

**SOAH DOCKET NO. 458-06-2499**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>MARTINA JOSEPHINE DEIBLER</b>	§	
<b>D/B/A HILDEN</b>	§	
<b>TABC CASE NO. 532878</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (Staff) initiated this action against Martina Josephine Deibler d/b/a Hilden ( 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 June 23, 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, Martina Josephine Deibler appeared and represented herself. 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 June 5, 2003, 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 May 17, 2003, the Respondent had committed a violation of the Code: "Employee Permitting Minor to Possess/Consume Alcoholic Beverage." 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 June 11, 2003, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing."

According to the Commission's Exhibit No. 1, on March 29, 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 February 17, 2005, the Respondent had

committed one violation of the Code: “Purchase Alcoholic Beverages from Another Retailer for Resale.” In this waiver 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 this waiver agreement, the Commission Administrator entered an order on April 4, 2005, finding that the Respondent violated the section of the Code as stated in the “Agreement and Waiver of Hearing,” and imposing the penalty reflected in that agreement.

Commission’s Exhibit No. 1 further shows that on January 9, 2006, 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 December 16, 2005, the Respondent had committed another violation of the Code: “Permit Consumption During Prohibited Hours By Permittee.” In this waiver 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 this waiver agreement, the Commission Administrator entered an order on January 18, 2006, finding that the Respondent violated the section of the Code as stated in the “Agreement and Waiver of Hearing,” and imposing the penalty reflected in that agreement.

Respondent briefly testified that she was not present at the establishment during one of the past violations and she thought one of the TABC agents had received numerous complaints.

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 Wine and Beer Retailer’s Permit BG-534995 and Retail Dealer’s On Premise Late Hours License BL-534996 issued to Martina Josephine Deibler, d/b/a Hilden, 4416 Red Bluff, Pasadena, Harris County, Texas, issued by the Commission, on April 30, 2003. The permits have been continuously renewed.

2. On March 30, 2004, the Respondent executed a conduct surety bond for the Martina Josephine Deibler d/b/a Hilden in the amount of \$5000.00.
3. On June 5, 2003, 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 May 17, 2003, the Respondent committed a violation of the Code: "Employee Permitting Minor to Possess/Consume Alcoholic Beverage." 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 June 5, 2003, waiver agreement, the Commission Administrator entered an order on June 11, 2003, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing,"
4. On March 29, 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 February 17, 2005, the Respondent committed one violation of the Code: "Purchase Alcoholic Beverages From Another Retailer for Resale." 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 March 29, 2005 waiver agreement, the Commission Administrator entered an order on April 4, 2005, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing,"
5. On January 9, 2006, 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 December 16, 2005, the Respondent committed one violation of the Code: "Permit Consumption During Prohibited Hours By Permittee." 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 January 9, 2006 waiver agreement, the Commission Administrator entered an order on January 18, 2006, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing,"
6. The Respondent has committed three violations of the Code since September 1, 1995.
7. The Respondent did not appeal the Commission's orders of June 11, 2003, April 4, 2005, and January 18, 2006.
8. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on June 9, 2006.
9. 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.

10. The hearing on the merits convened on June 23, 2006, in the SOAH offices at 2020 North Loop West, Suite # 111, Houston, Texas. The Commission appeared by its attorney, Lindy Hendricks. The Respondent appeared and represented herself. 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 August 17, 2006.**

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