

DOCKET NO. 458-06-2403

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Petitioner	§	
	§	
	§	
VS.	§	OF
	§	
HONG KONG BUFFET CLUB,	§	
Respondent	§	
(TABC CASE NO. 524597)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Hong Kong Buffet Club (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 (the Code) or rules promulgated by the TABC (the Rules). 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 December 30, 2005, 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 May 30, 2006, Staff issued a notice of hearing to all parties. On July 13, 2006, ALJ Phyllis Cranz convened the hearing in this matter with both parties present at the SOAH offices in Fort Worth, Tarrant County, Texas. Diane Brown, Staff's attorney, appeared and represented Staff. Respondent appeared through its representative, Tuan Tran.

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 13, 2006.

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. §§ 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 two exhibits: the Notice of Hearing issued on May 31, 2006; and the Affidavit of Amy Harrison with its attachments. Ms. Harrison is the Director of the TABC Licensing Department, and is the custodian of all TABC records and files. Ms. Harrison identified the attachments to her Affidavit as true and correct copies of Respondent's permits, violation history, Conduct Surety Bond, and correspondence concerning the bond.

Attached to Ms. Harrison's affidavit are Private Club Registration Permit, N-413554, and Beverage Cartage Permit, PE-413555. The holder named on the permits is Respondent. The licensed premises is located at 2625 Old Denton Road, #552, Carrollton, Texas. TABC Conduct Surety Bond, in the form of an Irrevocable Letter of Credit, no. (1) 1145 issued on September 23, 2003 from the First International Bank, Garland, Texas is attached to Ms. Harrison's affidavit. The Bond is executed by Respondent's representative, Tuan Tran, as principal. The Irrevocable Letter of Credit is due to expire on March 10, 2007, unless released or discharged by the Texas Alcoholic Beverage Commission.

Also attached to Ms. Harrison's affidavit are two 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. 615678, styled *In re Hong Kong Buffet Club*.** The Waiver Order is dated June 9, 2005, and was issued by the TABC. The Agreement and Waiver of Hearing is dated May 31, 2005, and was signed by Luu Cuong, Secretary, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violations:

Sale to Minor¹ on January 14, 2005, and

Operating an Open Saloon² on January 14, 2005.

These violations were 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. 595566, styled *In re Hong Kong Buffet Club*.** The Waiver Order is dated August 9, 2001, and was issued by the TABC. The Agreement and Waiver of Hearing is dated August 2, 2001, and was signed by Cuong Chi Luu, Secretary, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Operating an Open Saloon³ on June 21, 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."

¹TEX. ALCO. BEV. CODE ANN. §106.03.

²Tex. Alco. Bev. Code Ann §32.17(a)(1) and §32.17(b).

³Tex. Alco. Bev. Code Ann. §32.17(a)(1) and §32.17(b).

Finally, Ms. Harrison's affidavit includes a copy of Staff's letter dated December 30, 2005, addressed to Respondent at its mailing address, which reads:

"A review of your file indicates that there have been three or more violations of the Texas Alcoholic Beverage Code or Rules since September 1, 1995 under the above referenced permit/license. In accordance with Rule 33.24(j), we are notifying you of our intention to seek forfeiture of the full amount of your surety bond."

By signing the December 30, 2005 letter and returning it to TABC's Staff, Respondent requested a hearing to determine if its bond should be forfeited. At the hearing, Tuan Tran testified on behalf of Respondent, and as the holder of the irrevocable letter of credit. Mr. Tran testified that the club had ceased to exist and had let their permit and license lapse. Mr. Tran stated that they had satisfied the penalties on each of the violations and requested that the surety bond in the form of the irrevocable letter of credit not be forfeited, or in the alternative, only a portion of it be forfeited.

C. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted in favor of TABC by license and permit holders to encourage compliance with provisions of the Code and Rules. Respondent, by its own admissions, committed three violations of the Code and Rules since 1995.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Staff's evidence shows that Respondent posted a conduct surety bond in favor of the TABC, as was required. This bond has continued to be posted by Respondent and, to date, is still in effect in favor of TABC. Respondent was finally adjudicated of three or more violations of the Code or Rules between August 9, 2001 and June 9, 2005, 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.

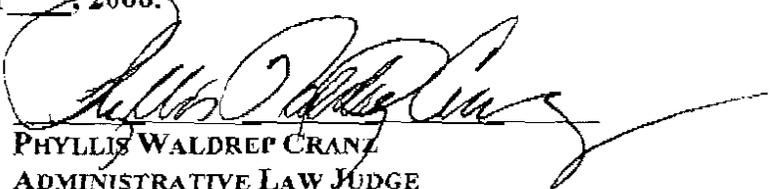
III. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent, Hong Kong Buffet Club, a Private Club Registration Permit, N-413554, and a Beverage Cartage Permit, PE-413555.
2. Respondent posted a conduct surety bond in the form of an irrevocable letter of credit. The Irrevocable Letter of Credit, no. (1) 1145, was issued on September 23, 2003 from the First International Bank, 3306 West Walnut, Garland, Texas, and expires on March 10, 2007 or is released or discharged by the Texas Alcoholic Beverage Commission. The Bond is executed by Respondent's representative, Tuan Tran, 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 August 2, 2001 and May 31, 2005.
4. On June 9, 2005, the TABC issued its Waiver Order in TABC Docket no. 615678 styled *In re Hong Kong Buffet Club*. The Waiver Order found that Respondent was responsible for the violation of Operating an Open Saloon and with criminal negligence, sold, served or delivered an alcoholic beverage to a minor on the licensed premises
5. On August 9, 2001, the TABC issued its Waiver Order in TABC Docket No. 595566, styled *In re Hong Kong Buffet Club*. The Waiver Order found that Respondent was responsible for the violation of Operating an Open Saloon on June 21, 2001.
6. Respondent has committed three or more violations of the Code or Rules since September 1, 1995.
7. On December 30, 2005, 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.
8. On May 31, 2006, 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 included a short, plain statement of the matters asserted.
9. On July 13, 2006, the hearing was convened by Phyllis Crazz, Administrative Law Judge, at the State Office of Administrative Hearings, Fort Worth, Tarrant County, Texas. Both parties appeared and presented evidence. The record closed on July 13, 2006.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11, 11.61, 61.13, and 61.71, and 16 TEX. ADMIN. CODE § 33.24 (2003) (TEX. ALCO. BEV. Comm'n, Conduct Surety Bond).
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, Irrevocable Letter of Credit, no. (1) 1145, should be forfeited. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 and 16 TEX. ADMIN CODE § 33.24(i).

ISSUED the 31st day of JULY, 2006.


PHYLLIS WALDREP CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: Hong Kong Buffet Club d/b/a Hong Kong Buffet Club
DOCKET NUMBER: 458-06-2403
AGENCY CASE NO: 524597

Diane Brown
Staff Attorney
Texas Alcoholic Beverage Commission
Fax: 214/819-9676
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AGENCY COUNSEL
BY FAX

Hong Kong Buffet Club
d/b/a Hong Kong Buffet Club
2825 Old Denton Road # 552
Carrollton, Texas 75006-5114

RESPONDENT
BY MAIL

as of June 1, 2006

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 31, 2006

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 458-06-2403; Texas Alcoholic Beverage Commission vs Hong Kong Buffet Club
d/b/a Hong Kong Buffet Club (TABC Case No. 524597)

Dear Mr. Steen:

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 Diane Brown, attorney for Texas Alcoholic Beverage Commission, and to Hong Kong Buffett Club d/b/a Hong Kong Buffet Club, Respondent. The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Hong Kong Buffet Club (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 (the Code) or rules promulgated by the TABC (the Rules). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

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, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Phyllis Cranz", written over a horizontal line.

Phyllis Cranz
Administrative Law Judge

PC/dd

cc: Hong Kong Buffet Club d/b/a Hong Kong Buffett Club, 2825 Old Denton Road # 552, Carrollton, Texas 75006-5114