

**DOCKET NO. 599502**

IN RE HEADLINERS SPORTS BAR  
PERMIT NOS. N-468006, PE468007

NACOGDOCHES COUNTY, TEXAS  
(SOAH DOCKET NO. 458-02-3302)

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§

BEFORE THE  
TEXAS ALCOHOLIC  
BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 15th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened and adjourned on July 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 25, 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.

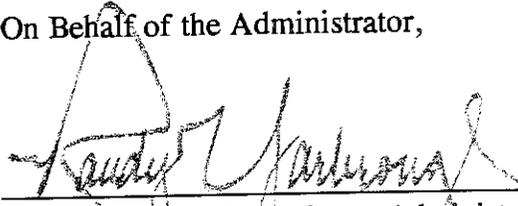
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

**This Order will become final and enforceable on September 5, 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 15th day of August, 2002.

On Behalf of the Administrator,



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Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

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

**HEADLINERS SPORTS BAR**  
**RESPONDENT**  
3801 N St. Ste. 10-11  
Nacogdoches, TX 75961  
**CERTIFIED MAIL NO. 7001 2510 0000 7276 5832**

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Longview District Office



DOCKET NO. 458-02-3302

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner

VS.

HEADLINERS SPORTS BAR Respondent (TABC CASE NO. 599502)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Headliners Sports Bar, Respondent. Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated of committing three violations of the Texas Alcoholic Beverage Code. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. PROCEDURAL HISTORY

On March 27, 2002, Staff sent Respondent written notice of its intention to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative Hearings (SOAH) to conduct the requested hearing. On June 12, 2002, Staff issued a notice of hearing informing all parties of the hearing. On July 11, 2002, ALJ Tanya Cooper convened the hearing in this matter with both parties present at the SOAH offices in Dallas, Dallas County, Texas. Timothy Griffith, Staff's attorney, appeared and represented Staff. Respondent appeared through its representative, Nancy Word.

There were no contested issues of notice, jurisdiction, or venue in the proceeding. Therefore, those matters are set out in the proposed Findings of Facts and Conclusions of Law without further discussion. Following the presentation of evidence, the record closed on July 11, 2002.

II. DISCUSSION

A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5000 surety bond, conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. (the Code) §§ 11.11 and 61.13. The bond may be forfeited if: (1) the licensee has provided the TABC a conduct surety bond; (2) the licensee has been finally adjudicated of three violations of the Code since September 1, 1995; and (3) the TABC notifies the licensee in writing of its intent to seek

forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j).

B. Evidence

Staff's evidence consists of three exhibits: the Notice of Hearing issued on June 12, 2002; Staff's Requests for Admissions, Interrogatories and Requests for Production served on Respondent on that same date to which no responses were made by Respondent; and the Affidavit of Brian L. Guenther with its attachments. Mr. Guenther is the Director of the TABC Licensing Department. He is the custodian of all TABC records and files. Mr. Guenther identified the attachments to his Affidavit as true and correct copies of Respondent's permit and license, violation history, Conduct Surety Bond, and correspondence concerning the bond.

Attached to Mr. Guenther's affidavit are Private Club Registration Permit, N468006, and Beverage Cartage Permit, PE 468007. The holder named on the permit and license is Respondent. The licensed premises is located at 3801 N St., Suite 10-11, Nacogdoches, Texas. Respondent's mailing address is listed as that same address. TABC Conduct Surety Bond, LP04176, is attached to Mr. Guenther's affidavit. The Bond is executed by Respondent's representative, Nancy Word, as principal. The Bond is dated January 28, 2000. Also attached to Mr. Guenther's affidavit are three Waiver Orders and Agreements and Waivers of Hearing for enforcement actions by TABC Staff taken against Respondent. Details concerning these enforcement actions are as follows:

1. **TABC Docket No. 598185, styled *In re Headliners Sports Bar*.** The Waiver Order is dated February 11, 2002, and was issued by the TABC. The Agreement and Waiver of Hearing is dated February 8, 2002, and was signed by Nancy Word, Respondent's president at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Return check-Cash Law violation<sup>1</sup> on November 28, 2001.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

2. **TABC Docket No. 593169, styled *In re Headliners Sports Bar*.** The Waiver Order is dated February 21, 2001, and was issued by the TABC. The Agreement and Waiver of Hearing is dated February 13, 2001, and was signed by Nancy Word, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Permitting a Minor to Possess and/or Consume Alcoholic Beverage<sup>2</sup> on January 13, 2001.

<sup>1</sup>TEX. ALCO. BEV. CODE ANN. §§ 102.31 and 61.73.

<sup>2</sup>TEX. ALCO. BEV. CODE ANN. § 106.13.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

3. **TABC Docket No. 590760, styled *In re Headliners Sports Bar*.** The Waiver Order is dated August 29, 2000, and was issued by the TABC. The Agreement and Waiver of Hearing is dated August 17, 2000, and was signed by Nancy Word, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Operating an Open Saloon violation<sup>3</sup> on August 3, 2000.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

Finally, Mr. Guenther's affidavit includes a copy of Staff's letter dated March 27, 2002, addressed to Respondent at its mailing address, which reads:

[W]e are notifying you of our intention to seek forfeiture of the full amount of your surety bond.

Respondent requested a hearing to determine if its bond should be forfeited by signing the March 27, 2002 letter and returning it to TABC's Staff. At the hearing, Nancy Word testified on behalf of Respondent. Ms. Word offered an explanation in relation to the cash law violation which occurred in November 2001. Ms. Word testified that sufficient money had been deposited in Respondent's bank account; however, the check issued for beer had been dishonored by the bank despite these funds being deposited. According to Ms. Word, the violation was not contested at the time due to a family emergency which had required Ms. Word to travel to Nevada for the majority of the month of November 2001.

Ms. Word stated that maintaining Respondent's private club registration permit was essential to successful operation of another business at the same location, a bowling center. Ms. Word testified the forfeiture of the bond at issue in this case would result in a hardship for both businesses.

C. Analysis, Conclusion, and Recommendation

Staff has met its burden of proof for forfeiture of Respondent's conduct surety bond. Respondent failed to make any response to Staff discovery requests as required by 1 TEX. ADMIN. CODE § 155.31. Therefore, the elements required to be established by TABC in this case should be deemed as admitted by Respondent.

Further, Staff's additional evidence shows that Respondent provided the TABC with a

<sup>3</sup> TEX. ALCO. BEV. CODE ANN. § 32.17(a)(1).

conduct surety bond, as required. Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995 by its execution of Agreements and Waivers of Hearing on those violations. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j). Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

Surety bonds are required to be posted in order to encourage compliance with laws and regulations associated with operation of licensed premises. Statutes and rules governing surety bond forfeiture proceedings do not provide for consideration of business hardship that may result from forfeiture of any posted bond. Further, any facts associated with the underlying violations which have led the Staff to seek bond forfeiture may not be considered during a bond forfeiture hearing, as those violations have previously been adjudicated via settlement negotiations with the TABC Staff. Therefore, the evidence presented on Respondent's behalf at this hearing, however compelling, was not relevant to the issues which must be decided by the ALJ in relation to Respondent's surety bond forfeiture case.

### III. PROPOSED FINDINGS OF FACT

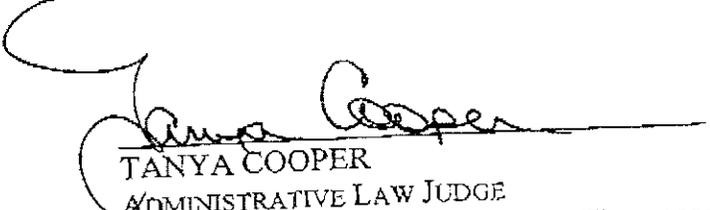
1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent, Headliners Sports Bar, a Private Club Registration Permit, N468006, and Beverage Cartage Permit, PE 468007.
2. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond, LP04176. Respondent executed the bond as Principal.
3. Respondent, acting through its representative, admitted that three violations of the Texas Alcoholic Beverage Code (the Code) occurred on the licensed premises by executing Agreements and Waivers of Hearing with the TABC Staff on February 8, 2002, February 13, 2001, and August 17, 2000.
4. On February 11, 2002, the TABC issued its Waiver Order in TABC Docket No. 598185, styled *In re Headliners Sports Bar*. The Waiver Order found that Respondent was responsible for a returned check, a Cash Law violation, on November 28, 2001.
5. On February 21, 2001, the TABC issued its Waiver Order in TABC Docket No. 593169, styled *In re Headliners Sports Bar*. The Waiver Order found that Respondent was responsible for the violation of permitting a minor to possess and/or consume an alcoholic beverage on the licensed premises on January 13, 2001.
6. On August 29, 2000, the TABC issued its Waiver Order in TABC Docket No. 590760, styled *In re Headliners Sports Bar*. The Waiver Order found that Respondent was responsible for the violation of operating a open saloon on the licensed premises on August 3, 2000.
7. Respondent has committed three or more violations of the Code since September 1, 1995.
8. On March 27, 2002, the Staff of TABC (Staff) sent Respondent written notice of its intent to seek forfeiture of the bond. Respondent requested a hearing on this matter.

9. On June 12, 2002, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and include a short, plain statement of the matters asserted.
10. On July 11, 2002, the hearing was convened by Tanya Cooper, Administrative Law Judge, at the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Both parties appeared and presented evidence. The record closed on July 11, 2002.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2).
2. The State Office of Administrative Hearings 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. §2003.021.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE §§ 155.25 and 155.27.
4. Based on the foregoing findings and conclusions, Texas Alcoholic Beverage Commission Conduct Surety Bond, LP04176, should be forfeited. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 and 16 TEX. ADMIN CODE § 33.24(j).

SIGNED July 25, 2002.

  
TANYA COOPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS