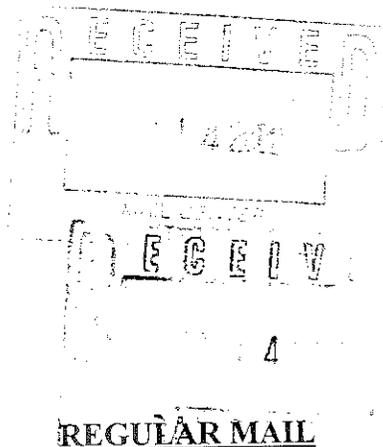
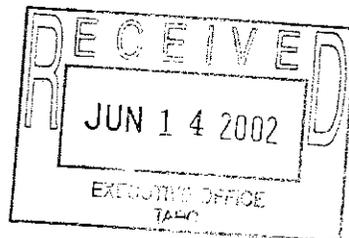
Licensing Division
Lubbock District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 12, 2002



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

RE: Docket No. 458-02-2796; Texas Alcoholic Beverage Commission vs. Vickey Ruth Cooper d/b/a
The Caprock (TABC Case No. 598824)

Dear Mr. Garza:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Vickey Ruth Cooper, Respondent. I recommend Respondent's Renewal conduct surety bond be forfeited for reasons discussed in the proposal.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink that reads "B.L. Phillips".

B.L. Phillips
Administrative Law Judge

B.L.P.:vu
Enclosure

XC: Gayle Gordon Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Ste. 160, Austin, Texas 78731 REGULAR MAIL
Vickey Ruth Cooper, 208 N. Ave. F, Post, Texas 79356-3317 - REGULAR MAIL

Megaron Building
8212 Ithaca, Suite W3 ♦ Lubbock, Texas 79423
(806) 792-0007 Fax (806) 792-0149

DOCKET NO. 458-02-2796

TEXAS ALCOHOLIC BEVERAGE	§	IN AND BEFORE THE
COMMISSION	§	
	§	
V.	§	STATE OFFICE OF
	§	
VICKEY RUTH COOPER	§	
DBA THE CAPROCK	§	
PERMIT NO. BG-457187	§	ADMINISTRATIVE HEARINGS
GARZA COUNTY, TEXAS	§	
(TABC CASE NO. 598824)	§	

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Vickey Ruth Cooper dba The Caprock (Respondent). Respondent posted a conduct surety bond on February 8, 2001, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). Staff recommended the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent appeared by telephone at the hearing and represented herself. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing on this matter convened on June 3, 2002, before ALJ B. L. Phillips, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Staff was represented by Gail Gordon, Assistant Attorney General, who appeared by telephone. Respondent represented herself and also appeared by telephone. The record closed the same day.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. Conduct Surety Bond

On August 23, 1999, the Commission issued a Wine and Beer Retailer's Permit BG-457187 to Respondent. On February 8, 2001, Respondent posted a conduct surety bond for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On January 15, 2002, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code. The waiver agreement stated that on December 20, 2001, Respondent permitted an intoxicated permittee, licensee or employee on the premises, sold an alcoholic beverage to an intoxicated person, and misbranded Draft beer in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13), 11.61(b)(14) and 104.04. As a result of this waiver agreement, the Commission Administrator entered an order on January 28, 2002, suspending Respondent's permits for ten days unless Respondent paid a civil penalty of \$ 1500.00.

On September 13, 2001, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on August 1, 2001, Respondent committed a cash law violation by writing two Non-Sufficient Fund checks in violation of TEX. ALCO. BEV. CODE ANN. § 102.31. As a result of this waiver agreement, the Commission Administrator entered an order on September 17, 2001, suspending Respondent's permits for ten days unless Respondent paid a civil penalty of \$ 1500.00.

On March 26, 2001, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on February 8, 2001, Respondent committed a cash law violation by writing one Non-Sufficient Fund check in violation of TEX. ALCO. BEV. CODE ANN. § 102.31. As a result of this waiver agreement, the Commission Administrator entered an order on March 20, 2001, suspending Respondent's permits for five days unless Respondent paid a civil penalty of \$ 750.00.

IV. Forfeiture of Conduct Surety Bond

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 ANN. §§ 6.01 and 61.71. The Commission's rule found at 16 TAC § 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 where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

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.

Respondent admitted in the Agreements and Waivers of Hearing that she has violated the provisions of the Code three times since September 1, 1995.

V. Proposed Findings of Fact

1. On August 23, 1999, the Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit BG-457187 to Respondent for premises located in Post, Garza County, Texas. On February 8, 2001, Respondent posted a conduct surety bond for \$5000, as required by Sections 11.11 and 61.13 of the Code.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated May 3, 2002. The notice was properly sent to Respondent at her address of record.
3. The notice of hearing 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 section of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The hearing was convened on June 3, 2002, at the offices of the State Office of Administrative Hearings in Lubbock, Lubbock County, Texas. Respondent appeared by telephone and represented herself. Gail Gordon, Assistant Attorney General, represented Staff.
5. On January 15, 2002, Respondent signed a waiver agreement admitting that Respondent permitted an intoxicated permittee, licensee or employee on the premises, sold an alcoholic beverage to an intoxicated person, and misbranded Draft beer in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13), 11.61(b)(14) and 104.04.
6. On September 13, 2001 and March 26, 2001, Respondent signed waiver agreements admitting Respondent committed cash law violations by writing Non-Sufficient Fund checks in violation of TEX. ALCO. BEV. CODE ANN. § 102.31.
7. On January 28, 2002, September 17, 2001 and March 20, 2001, the Commission Administrator entered orders finding that Respondent had

committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact Nos. 5-6.

8. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

VI. Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001.
4. Respondent holds Permit No. BG-457187 and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 .
5. Respondent violated three provisions of the Texas Alcoholic Beverage Code, to wit, permitting an intoxicated permittee, licensee or employee on the premises, sold an alcoholic beverage to an intoxicated person, and misbranded Draft beer in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13), 11.61(b)(14) and 104.04, and committing cash law violations by writing Non-Sufficient Fund checks in violation of TEX. ALCO. BEV. CODE ANN. § 102.31.
6. Respondent violated 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding Permit No. BG-457187, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED this 12th day of June, 2002.



B.L. PHILLIPS

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DISTRIBUTION LIST
458-02-2796

Gayle Gordon
Attorney For Petitioner
TABC Legal Section
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Austin, Texas 78731
U.S. Regular Mail
VIA FACSIMILE 512-206-3498

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