

DOCKET NO. 458-09-1262

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| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION, Petitioner | § | |
| | § | |
| VS. | § | |
| | § | OF |
| AMERICAN MANAGEMENT GROUP | § | |
| ACQUISITIONS INC. | § | |
| d/b/a MEDUSA LOUNGE | § | |
| BEXAR COUNTY, TEXAS | § | |
| (TABC CASE NO. 579709) | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) brought this action seeking forfeiture of the conduct surety bond of American Management Group d/b/a Medusa Lounge (Respondent) Mixed Beverage Permit and Mixed Beverage Late Hours Permit following final adjudication of three violations by Respondent. The Administrative Law Judge (ALJ) recommends that the conduct surety bond be forfeited.

I. JURISDICTION AND NOTICE

Jurisdiction and notice were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

II. PROCEDURAL HISTORY

On July 22, 2008, Petitioner notified Respondent by letter that Respondent had three or more violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995, under permit MB-573323, and that in accordance with 16 TEX. ADMIN. CODE (TAC) 33.24(j), Petitioner sought forfeiture of the full amount of Respondent’s surety bond.

Respondent then notified Petitioner of its request for a due process hearing.

On March 12, 2009, Petitioner sent Respondent a Notice of Hearing (NOH) by certified mail, return receipt requested. The signed receipt was introduced as part of Exhibit 1.

On May 15, 2009, a hearing convened before ALJ George R. Lambright of the State Office of Administrative Hearings (SOAH), 10300 Heritage, Suite 250, San Antonio, Texas 78216. The Petitioner was represented by Emily Helm, Staff Attorney. Respondent appeared *Pro Se*. After presenting evidence, Petitioner moved Respondent's bond be forfeited. Although not contesting the evidence, Respondent asked that his bond not be forfeited. The record was closed the same date after the receipt of sufficient evidence to establish jurisdiction, notice, and resolve the issues as set forth in the findings of fact and conclusions of law.

III. LEGAL STANDARDS AND APPLICABLE LAW

The Code § 11.11 and 16 TAC § 33.24 require the holder of a mixed beverage permit to obtain a bond. 16 TAC § 62.13 (b) states the holder of the permit agrees the amount of the bond will be paid to the state if the permit holder violates a Code provision.

Petitioner had the burden of proof and must prove their case by a preponderance of the evidence.

II. DISCUSSION

Respondent does not contest Petitioner's evidence.

Petitioner's evidence clearly demonstrates that Respondent has three or more adjudicated violations of the Code. On October 26, 2006, in cause number 553790, Respondent was adjudicated as having violated the cash law provision of the Code. On January 11, 2007, in cause number

561982, Respondent was adjudicated as having violated the cash law provision of the Code. On June 28, 2007, in cause number 567908, Respondent was adjudicated as having violated the cash law provision of the Code. On February 1, 2008, in cause number 576209, Respondent was adjudicated had having permitted a minor to possess or consume an alcoholic beverage.

III. FINDINGS OF FACT

1. Respondent holds a Mixed Beverage Permit and Mixed Beverage Late Hours Permit MB573323 issued by the Texas Alcoholic Beverage Commission (Petitioner).
2. On July 22, 2008, Petitioner sent a Notice of Hearing (NOH) to Respondent by certified mail to the last known address, alleging that because of the violations referenced in Finding of Fact No. 2, Respondent was subject to forfeiture of the full amount of his conduct surety bond.
3. The NOH was as evidenced by the signature on the returned green card.
4. The NOH notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and the matters asserted.
5. On May 15, 2009, a hearing convened before ALJ George R. Lambright at 10300 Heritage, Suite 250, San Antonio, Texas 78216.
6. On October 26, 2006, in cause number 553790, Respondent was adjudicated in violation of the cash law provision of the TEX. ALCO. BEV. CODE ANN. (Code).
7. On January 11, 2007, in cause number 561982, Respondent was adjudicated in violation of the cash law provision of the Code.
8. On June 28, 2007, in cause number 567908, Respondent was adjudicated in violation of the cash law provision of the Code.
9. On February 1, 2008, in cause number 576209, Respondent was adjudicated had having permitted a minor to possess or consume an alcoholic beverage in violation of the Code.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter

pursuant to Subchapter B of Chapter 5 and § 61.71 of the Code.

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. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.
4. Based on the foregoing Findings and Conclusions and in compliance with the Code § 11.11 (Vernon 1995 and Vernon Supp. 1998), the Respondent's conduct surety bond should be forfeited.

Signed on May 19, 2009.



GEORGE R. LAMBRIGHT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS