

DOCKET NO. 589408

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
SUSANA ARMENDARIZ SALDANA	§	
D/B/A JC'S LOUNGE SPORTSBAR	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB656227, LB & PE	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-2125)	§	BEVERAGE COMMISSION

ORDER

The above-styled and numbered cause is before the Assistant Administrator, Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on the 23rd day of February, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 29th day of March, 2010. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies. No exceptions were filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law made by the Administrative Law Judge.

IT IS THEREFORE ORDERED, that pursuant to rules adopted by the commission found in Title 16, Texas Administrative Code §33.24, your conduct surety bond if FORFEITED to the STATE OF TEXAS.

IT IS FURTHER ORDERED, that service of this Order shall be made to the surety company, bank or savings institution holding the bond, certificate of deposit or letter of credit securing performance of the holder of the permit on the date it becomes final, and the amount of the bond payable to the state be remitted to the commission, not later than 10 days from the date the final order is served.

This Order will become **final and enforceable** on the 7th day of June, 2010, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED this the 13th day of may, 2010, at Austin, Texas.



 Sherry K- Cook, Assistant Administrator
 Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on the 13 day of May, 2010.



Cecelia Brooks, Paralegal
Texas Alcoholic Beverage Commission
Legal Division

Honorable Judge Veronica S. Najera
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
El Paso, Texas
VIA FACSIMILE: (915) 834-5657

Chase Bank
SURETY, BANK OR SAVINGS INSTITUTION
2829 Montana
El Paso, TX 79903
VIA REGULAR MAIL

Susana Armendariz Saldana
RESPONDENT
d/b/a JC'S Lounge Sportsbar
3900 Pershing Dr.
El Paso, TX 79903-1712
VIA REGULAR MAIL

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

El Paso District Office

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 29, 2010

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

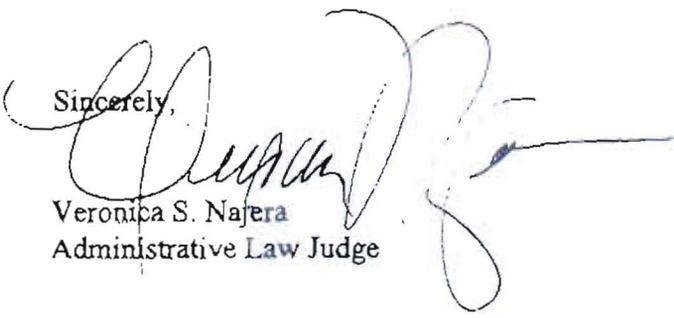
VIA FACSIMILE NO. 512-206-3203

RE: Docket No. 458-10-2125
TABC v. Susana Armendariz Saldaña d/b/a JC's Lounge Sportsbar

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my **recommendation** and **underlying rationale**.

Sincerely,


Veronica S. Najera
Administrative Law Judge

Enclosure

xc Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, **VIA FACSIMILE NO. 512-206-3226**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE NO. 512-206-3498**
Susana A. Saldaña, **VIA REGULAR MAIL**
SOAH-Austin-Docketing- VIA DOCKET CHANGE FORM

A hearing was requested on this forfeiture and, on January 11, 2010, the TABC sent Respondent a Notice of Hearing.² The Notice of Hearing alleged a “violation of the Texas Alcoholic Beverage Code § 11.11 and the Texas Alcoholic Beverage Commission Rule § 33.24(j), for which Respondent must forfeit her conduct surety bond, certificate of deposit, or letter of credit.”

The Notice of Hearing was sent through the U.S. Post Office by certified mail, return receipt requested. The TABC offered into evidence the U.S. Post Office’s return receipt “green card” number 7007 0710 0005 4782 8619, with a signature indicating delivery. Furthermore, the Notice of Hearing is presumed to have been received.³

II. ANALYSIS

Based on Respondent’s failure to appear at the hearing, the Staff requested that the default provisions of 1 TAC § 155.501 be invoked. The Notice of Hearing complies with 1 TAC §§ 155.401 and 155.501 and Code § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below. The findings support the requested sanction of bond forfeiture.

III. FINDINGS OF FACT

1. Susana Armendariz Saldaña (Respondent) held a Mixed Beverage Permit, which includes a Beverage Cartage Permit, and a Mixed Beverage Late Hours Permit No. MB-656227, issued by the Texas Alcoholic Beverage Commission for the premises known as JC’s Lounge Sportsbar located at 3900 Pershing Drive, in El Paso County, Texas.
2. A \$5,000.00 conduct surety bond was obtained by Respondents through a certificate of deposit number 0100070984392 at Chase Bank.
3. In a Waiver Order signed on August 11, 2009, the TABC cancelled for cause Permit No. MB-656227. The Waiver Order was based on a “Settlement Agreement and Waiver of Hearing” executed on July 2, 2009.

² Petitioner’s Exhibit No. 1.

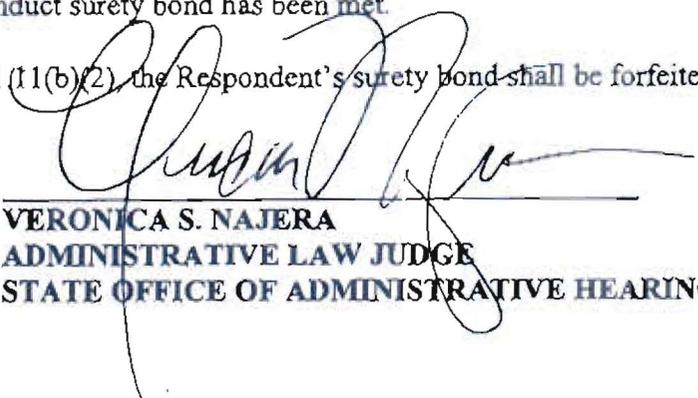
³ 1 TAC § 155.25(d) provides that if a document was sent by regular mail, certified mail, or registered mail, the Judge shall presume that it was received no later than three days after mailing.

4. On January 11, 2010, the TABC's staff issued a Notice of Hearing to Respondent at her mailing address of record.
5. This notice was sent through the U.S. Post Office by certified mail, return receipt requested. The "green card" number 7007 0710 0005 4782 8619 was returned to the TABC with signature indicating delivery.
6. The notice 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.
7. The notice properly disclosed in at least 12-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought may be granted by default.
8. The hearing convened on February 23, 2010, at the El Paso State Office of Administrative Hearings. Judith Kennison, attorney for the TABC's staff, appeared telephonically. Respondent Susana Armendariz Saldaña failed to appear. On that date, the hearing was held and the record closed.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) §§ 5.31 and 5.35.
2. The State Office of Administrative Hearings 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 Code § 5.43 and TEX. GOV'T CODE ANN. §§ 2003.021(b) and 2003.042(6).
3. Based upon Findings of Fact Nos. 5-8, the TABC issued its Notice of Hearing in compliance with 1 TAC §§ 155.401 and 155.501, and Code § 11.63.
4. The hearing proceeded on a default basis as authorized by TAC § 155.501.
5. Based upon these Findings of Fact and Conclusions of Law, the criterion in 16 TAC § 33.24(j) for forfeiture of a conduct surety bond has been met.
6. In compliance with Code § 11(1)(b)(2), the Respondent's surety bond shall be forfeited.

Signed March 29, 2010.



VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS