

Docket 458-03-0531

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
MAINSTAGE, INC.	§	OF
D/B/A PT's II	§	
PERMIT NOS. MB-185363 AND	§	
LB-185634	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 601128)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Mainstage, Inc. d/b/a PT's II (Respondent) seeking forfeiture of the full amount of Respondent's conduct surety bond. TABC alleged Respondent's conduct surety bond should be forfeited because Respondent committed three or more violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission Rules since September 1, 1995. Respondent presented no evidence. This Proposal for Decision finds Respondent's conduct surety bond should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on November 8, 2002. Attorney Timothy Griffith represented TABC. Respondent was represented by Attorney Roger Albright. Administrative Law Judge Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. EVIDENCE

The staff of TABC (the Staff) offered documentary evidence from the TABC files. Those documents show:

(a) On September 7, 2001, Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting it would faithfully conform to the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.



(b) On September 26, 1986, Respondent was issued Mixed Beverage Permit MB-185363 and Mixed Beverage Late Hours Permit LB-185364.

(c) On June 4, 2002, Respondent signed a document entitled "Agreement and Waiver of Hearing." The document listed four alleged violations occurring after April 4, 2001: Respondent permitted public lewdness on the premises on two occasions; Respondent permitted a minor to possess or consume alcohol; and solicitation of an alcoholic beverage by an employee of Respondent. By signing this document, Respondent waived its right to a hearing. Respondent neither admitted nor denied such violations. The document also stated the signing of the waiver may result in the forfeiture of any related conduct surety bond.

(d) On June 7, 2002 the TABC entered a waiver order stating Respondent violated the Texas Alcoholic Beverage Code as set out in the June 4, 2002 waiver agreement signed by Respondent. This order imposed a 45-day suspension or a civil penalty of \$6,750.00 on Respondent.

(e) On October 10, 2002, the TABC sent a notice Respondent asserting that the TABC was seeking to forfeit Respondent's surety bond.

Respondent offered no evidence.

III. STATUTORY AUTHORITY

The rules of the TABC, at 16 TEX. ADMIN. CODE §33.24(j) 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 a 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 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. . . .

III. RECOMMENDATION

Based on a preponderance of the evidence, Respondent's conduct surety bond should be forfeited because Respondent committed three violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission Rules since September 1, 1995.

IV. FINDINGS OF FACT

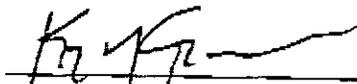
1. Mainstage Inc. d/b/a PT's II (Respondent) is the holder of Mixed Beverage Permit MB-185363 and Mixed Beverage Late Hours Permit LB-185364.
2. On September 7, 2001, Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting it would faithfully conform to the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.
3. On October 10, 2002, the staff of TABC (the Staff) sent a notice asserting that TABC was seeking to forfeit Respondent's surety bond.
4. On June 7, 2002 the TABC entered a waiver order stating Respondent violated the Texas Alcoholic Beverage Code as set out in the June 4, 2002 waiver agreement signed by Respondent. This order imposed a 45-day suspension or a civil penalty of \$6,750.00 on Respondent. By signing the June 4, 2002 waiver agreement, Respondent waived his right to a hearing. Respondent neither admitted nor denied such violations. The document also stated the signing of the waiver may result in the forfeiture of any related conduct surety bond.
5. The hearing on the merits was held on November 8, 2002. Timothy Griffith appeared and represented the Staff. Respondent was represented by Attorney Roger Albright. Kyle J. Groves, Administrative Law Judge presided

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

4. Respondent's has committed four violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage commission Rules since September 1, 1995.
5. TABC is permitted by TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24 to forfeit the conduct surety bonds of permittees that have committed three or more violations of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage commission Rules since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 12th day of December, 2002.



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601128

IN RE MAINSTAGE INC.	§	BEFORE THE
D/B/A P. T. 'S II	§	
PERMIT NOS. MB185363, LB185364	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-0531)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 6th day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on November 8, 2002, and adjourned on November 8, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 12, 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. Respondent's Exceptions were received on December 16, 2002.

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.

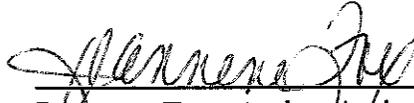
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on January 27, 2003, 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 6th day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

Roger Albright
ATTORNEY FOR RESPONDENT
3301 Elm Street
Dallas, Texas 75226-1637
VIA FAX (214) 939-9229

MAINSTAGE INC.
D/B/A P. T. 'S II
RESPONDENT
PO Box 540938
Dallas, Texas 75354
CERTIFIED MAIL NO. 7001 2510 0003 8688 7718

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Dallas District Office