

**DOCKET NO. 524590**

IN RE J.J. GARCIA INC.	§	BEFORE THE TEXAS
D/B/A SCALA	§	
PERMIT NO(s). MB572423	§	
	§	ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-0755)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29<sup>th</sup> day of May 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on January 16, 2007 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 19, 2007. The 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 and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge; that 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 should be **FORFEITED**.

This Order will become final and enforceable on June 21, 2007 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** this the 29<sup>th</sup> day of May, 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

SKP/aa

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
5155 Flynn Parkway, Suite 200  
Corpus Christi, Texas 78411  
***VIA FACSIMILE: (361) 884-5427***

J.J. Garcia Inc.  
d/b/a Scala  
**RESPONDENT**  
1110 Austin Street  
McAllen, TX 78501  
***VIA FIRST-CLASS MAIL***

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

McAllen District Office

**DOCKET NO. 458-07-0755**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**VS.**

**J.J. GARCIA INC.  
D/B/A SCALA,  
PERMIT NO. MB-572423  
HIDALGO COUNTY, TEXAS  
(TABC NO. 524590)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (Staff) initiated this action against J.J. Garcia Inc. d/b/a Scala (Respondent), seeking the forfeiture of the conduct surety bond posted by the Respondent. The Commission recommended that the bond be forfeited because the Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) after September 1, 1995. The undersigned Administrative Law Judge (ALJ) concludes that the Staff established that the allegations are true and therefore the bond should be revoked.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On January 16, 2007, a public hearing was held before Melissa M. Ricard, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 5155 Flynn Parkway, Suite 200, Corpus Christi, Texas, by telephone. The Commission appeared through its attorney, Sandra K. Patton.

Respondent appeared through its President, Juan Garcia. Evidence and argument were heard, and the record closed the same day.

## II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code §11.11, an applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with alcoholic beverage law. Pursuant to Rule § 33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond, as established by Code §11.11, and Rule § 33.24 have been satisfied.

## III. ANALYSIS

Commission's Exhibit No. 1, which includes copies of the Respondent's permit, violation history, and conduct surety bond, reveals that on June 30, 2005, the Respondent, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on February 27, 2005, the Respondent had a breach of the peace on the premises, and that the Respondent failed to report the beach. The Commission counts each of these incidents as separate violations of the Code. In this waiver, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond, however, the Respondent neither admitted or denied that the violations occurred. As a result of this waiver agreement, the Commission Administrator entered an Order on July 7, 2005, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing."

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According to the Commission's Exhibit No. 1, on November 30, 2005, the Respondent, signed another "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on September 15, 2005, the Respondent had committed a cash law violation of the Code. In this waiver, the Respondent acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond, but neither admitted nor denied that the violation occurred. As a result of this waiver agreement, the Commission Administrator entered an Order on December 19, 2005, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing."

The Respondent denies that three or more violations of the Code exist. Respondent argues that the violation of failure to report the February 2005 incident did not occur. The Respondent provided evidence to show that the violation of the breach of the peace occurred on a Saturday evening. The owners of the Respondent and its manager, Mr. Albert Garza, left the next day to attend a convention in Las Vegas. On Monday, February 28, 2005, at 10:57 a.m., a call to the McAllen TABC office was made by Mr. George Garcia, shareholder of the Respondent. The call lasted three minutes and the Respondent provided a Sprint invoice from Mr. Garza's cell phone which showed that the call was made. Mr. Garza stated that Mr. Garcia did speak with someone at the TABC and reported the incident, however, they did not obtain the name of the individual that Mr. Garcia spoke with.

Mr. Garza stated that the Waiver and Agreement dated June 30, 2005, was entered into by Mr. Juan Garcia because, at that time, the Respondent could not provide evidence that the call was made. Before the civil penalty was paid, evidence of the call was provided to the Commission.

There was no evidence that the Respondent appealed the Commission's orders. The Staff only provided the Agreement and Waiver of Hearings as evidence to show that three or more

violations occurred. In the Agreements, the Respondent neither admitted nor denied that the violations occurred. However, the Orders signed by the Commission find that the Respondent violated the sections of the Code indicated in the Agreements. It is unfortunate that now the Respondent has evidence to show that it reported the February 2005 incident. The evidence that the failure to report did not occur would be relevant to any appeal of the final Order, but does not override the legal effect of the Order for the purpose of this hearing. The Commission's Order is a final adjudication that the violations occurred, therefore the Staff established that pursuant to Rule § 33.24, final adjudication has been made that the Respondent has committed three violations of the Code since September 1, 1995.

#### IV. FINDINGS OF FACT

1. The Respondent is the holder of Mixed Beverage Permit MB-572423 issued to J.J. Garcia Inc. d/b/a Scala (Respondent) for the premises at 1110 Austin Street, McAllen, Hidalgo County, Texas, issued by the Commission, on January 24, 2005.
2. On December 17, 2004, the Respondent executed a conduct surety bond in the amount of \$5000.00.
3. On June 30, 2005, the Respondent, signed an "Agreement and Waiver of Hearing." In the agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on February 27, 2005, a breach of the peace on the premises had occurred, and that the Respondent failed to report the breach. The Commission counted each of these incidents as separate violations of the Code. In this waiver, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond, however, the Respondent neither admitted or denied that the violations occurred.
4. The Commission Administrator entered an Order on July 7, 2005, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing" dated June 30, 2005.
5. On November 30, 2005, the Respondent, signed another "Agreement and Waiver of Hearing." In the agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on September 15, 2005, the Respondent had committed a cash

law violation of the Code. In the waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond, but neither admitted nor denied that the violation occurred.

6. The Commission Administrator entered an Order on December 19, 2005, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing" dated November 30, 2005.
7. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on November 26, 2006.
8. The Notice of Hearing informed the Respondent of the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing was to be held.
9. The hearing on the merits convened on January 16, 2006, a public hearing was held before Melissa M. Ricard, Administrative Law Judge by telephone, at the offices of the State Office of Administrative Hearings at 5155 Flynn Parkway, Suite 200, Corpus Christi, Texas. The Commission appeared through its attorney, Sandra K. Patton. Respondent appeared through its president, Juan Garcia.
10. The Respondent has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.

## V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed 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 under the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Based on the foregoing findings and conclusions, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.11, and 16 TEX. ADMIN. CODE § 33.24.

5. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

**SIGNED March 19, 2007.**



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**MELISSA M. RICARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 19, 2007

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**RE: Docket No. 458-07-0755/ TABC vs. J.J. GARCIA INC.  
d/b/a SCALA**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script, appearing to read "Melissa M. Ricard".

Melissa M. Ricard  
Administrative Law Judge

MMR/MAR  
Enclosure

xc: Natalie Howard, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra K. Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-  
**VIA REGULAR MAIL**  
Juan Garcia, 1110 Austin Street, McAllen, Tx 78501-4819 - **VIA REGULAR MAIL**