

DOCKET NO. 573250

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS	§	
	§	
CHEER'S RESTAURANT AND TAVERN D/B/A CHEER'S RESTAURANT AND TAVERN PERMIT/LICENSE NO(s). N148903, PE148909	§	ALCOHOLIC
	§	
	§	
GRAYSON COUNTY, TEXAS (SOAH DOCKET NO. 458-08-3523)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 10th day of October 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on July 15, 2008 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 September 11, 2008. 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.

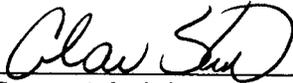
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 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 of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on November 3, 2008 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 10th day of October,
2008, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE TO: (214) 956-8611

Cheer's Restaurant and Tavern
d/b/a Cheer's Restaurant and Tavern
RESPONDENT
P.O. Box 1464
Sherman, TX 75091
VIA FIRST CLASS MAIL

Cheer's Restaurant and Tavern
d/b/a Cheer's Restaurant and Tavern
RESPONDENT
2105 Texoma Parkway
Sherman, Texas 75090
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Services Division

Enforcement Services Division

SKP/aa

STATE OFFICE OF ADMINISTRATIVE HEARINGS**DALLAS OFFICE**

6333 Forest Park Road Suite 150a

Dallas, Texas 75235

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DATE: 09/11/2008
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 08
REGARDING: PROPOSAL FOR DECISION
DOCKET NUMBER: 458-08-3523

JUDGE JERRY VAN HAMMEFAX TO:FAX TO:

**SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)**

(713) 426-7965

Cheer's Restaurant and Tavern

VIA REGULAR MAIL

**ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)**

(512) 206-3350

Lou Bright Director of Legal Services (Alcoholic Beverage
Commission, Texas)

(512) 206-3498

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(lda) (214) 956-8616

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 11, 2008

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

VIA FACSIMILE 512/206-3203

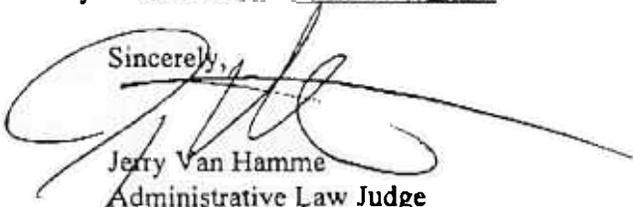
RE: Docket No. 458-08-3523 Texas Alcoholic Beverage Commission V. Cheer's Restaurant & Tavern

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,


Jerry Van Hamme
Administrative Law Judge

JVH/lan
Enclosure

xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**
Cheer's Restaurant & Tavern, **VIA REGULAR MAIL Post Office Box 1464 Sherman, Texas 75091**

SOAH DOCKET NO. 458-08-3523

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	
CHEER'S RESTAURANT & TAVERN,	§	
D/B/A CHEER'S RESTAURANT &	§	OF
TAVERN,	§	
Respondent	§	
	§	
GRAYSON COUNTY, TEXAS	§	
(TABC CASE NO. 573250)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) brought this forfeiture action against Cheer's Restaurant & Tavern, d/b/a Cheer's Restaurant & Tavern (Respondent). Staff sought forfeiture of Respondent's conduct surety bond alleging that since September 1, 1995, Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) that have been finally adjudicated. The Administrative Law Judge (ALJ) recommends that the conduct surety bond be forfeited.

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.

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On July 15, 2008, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Sandra K. Patton, attorney. Respondent appeared *pro se*. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE § 33.24(j), which provides that the Commission may seek forfeiture when a license or permit has been canceled or when there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

III. EVIDENCE

A. Staff's Evidence and Contentions

On January 24, 1983, Respondent was issued a Private Club Registration and Beverage Cartage Permit, N-148903, for premises located at 2105 Texoma Parkway, Sherman, Grayson County, Texas. On June 19, 2007, Respondent provided a \$5,000.00 conduct surety bond.

On August 20, 2007, Respondent signed a Settlement Agreement and Waiver of Hearing wherein Respondent agreed to pay a civil penalty of \$4,500.00 or have its permit suspended for 30 days for allowing an unauthorized person to use or display Respondent's permit to conduct business in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61(b)(2), and 109.53. Respondent agreed to waive its right to a hearing and acknowledged that signing the waiver "may result in the forfeiture of [Respondent's] conduct surety bond." The Settlement Agreement and Waiver of Hearing was adjudicated and became final and enforceable by Waiver Order dated August 22, 2007, Docket No. 544574, which found that "Respondent violated ... §§ 11.05, 11.61(b)(2), and 109.53 of the Texas Alcoholic Beverage Code."

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On October 24, 2007, Respondent signed a Settlement Agreement and Waiver of Hearing for a "cash law" violation of TEX. ALCO. BEV. CODE ANN. §§ 28.12, 61.73, and 102.31 and for purchasing replacement alcoholic beverages from other than the replacement account in violation of TEX. ALCO. BEV. CODE ANN. § 32.06(b)(3). Respondent agreed to waive its right to a hearing and acknowledged that signing the waiver "may result in the forfeiture of any conduct surety bond." The Settlement Agreement and Waiver of Hearing was adjudicated and became final and enforceable by Waiver Order dated November 7, 2007, Docket No. 569778, which found "that Respondent violated those sections of the Texas Alcoholic Beverage Code stated in the Agreement and Waiver of Hearing.

B. Respondent's Evidence

Leo James Forde, Jr., president of Cheer's Restaurant and Tavern, testified that he signed the two Settlement Agreement and Waiver of Hearing documents but that they were not correct. Although he signed them, he said he did not understand what he was signing when he did so.

IV. ANALYSIS

As the holder of an alcoholic beverage permit, Respondent was required to provide a conduct surety bond in the amount of \$5,000.00, payable to the Commission. TEX. ALCO. BEV. CODE ANN. § 11.11. The Commission may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995. 16 TEX. ADMIN. CODE § 33.24(j).

Staff provided evidence that Respondent violated the Code at least three times since September 1, 1995. Respondent signed two separate Settlement Agreement and Waiver of Hearing documents on two separate occasions regarding three violations which occurred after September 1, 2005. The documents stated that Respondent's conduct surety bond may be forfeited as a result. These statements put Respondent on notice that Staff might seek forfeiture of Respondent's conduct

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surety bond.

Final orders regarding these violations were issued by the Commission, resulting in the violations being adjudicated. "Any agency process that results in a final disposition is necessarily an adjudication." See Sierra Club v. Peterson, 185 F. 3d 349 (5th Cir. 1999).

V. RECOMMENDATION

The evidence on the record is sufficient to establish that Respondent has been finally adjudicated of three violations of the Code since September 1, 1995. Forfeiture of the conduct surety bond is the penalty for this violation. 16 TEX. ADMIN. CODE § 33.24 (j). Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

VI. FINDINGS OF FACT

- 1 On January 24, 1983, Respondent was issued a Private Club Registration Permit and Beverage Cartage Permit, N-148903, for premises located at 2105 Texoma Parkway, Sherman, Grayson County, Texas.
- 2 On June 19, 2007, Respondent posted a \$5,000.00 conduct surety bond.
- 3 On August 20, 2007, Respondent signed a Settlement Agreement and Waiver of Hearing wherein Respondent agreed that its permit would be suspended for 30 days or that Respondent would pay a civil penalty of \$4,500.00 for allowing an unauthorized person to use or display Respondent's permit to conduct business in violation of TEX. ALCO. BEV. CODE ANN. §§ 11.05, 11.61(b)(2), and 109.53.
- 4 The adjudicated Settlement Agreement and Waiver of Hearing became final and enforceable by Waiver Order dated August 22, 2007, Docket No. 544574, which found "that Respondent violated ... §§ 11.05, 11.61(b)(2), and 109.53 of the Texas Alcoholic Beverage Code."

On October 24, 2007, Respondent signed a Settlement Agreement and Waiver of Hearing for a "cash law" violation of TEX. ALCO. BEV. CODE ANN. §§ 28.12, 61.73, and 102.31; and for purchasing replacement alcoholic beverages from other than the replacement account in violation of TEX. ALCO. BEV. CODE ANN. § 32.06(b)(3).