

DOCKET NO. 565095

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
ON THE BREAK INC. D/B/A ON THE BREAK INC. PERMIT/LICENSE NO(s). MB572158 BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-07-3972)	§	ALCOHOLIC
	§	
	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this day, in the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sarah Ramos. The hearing convened on 19th day of September 2007 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 22nd day of October 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, which 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.

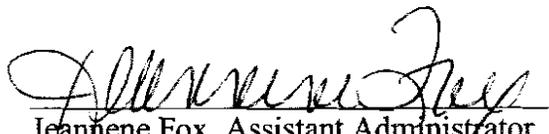
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your Conduct Surety Bond in the amount of **\$5,000.00** is hereby **FORFEITED**.

This Order will become final and enforceable on December 6, 2007, 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 November 12, 2007, at Austin, Texas.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CGG\bc

The Honorable Sarah G. Ramos
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

John A. Gonzales
ON THE BREAK INC.
RESPONDENT
d/b/a ON THE BREAK INC.
4515 BLANCO RD
SAN ANTONIO, TX 78213

Christopher G. Gee
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division

SOAH DOCKET NO. 458-07-3972

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	
	§	OF
ON THE BREAK, INC.	§	
D/B/A ON THE BREAK, INC.	§	
PERMIT NO. MB572158	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 565095)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission brought this forfeiture action against On the Break, Inc. (Respondent), alleging that Respondent's conduct surety bond should be forfeited because Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) or the Commission's rules since September 1, 1995. Based on the evidence, the Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction are discussed only in the findings of fact and conclusions of law. The hearing convened September 19, 2007, at the State Office of Administrative Hearings, 10300 Heritage Boulevard, Suite 250, San Antonio, Texas. Staff attorney Christopher Gee represented Staff, and Respondent's president, John A. Gonzales, represented Respondent. The record closed at the conclusion of the hearing.

II. DISCUSSION

The Commission may seek a bond's forfeiture when a license or permit has been canceled, or when there has been a final adjudication that the permittee has committed three violations of the

Code since September 1, 1995.¹ Staff introduced Commission Orders that have been entered against Respondent for Code violations. These included one violation for the sale of alcohol to a minor and two violations for issuing checks to pay for beer that were later dishonored.

Respondent testified that he has changed his method of paying for beer. He now pays only with a money order. He also said the employee who sold the alcoholic beverage to the minor was seller-server certified. Further, a minor sting operation has been conducted at the premises, and no violations were found. Thus, Respondent concluded, he has improved his business practices, and for this reason, he asked to be given another chance before his conduct surety bond is revoked.

III. ANALYSIS

The evidence established that Respondent has been finally adjudicated of three violations of the Code since September 1, 1995. Based on 16 TEX. ADMIN. CODE § 33.24 (j), forfeiture of the conduct surety bond is the appropriate penalty for this violation. There is no basis to allow additional opportunities to retain the bond. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

IV. FINDINGS OF FACT

1. On the Break, Inc., (Respondent) holds Mixed Beverage Permit and Mixed Beverage Late Hour Permit No. 572158 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 4515 Blanco Road, San Antonio, Bexar County, Texas 78213.
2. On August 28, 2007, the Commission's Staff sent a notice of hearing regarding forfeiture of Respondent's conduct surety bond to Respondent's address of record, and Respondent received the notice on September 4, 2007.
3. The notice of hearing included the date, time, and place of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

¹ 16 TEX. ADMIN. CODE (TAC) § 33.24(j).

4. The hearing regarding Staff's allegations convened September 19, 2007, at the State Office of Administrative Hearings, 10300 Heritage Boulevard, Suite 250, San Antonio, Texas. Staff attorney Christopher Gee represented Staff, and Respondent's president, John A. Gonzales, represented Respondent. The record closed at the conclusion of the hearing.
5. On December 22, 2004, Respondent executed a conduct surety bond in the amount of \$5,000, payable to the state if Respondent violated a law relating to alcoholic beverages or a Texas Alcoholic Beverage Commission rule.
6. On May 31, 2005, Respondent signed an Agreement and Waiver of Hearing regarding a sale of an alcoholic beverage to a minor, a violation of the Texas Alcoholic Beverage Code (Code), which occurred on May 6, 2005.
7. The violation was adjudicated against Respondent by Commission Order, dated June 16, 2005, in TABC Docket No. 495089.
8. On April 12, 2006, Respondent signed an Agreement and Waiver of Hearing regarding a cash law violation of the Code, which occurred on January 23, 2006.
9. The violation was adjudicated against Respondent by Commission Order, dated April 25, 2006, in TABC Docket No. 529655.
10. On April 3, 2007, Respondent signed an Agreement and Waiver of Hearing regarding a cash law violation of the Code, which occurred on February 14, 2007.
11. The violation was adjudicated against Respondent by Commission Order, dated April 10, 2007, in TABC Docket No. 562254.
12. The three agreements and waivers of hearing that Respondent signed included the statement, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11, and 16 TEX. ADMIN. CODE (TAC) § 33.24.
 2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
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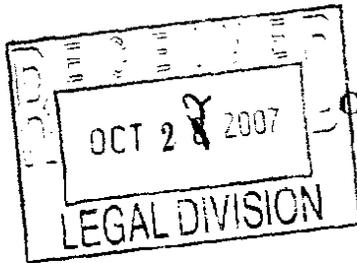
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent has committed at least three violations of the Code since September 1, 1995.
5. Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 TAC § 33.24(j).

SIGNED October 22, 2007.



**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 22, 2007

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

HAND DELIVERY

RE: Docket No. 458-07-3972; Texas Alcoholic Beverage Commission v. On the Break, Inc. d/b/a On the Break, Inc. Permit No. MB572158 Bexar County, Texas (TABC Case No. 565095)

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 cursive script that reads "Sarah G. Ramos".

Sarah G. Ramos
Administrative Law Judge

SGR/ed
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Christopher Gee, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA HAND DELIVERY
John A. Gonzales, On the Break, Inc., 4515 Blanco Road, San Antonio, TX 78213 -**VIA REGULAR MAIL**