

DOCKET NO. 524598

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
A. K. M. INC. D/B/A GIGIS PERMIT/LICENSE NO(s). MB243203 LB243204	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-06-2500)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 4th day of December 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie McLarty and then reassigned to Administrative Law Judge Timothy J. Horan. The hearing convened on 8th day of September, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 6, 2006. 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** is hereby **FORFEITED**.

This Order will become final and enforceable on December 27, 2006, unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this the 4th day of December 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

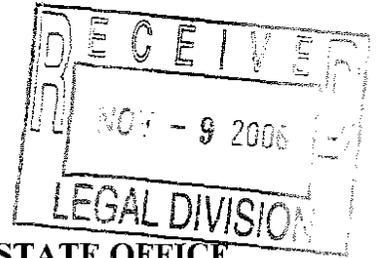
Paul Decuir Jr.
ATTORNEY FOR RESPONDENT
PO BOX 9687
Houston, TX 77213
VIA FACSIMILE: (281) 452-9187

A. K. M. Inc.
d/b/a Gigi 's
RESPONDENT
11150 N.W. Fwy
Houston, TX 77092
CERTIFIED MAIL NO. 7003 0500 0003 1524 4121

Lindy B. Hendricks
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

SOAH DOCKET NO. 458-06-2500



TEXAS ALCOHOLIC BEVERAGE
COMMISSION

Petitioner

V.

A. K. M. INC.

D/B/A GIGI'S

TABC CASE NO. 524598

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) initiated this action against A. K. M. Inc. d/b/a Gigi's (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, in violation of § 11.11, of the Code and 16 TEX. ADMIN. CODE (Rules) § 33.24. The undersigned Administrative Law Judge (ALJ) concludes that the Commission's allegations are true and agrees with the Commission's recommended penalty.

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 September 8, 2006, a public hearing was held before Carrie McLarty, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 2020 North Loop West, Suite # 111, Houston, Texas. The Commission appeared through its attorney, Lindy Hendricks. Respondent was represented by attorney of record Paul Decuir, Jr. Evidence and argument were heard, and the record closed the same day. After the hearing, the case was reassigned to ALJ Timothy Horan, who

reviewed the record in the case, including the tape of the proceedings and the exhibits admitted into evidence, and who issues this Proposal For Decision.

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 April 13, 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 August 20, 2004, the Respondent had committed two violations of the Code : "Soliciting an A/B By Lic/Perm/Employee" and "Place or Manner Prostitution." On September 16, 2004 the Respondent committed a third violation of the Code: "Soliciting An A/B By Lic/Perm/Employee." In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. This agreement became final and enforceable by the order signed by the Commission Administrator on April 19, 2005, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing."

There was no evidence that the Respondent appealed the Commission's orders. Therefore, based on the foregoing, the Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. The Respondent is the holder of Mixed Beverage Permit MB-243203 and Mixed Beverage Late Hours Permit LB-243204 issued to A K M Inc. d/b/a Gigi's, 11150 NW Freeway, Houston, Harris County, Texas, issued by the Commission, on April 6, 1994. The permits have been continuously renewed.
2. On March 9, 2004, the Respondent executed a conduct surety bond for the A K M Inc. d/b/a Gigi's in the amount of \$5000.00.
3. On April 13, 2005, the Respondent signed an "Agreement and Waiver of Hearing" in which the Respondent waived its right to a hearing to contest the Commission's assertion that on August 20, 2004, the Respondent committed two violations of the Code: "Soliciting An A/B By Lic/Perm/Employee" and "Place or Manner Prostitution." On September 16, 2004 the Respondent committed a third violation of the Code "Soliciting An A/B By Lic/Perm/Employee." In the waiver agreement, the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of the April 13, 2005, waiver agreement, the Commission Administrator entered an order on April 19, 2005, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing,"
4. The Respondent has committed three violations of the Code since September 1, 1995.
5. The Respondent did not appeal the Commission's orders of April 19, 2005.
6. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on June 9, 2006.
7. This 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.
8. The hearing on the merits convened on September 8, 2006, in the SOAH offices at 2020 North Loop West, Suite # 111, Houston, Texas. The Commission appeared by its attorney, Lindy Hendricks. The Respondent was represented attorney of record, Paul Decuir. ALJ Carrie McLarty presided. Evidence and argument were heard and the record closed on the same date.

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 November 6, 2006.



**TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings

LT +
Bred 7



Shelia Bailey Taylor
Chief Administrative Law Judge



November 6, 2006

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

VIA REGULAR MAIL

**RE: Docket No. 458-06-2500; Texas Alcoholic Beverage Commission vs. A.K.M. Inc.,
D/B/A GIGI'S**

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Horan".

Timothy J. Horan
Administrative Law Judge

TJH/jh
Enclosure

xc: Lindy Hendricks, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, #600, Houston, TX 77008- **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Paul Decuir, Jr. Attorney at Law, P.O. Box 9687, Houston, Texas 77213 -**VIA REGULAR MAIL**