

**SOAH DOCKET NO. 458-09-4993**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**V.**

**ZWERN ENTERTAINMENT PARTNERS  
LP D/B/A BLACK & TAN/RUSTY SPURS  
PERMIT NO(s) MB684681, PE & LB & CB  
TRAVIS COUNTY, TEXAS  
(TABC CASE NO. 585236),  
Respondents**

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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) initiated this action seeking forfeiture of the conduct surety bond posted by Zwern Entertainment Partners LP D/B/A Black & Tan/Rusty Spurs (Respondent) because Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (Code). The violations of the Code have been adjudicated. The Respondent made no appearance. The Administrative Law Judge (ALJ) finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

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

The hearing in this matter convened on July 8, 2009 before ALJ Hunter Burkhalter at the offices of the State Office of Administrative Hearings (SOAH) in Austin, Travis County, Texas. The record closed on that same date. The staff of the Commission (Staff) was represented by its counsel, Matthew Clark. Respondent did not appear. The procedural history, notice, and jurisdictional issues are addressed in the findings of fact and conclusions of law without further discussion in the text of this Proposal for Decision.

## II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. § 11.11 provides that a conduct surety bond obtained by a permittee must contain a statement mandating that the amount of the surety bond shall be paid to the state if the permit is revoked or it is found, on final adjudication, that the holder violated a provision of the Code. Commission rule 16 TEX. ADMIN. CODE § 33.24(j) governs forfeiture of a conduct surety bond and provides that the Commission may seek forfeiture of the bond when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

Staff introduced two exhibits into evidence. Exhibit 1 consists of the affidavit of Amy Harrison, TABC Director of the Licensing Division and attached TABC records pertaining to Respondent (the records). The records demonstrate that a Mixed Beverage Permit, MB684681, which includes a Beverage Cartage Permit, Caterer's Permit, and Mixed Beverage Late Hours Permit, was issued to Zwern Entertainment Partners LP, doing business as Black & Tan/Rusty Spurs, 405 E. 7<sup>th</sup> St., Austin, Travis County, Texas, 78701, by the Commission, on the 21st day of February, 2008. The permit has been renewed since its original issuance. The records contain final Orders in Docket Numbers 578943, 579484, and 583350 demonstrating that Respondent has committed three violations under the Code after September 1, 1995. Each Order found that Respondent violated the Code and assessed a penalty. The records demonstrate that Respondent is the holder of a conduct surety bond, bond number MS4877766, issued by Great American Insurance Company. The records demonstrate that, on March 12, 2009, the Commission mailed a notice to Respondent stating that the Commission intended to seek forfeiture of the conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited.

Exhibit 2 is the Notice of Hearing which shows the hearing was scheduled for July 8, 2009 at 1:00. The Notice of Hearing was mailed to Zwern Entertainment Partners, LP, d/b/a Black & Tan/Rusty Spurs, 405 E. 7<sup>th</sup> St., Austin, Tx, 78701 by certified mail 7007 0710 0005 4782 7995 on June 26, 2009.

### III. RECOMMENDATION

Because the Respondent has committed three violations of the Code since September 1, 1995, the Respondent should forfeit the full amount of the conduct surety bond.

### IV. FINDINGS OF FACT

1. Zwern Entertainment Partners LP d/b/a Black & Tan/Rusty Spurs was issued a Mixed Beverage Permit, MB684681, which includes a Beverage Cartage Permit, Caterer's Permit, and Mixed Beverage Late Hours Permit, by TABC for the premises located at 405 E. 7<sup>th</sup> St., Austin, Travis County, Texas 78701.
2. TABC staff sent a Notice of Hearing to Respondent on June 26, 2009, advising that this matter was set for hearing on July 8, 2009.
3. The Notice of Hearing to the Respondent was shown to have been sent to Respondent's last known address, as shown on the referring agency's record, by certified mail.
4. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a 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.
5. The hearing on the merits was held on July 8, 2009 at the offices of the State Office of Administrative Hearings in Austin, Travis County, Texas. 16 TEX. ADMIN. CODE § 33.24(j) Staff was represented by its counsel, Matthew Clark. The Respondent did not appear and was not represented at the hearing. The record closed on that same date.
6. Respondent has had three finally adjudicated violations of the Code since September 1, 1995.

7. The Respondent's conduct surety bond expressly provides that, if the permit holder (Respondent) violates a law of the state relating to alcoholic beverages or a rule of the Commission, then the amount of the bond shall be paid to the state.

#### V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11.
2. SOAH 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. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The condition for forfeiture set forth in the terms and conditions of Respondent's conduct surety bond has been met.
5. The conditions for forfeiture, as set forth in 16 TEX. ADMIN. CODE § 33.24(j), have been met.
6. Based on the above Findings of Fact and Conclusions of Law, the conduct surety bond executed by Respondent should be forfeited to the State.

**SIGNED July 20, 2009.**



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**HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**