

DOCKET NO. 543846

IN RE JUANITA R. ALVAREZ	§	BEFORE THE TEXAS
D/B/A JOE'S PLACE	§	
PERMIT/LICENSE NO(s). BG614954, BL	§	
	§	ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-07-0456)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of March 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica Najera. The hearing convened on December 18, 2006 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 February 14, 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 in the amount be **FORFEITED**.

This Order will become final and enforceable on April 5, 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 13th day of March 2007, at Austin, Texas.

On Behalf of the Administrator,



Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

SKP/aa

The Honorable Veronica Najera
Administrative Law Judge
State Office of Administrative Hearings
401 E. Franklin Avenue, Suite 580
El Paso, Texas 79901
VIA FACSIMILE: (915) 834-5657

Juanita R. Alvarez
d/b/a Joe's Place
RESPONDENT
220 N Judkins Dr
Odessa, TX 79764
VIA U.S. FIRST-CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Section

El Paso District Office

Regional Office, located at the State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas, on December 18, 2006. Petitioner was represented at the hearing by Sandra K. Patton, a TABC Staff Attorney. Respondent appeared *pro se*. During the hearing, Petitioner offered evidence to support the forfeiture of Respondent's surety bond. The hearing concluded and the record closed on that same day.

II. DISCUSSION

A. Background

On November 29, 2005, the Texas Alcoholic Beverage Commission issued to Respondent a Wine and Beer Retailer's permit and a Retail Dealer's On-Premise Late Hours license, both under the number BG-614954.²

On July 11, 2006, Petitioner issued a waiver order against Respondent for two violations of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 16 days, or in lieu of the suspension, a civil penalty in the amount of \$2,400.00.³

On March 14, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 10 days, or in lieu of the suspension, a civil penalty in the amount of \$1,500.00.⁴

The aforementioned orders constituted final adjudication of the three violations.

² See TABC Exhibit No. 1.

³ See TABC Exhibit No. 1 at page 11, Order, docket no. 535020; and at page 12, Agreement and Waiver of Hearing dated June 30, 2006.

⁴ See TABC Exhibit No. 1 at page 13, Order, docket no. 521835; and at page 14, Agreement and Waiver of Hearing dated March 7, 2006.

B. Legal Standards

Respondent was required to file with the Commission a surety bond in the amount of \$5,000.00.⁵ When a licensee or permittee has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.⁶ In this case, three violations were committed, and waiver orders were issued on each violation. The applicable statutory provision states that 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 the Code.⁷

C. Recommendation

Because Petitioner proved by a preponderance of the evidence that all requirements for forfeiture of Respondent's conduct surety bond have been met, the ALJ recommends Respondent's conduct surety bond be forfeited.

III. FINDINGS OF FACT

1. Juanita R. Alvarez d/b/a Joe's Place (Respondent) holds a Wine and Beer Retailer's permit and a Retail Dealer's On-Premise Late Hours license, under number BG-614954, for the premises located at 321 S. Grant, Odessa, Ector County, Texas.
2. Respondent has posted a Conduct Surety Bond, numbered XTL07661, executed on November 8, 2005, in the amount of \$5,000.00.
3. Petitioner notified Respondent that it intended to seek forfeiture of Respondent's conduct

⁵ TEX. ALCO. BEV. CODE ANN. § 11.11(a)(1). See TABC Exhibit No. 1, Respondent's Surety Bond No. XTL07661.

⁶ 16 TEX. ADMIN. CODE ANN. § 33.24(j) [Conduct Surety Bond: Forfeiture of the Bond].

⁷ TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2).

surety bond based on Petitioner's final adjudication of Respondent's violations of the Texas Alcoholic Beverage Code.

4. On October 24, 2006, TABC issued a Notice of Hearing to Respondent at her mailing address of record reflected on Respondent's permit and license applications.
5. The Notice of Hearing contained a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a statement of the matters asserted.
6. On December 18, 2006, a hearing was convened at the SOAH El Paso Regional Office, located at the State Office Building, 401 East Franklin Avenue, Suite 580, El Paso, Texas.
7. Petitioner was represented at the hearing by Sandra K. Patton, a TABC Staff Attorney. Respondent appeared *pro se*.
8. On July 11, 2006, Petitioner issued a waiver order against Respondent for two violations of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 16 days, or in lieu of the suspension, a civil penalty in the amount of \$2,400.00.
9. On March 14, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 10 days, or in lieu of the suspension, a civil penalty in the amount of \$1,500.00.
10. Respondent has had three final adjudications of the Texas Alcoholic Beverage Code since September 1, 1995.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31 and 5.35.
 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. ch. 2003 and TEX. ALCO. BEV. CODE ANN. § 5.43.
 3. Proper and timely notice of hearing was effected on all parties pursuant to 1 TEX. ADMIN. CODE (TAC) §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
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4. Based on the Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met pursuant to TEX. ALCO. BEV. CODE §11.11(b)(2) and TA C §33.24(j).
5. Respondent's conduct surety bond should be forfeited.

SIGNED February 14, 2007.



**VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

February 14, 2007

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

VIA FACSIMILE NO. 512-206-3350
AND REGULAR MAIL

RE: Docket No. 458-07-0456
Texas Alcoholic Beverage Commission v. Juanita R. Alvarez d/b/a Joe's Place

Dear Ms. Fox:

Please find enclosed the Proposal for Decision on the above referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "Veronica S. Najera".

Veronica S. Najera
Administrative Law Judge
State Office of Administrative Hearings
El Paso Regional Office

VSN/cr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA Docket Change Form**

Sandra K. Patton, Attorney, TABC Legal Division-**VIA Facsimile No. 713-426-7965**

Juanita R. Alvarez d/b/a Joe's Place, 220 N. Judkins Drive, Odessa, Texas 79764 - **VIA Regula Mail**