

**DOCKET NO. 581695**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§ § §	BEFORE THE TEXAS
VS.	§ §	
SHINE MARTINI LOUNGE INC. D/B/A SHINE MARTINI LOUNGE PERMIT/LICENSE NO(s). MB681503, LB	§ § § §	ALCOHOLIC
HIDALGO COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2324)	§ §	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

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

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on April 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 June 4, 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 23, 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 29<sup>th</sup> day of June, 2009, at  
Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

State Office of Administrative Hearings  
**ADMINISTRATIVE LAW JUDGE**  
5155 Flynn Parkway, Suite 200  
Corpus Christi, Texas 78411  
**VIA FACSIMILE: (361) 884-5427**

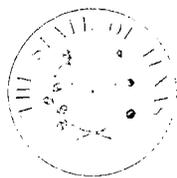
Shine Martini Lounge Inc.  
d/b/a Shine Martini Lounge  
**RESPONDENT**  
100 S 17th St  
McAllen, Texas 78501  
**VIA FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

SKP/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

June 4, 2009

**RECEIVED**

**JUN 08 2009**

**TABC HOUSTON  
LEGAL**

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

VIA REGULAR MAIL

**RE: Docket No. 458-09-2324 / TEXAS ALCOHOLIC BEVERAGE COMMISSION  
vs. SHINE MARTINI LOUNGE INC. d/b/a SHINE MARTINI LOUNGE**

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

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa M. Ricard".

MELISSA M. RICARD  
Administrative Law Judge

MMR/MAR  
Enclosure

xc / SANDRA PATTON, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-

VIA REGULAR MAIL

Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA

REGULAR MAIL

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA

REGULAR MAIL (with exhibits Nos. \_\_\_\_\_ and \_\_\_\_\_ hearing CDs)

Shine Martin Lounge Inc., 100 S. 17<sup>th</sup> Street, McAllen, Tx 78501-VIA REGULAR MAIL

5155 Flynn Parkway, Suite 200 ♦ Corpus Christi, Texas 78411-4139  
(361) 884-5023 Fax (361) 884-5427  
<http://www.soah.state.tx.us>

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

SHINE MARTINI LOUNGE INC.  
d/b/a SHINE MARTINI LOUNGE  
PERMIT NOS. MB681503, LB  
HIDALGO COUNTY, TEXAS  
(TABC CASE NO. 581695)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Shine Martini Lounge Inc. d/b/a Shine Martini Lounge (Respondent). The Respondent had three or more adjudicated violations of the Texas Alcoholic Beverage Code (Code). The TABC requests the Respondent's conduct surety bond be forfeited in accordance with Code § 11.11. The Administrative Law Judge (ALJ) grants this request.

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

The hearing in this matter convened on April 9, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces, County, Texas. The staff of the Commission (Staff) was represented by its counsel, Sandra Patton, by telephone. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 11.11(b)(2) and 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24 provides that the holder of a permit must provide a conduct surety bond with an application for a permit and that the permittee agrees that the amount of the surety bond shall be paid to the state if the permittee has three or more adjudicated violations of the Code since September 1, 1995.

Staff introduced Exhibit A into evidence which is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Permit No. MB-651503 was issued to Shine Martini Lounge, Inc., doing business as Shine Marini Lounge, 100 S. 17<sup>th</sup> Street, McAllen, Hidalgo County, Texas, by the Commission. The mailing address is the same as the business address. Exhibit A further shows that Respondent posted Staff Conduct Surety Bond Number 46BSBEW8701, dated January 10, 2008, in the amount of \$5,000, payable to the State of Texas.

Staff introduced Exhibit B into evidence which is an affidavit of the permit and violation history which shows that more than three violations of the Code have occurred since September 1, 1995.

Staff introduced Exhibit C into evidence which is the US Postal Service Track & Confirm letter showing that the notice of hearing sent to Respondent by certified mail 7006 0810 0000 2143 1342 was unclaimed and returned to the TABC on March 6, 2009. The Notice of Hearing was also sent by regular mail and was not returned to the TABC.

## III. RECOMMENDATION

The notice of hearing, in bold lettering, states: If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default. The notice of hearing contains the following

language in bold face, all caps type: “According to 1 TEXAS ADMINISTRATIVE CODE §155.55, if any party fails to appear at the hearing, any evidence presented and accepted by the court at the hearing will be considered as being true, and the relief sought may be granted by default.”

Because Respondent failed to attend the hearing, the allegations in the Notice of Hearing are deemed true and the conduct surety bond should be forfeited.

#### IV. FINDINGS OF FACT

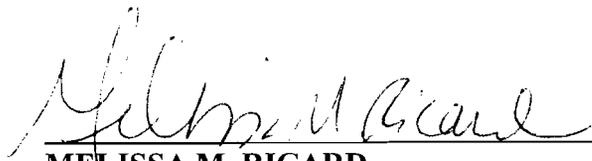
1. Permit No. MB-651503 was issued to Shine Martini Lounge, Inc., doing business as Shine Marini Lounge (Respondent), by the Texas Alcoholic Beverage Commission (TABC).
2. The mailing address of Respondent is 100 S. 17<sup>th</sup> Street, McAllen, Hidalgo County, Texas.
3. Respondent posted Staff Conduct Surety Bond Number 46BSBEW8701, dated January 10, 2008, in the amount of \$5,000, payable to the State of Texas.
4. Respondent’s permit history shows that more than three violations of the Code since have occurred since September 1, 1995.
5. TABC staff sent a notice of hearing regarding its intention to enforce the Texas Alcoholic Beverage Code to the Respondent on February 9, 2009 at its address of record via certified mail. The notice of hearing was returned to sender on March 6, 2009, because it was unclaimed. The notice of hearing was also sent regular mail and not returned to the TABC.
6. The notice of hearing also contained the following language in capital letters in 12-point or larger boldface type:  
  

**If you fail to appear at the hearing, the Commission will proceed without you and the allegation (s) in this notice will be deemed admitted as true, and the relief sought may be granted by default.**
7. The hearing on the merits was held on April 9, 2009, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra Patton by telephone. Respondent did not appear and was not represented at the hearing.
8. The hearing proceeded on a default basis, and the factual allegations were deemed admitted.

**V. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue 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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rule, 1 TEX. ADMIN. CODE (TAC) § 155.55.
5. Based upon the Findings of Fact, TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2), and 16 TAC § 33.24, Staff Conduct Surety Bond Number 46BSBEW8701, dated January 10, 2008, in the amount of \$5,000, should be forfeited.

**SIGNED June 4, 2009.**



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**MELISSA M. RICARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**