

**DOCKET NO. 580600**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
HENRY LOYD GRAY D/B/A HENRY'S PERMIT/LICENSE NO(s). BG643367, BL	§	ALCOHOLIC
	§	
GREGG COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2523)	§	BEVERAGE COMMISSION
	§	

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 8th day of June, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on March 9, 2009 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 May 8, 2009. 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 July 2, 2009, 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 8th day of June 2009, at  
Austin, Texas.



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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 (214) 956-8611*

Henry Loyd Gray  
d/b/a Henry's  
**RESPONDENT**  
803 Rose Lane  
Longview, Texas 75604  
*VIA REGULAR MAIL*

Shelia A. Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

SAL/aa

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DALLAS OFFICE**  
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DATE: 05/08/2009  
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 09  
REGARDING: PROPOSAL FOR DECISION  
DOCKET NUMBER: 458-09-2523

JUDGE BRENDA S COLEMAN

FAX TO:

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SHELIA A. LINDSEY (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(713) 426-7965

HENRY LOYD GRAY

VIA REGULAR MAIL

LOU BRIGHT (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(512) 206-3350

**NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT SANDRA PERRY(spe) (214) 956-8616**

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# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 8, 2009

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

VIA FACSIMILE 512/206-3203

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
HENRY LOYD GRAY d/b/a HENRY'S  
SOAH DOCKET NO. 458-09-2523**

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 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

*Brenda Coleman*  
Brenda Coleman  
Administrative Law Judge

BC/slp  
Enclosure

Xc: Shelia A Lindsey, 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  
Henry L. Gray, VIA REGULAR MAIL, 3124 Estes Parkway, Longview, TX 75602

**SOAH DOCKET NO. 458-09-2523**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	<b>OF</b>
<b>V.</b>	§	
	§	
<b>HENRY LOYD GRAY D/B/A HENRY'S,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC; Commission; or Petitioner) brought this forfeiture action against Henry Loyd Gray d/b/a Henry's (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging that Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (the Code) or Commission's rules (the Rules) since September 1, 1995. Petitioner also alleged that the violations have been finally adjudicated. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

On March 9, 2009, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Staff was represented at the hearing by Shelia Lindsey, TABC Staff Attorney. Respondent's owner, Henry Loyd Gray, appeared on behalf of Respondent. Evidence and argument were presented. The record closed on March 9, 2009.

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## II. DISCUSSION

### A. Applicable Law

Petitioner alleged that (1) Respondent had been issued a permit; (2) Respondent was found to have committed at least three violations of the Code or the Rules since September 1, 1995; (3) the violations have been finally adjudicated; and (4) Respondent has forfeited the full amount of the conduct surety bond.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law or the Rules relating to alcoholic beverages. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked or, after final adjudication that determines the holder violated a provision of the Code.

Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE (TAC) § 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.

### B. Petitioner's Evidence

Petitioner's three exhibits were admitted at the hearing without objection. Exhibit No. 1 included a copy of the permit, violation history, the conduct surety bond, and correspondence. Petitioner issued Wine and Beer Retailer's Permit, BG-643367, which includes the Retail Dealer's On-Premise Late Hours License, to Respondent on October 27, 2006. The permit has been continuously renewed. Respondent's licensed premise is located at 3124 Estes Parkway, Longview, Gregg County, Texas.

On March 12, 2007, Respondent signed an Agreement and Waiver of Hearing regarding two

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cash law violations of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claims that on January 26, 2007, and January 31, 2007, Respondent, its agent, servant, or employee presented for payment three insufficient checks for beer. Respondent also acknowledged that the signing of the waiver "may result in the forfeiture of any related conduct surety bond." The Agreement and Waiver of Hearing became final and enforceable by TABC Order, dated March 20, 2007, in TABC Docket No. 561835, finding that Respondent violated the section of the Code as stated, and imposing the penalty reflected in the Order.

On August 5, 2008, Respondent signed an Agreement and Waiver of Hearing regarding a cash law violation of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claim that on April 25, 2008, Respondent, its agent, servant, or employee presented for payment an insufficient check for beer. Respondent also acknowledged that the signing of the waiver "may result in the forfeiture of any related conduct surety bond." The Agreement and Waiver of Hearing became final and enforceable by TABC Order, dated August 12, 2008, in TABC Docket No. 578417, finding that Respondent violated the section of the Code as stated and imposing the penalty reflected in the Order.

On August 20, 2008, Respondent signed an Agreement and Waiver of Hearing regarding a violation of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claims that on July 18, 2008, a breach of the peace occurred on Respondent's licensed premise. Respondent also acknowledged that the signing of the waiver "may result in the forfeiture of any related conduct surety bond." The Agreement and Waiver of Hearing became final and enforceable by TABC Order, dated September 4, 2008, in TABC Docket No. 579240, finding that Respondent violated the section of the Code as stated, and imposing the penalty reflected in the Order.

### C. Respondent's Evidence

Respondent's owner, Henry Loyd Gray, testified on behalf of Respondent. He acknowledged that the violations are true. He stated that he tries to follow the Rules as best can but he has made

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mistakes. Mr. Gray also said that he has already paid over \$2,600 in fines for the violations, and he would like to avoid bond forfeiture.

### III. 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 Petitioner.<sup>1</sup> Respondent also agreed not to violate the Code or the Rules. Petitioner may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995.<sup>2</sup>

Petitioner provided evidence that Respondent has violated the Code at least three times since September 1, 1995. Respondent entered into an Agreement and Waiver on three separate occasions regarding violations of the Code, all of which occurred after September 1, 2005. Final orders regarding these violations were issued by the Commission.

Respondent argues that he did not realize that the violations would be considered as adjudicated when he signed the agreements. However, each of the orders issued by Commission stated that unless Respondent filed a motion for rehearing, the orders would become final and enforceable. The orders were not appealed and became final, resulting in the violations being adjudicated.

Mr. Gray admitted at the hearing that the violations were true. He also signed the agreements which included the following language, "The signing of this waiver may result in the forfeiture of

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<sup>1</sup> Code § 11.11

<sup>2</sup> 16 TAC § 33.24(j).

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any related conduct surety bond." This statement put Respondent on notice that there was a possibility that Petitioner would seek forfeiture of the conduct surety bond.

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. According to §33.24 (j) of the Rules, forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

#### IV. FINDINGS OF FACT

The Texas Alcoholic Beverage Commission (TABC; Commission; or Petitioner) issued Wine and Beer Retailer's Permit BG-643367, which includes the Retail Dealer's On-Premise Late Hours License, to Henry Loyd Gray d/b/a Henry's (Respondent) on October 27, 2006.

Respondent's licensed premise is located at 3124 Estes Parkway, Longview, Gregg County, Texas.

3. Respondent has posted a conduct surety bond. The bond is Commission Conduct Surety Bond Number 46BSBET4897, dated September 11, 2007. Respondent, acting through Henry Loyd Gray, executed the bond as principal. Hartford Casualty Insurance Company is the surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.
4. On March 12, 2007, Respondent signed an Agreement and Waiver of Hearing regarding two violations of the Texas Alcoholic Beverage Code (the Code) which occurred on January 26, 2007, and January 31, 2007.
5. The Agreement and Waiver of Hearing included the statement, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."
6. The violations were adjudicated against Respondent by Commission Order, dated March 20, 2007, in TABC Docket No. 561835.
7. The TABC Order included the statement, "This Order will become final and enforceable in 21 days from the date this Order was signed, unless you file a motion for rehearing with the Commission."
8. Respondent did not file a motion for rehearing.
9. On August 5, 2008, Respondent signed an Agreement and Waiver of Hearing regarding a

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violation of the Code which occurred on April 25, 2008.

10. The Agreement and Waiver of Hearing included the statement, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."
11. The violation was adjudicated against Respondent by Commission Order, dated August 12, 2008, in TABC Docket No. 578417.
12. The TABC Order included the statement, "This Order will become final and enforceable in 21 days from the date this Order was signed, unless you file a motion for rehearing with the Commission."
13. Respondent did not file a motion for rehearing.
14. On August 20, 2008, Respondent signed an Agreement and Waiver of Hearing regarding a violation of the Code which occurred on July 18, 2008.
15. The Agreement and Waiver of Hearing included the statement, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."
16. The violations were adjudicated against Respondent by Commission Order, dated September 4, 2008, in TABC Docket No. 579240.
7. The TABC Order included the statement, "This Order will become final and enforceable in 21 days from the date this Order was signed, unless you file a motion for rehearing with the Commission."
18. Respondent did not file a motion for rehearing.
19. Respondent committed at least three violations of the Code or Rules since September 1, 1995.
20. On September 23, 2008, Petitioner notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on the Commission's final adjudication of Respondent's violations of the Code.
21. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
22. On February 18, 2009, Petitioner issued its notice of hearing to Respondent. The U.S. Postal Service attempted delivery of the notice of hearing on February 20, 2009. A notice was left and the Respondent claimed the notice of hearing on March 2, 2009.
23. The notice of hearing contained a statement of the time, place, and nature of the hearing; a

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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 short, plain statement of the matters asserted.

24. The hearing was convened before State Office of Administrative Hearings Administrative Law Judge, Brenda Coleman, on March 9, 2009. Petitioner appeared and was represented by Shelia Lindsey, TABC Staff Attorney. Respondent's owner, Henry Loyd Gray, appeared on behalf of Respondent. The record closed the same day.

#### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11, as well as 16 TEX. ADMIN. CODE (TAC) § 33.24.
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 containing 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 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 Texas Alcoholic Beverage Code since September 1, 1995.
5. The conduct surety bond posted by Respondent should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

SIGNED May 8, 2009.

  
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BRENDA COLEMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS