

DOCKET NO. 584104

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
OMAR MARIN MARIN	§	
D/B/A A ZERO BAR	§	ALCOHOLIC
PERMIT/LICENSE NO(s). MB697800, LB	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-3545)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 19th day of August 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Laura Kuchinsky. The hearing convened on June 16, 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 July 17, 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.

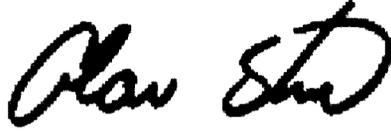
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and 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 September 14, 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 19th day of August 2009,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

State Office of Administrative Hearings
ADMINISTRATIVE LAW JUDGE
6333 Forest Park Rd, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE: (214) 956-8611

Omar Marin Marin
d/b/a A Zero Bar
RESPONDENT
P.O. Box 600436
Dallas, Texas 75360
VIA U.S. REGULAR MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

SKP/aa

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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DATE: 07/17/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 07

REGARDING: PROPOSAL FOR DECISION

DOCKET NUMBER: 458-09-3545

JUDGE LAURA KUCHINSKY

FAX TO:

FAX TO:

OMAR MARIN MARIN

VIA REGULAR MAIL

LOU BRIGHT (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)

(512) 206-3498

SANDRA K. PATTON (TEXAS ALCOHOLIC BEVERAGE
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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

July 17, 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.
OMAR MARIN MARIN D/B/A A ZERO BAR
SOAH DOCKET NO. 458-09-3545**

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.

Sincerely,

A handwritten signature in cursive script that reads "Laura Kuchinsky".

Laura Kuchinsky
Administrative Law Judge

LK/slp
Enclosure

Xc: Sandra Patton, 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**
Omar Marin Marin, **VIA REGULAR MAIL, P. O. Box 600436, Dallas, TX 75360**

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SOAH DOCKET NO. 458-09-3545
TABC CASE NO. 584104

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	OF
OMAR MARIN MARIN	§	
D/B/A A ZERO BAR	§	
PERMIT/LICENSE NO(s),	§	
MB697800, LB	§	
DALLAS COUNTY, TEXAS,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) seeks forfeiture of Respondent’s \$5,000.00 conduct surety bond pursuant to a settlement agreement that cancelled Respondent’s Mixed Beverage Permit and Mixed Beverage Late Hours Permit. Respondent argued that the bond should not be forfeited because he signed the settlement agreement under duress. The Administrative Law Judge (ALJ) recommends that Respondent’s \$5,000.00 conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this matter convened June 16, 2009, before ALJ Laura Kuchinsky, at 6333 Forest Park Road, Suite 150-A, Dallas, Texas 75235. TABC appeared by telephone and was represented by Sandra K. Patton, Staff Attorney. Omar Marin Marin, d/b/a A Zero Bar, appeared in person and represented himself *pro se*. The record closed that same day.

II. DISCUSSION

A. Legal Standard

TEX. ALCO. BEV. CODE ANN. § 11.11 requires a surety bond for a mixed beverage permit

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PROPOSAL FOR DECISION

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holder (TEX. ALCO. BEV. CODE ANN. ch. 28) in the amount of \$5,000, conditioned on the permit holder's compliance with alcoholic beverage law. TABC may seek forfeiture of a conduct surety bond when a license or permit has been cancelled. 16 TEX. ADMIN. CODE § 33.24(j).

B. Summary of TABC's Evidence

TABC offered one exhibit, which was admitted as TABC Exh. No. 1. It is a certified copy of Respondent's TABC permit and administrative history.

On July 11, 2008, TABC issued Respondent a Mixed Beverage Permit and Mixed Beverage Late Hours Permit, License Number MB697800, for A Zero Bar, located at 703 McKinney Avenue, #1, Dallas, Texas 75202 (Permit). A conduct surety bond in the amount of \$5,000.00 was issued by First Indemnity of America Insurance Company, bond number XTL08392, for Respondent in favor of the State of Texas; the bond states that its effective date is the issuance date of the TABC Mixed Beverage Permit.

On November 18, 2008, the Permit was cancelled pursuant to a Settlement Agreement and Waiver (Agreement), signed by Respondent. Respondent also initialed "OM" next to the word "cancellation" and next to the date of the cancellation, November 18, 2008. The Agreement resolved two violations, aggravated breach and subterfuge/application for the benefit of another, TABC docket number 581288, and the Agreement recites, "The above violation(s) will become a part of my license permit history regardless of whether I admit or deny them." The Agreement states, "This agreement may result in forfeiture of any conduct surety bond I have on file."

On November 19, 2008, TABC issued a Waiver Order adopting the Agreement and reciting, in pertinent part, that Respondent violated those sections of the Texas Alcoholic Beverage Code stated in the Agreement, Respondent agreed to the penalty as stated in the Agreement, and TABC is authorized to cancel a permit/license for the violation(s) stated in the Agreement. The Waiver Order shows that TABC cancelled Respondent's Permit on November 18, 2008.

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C. Summary of Respondent's Evidence

Respondent offered one exhibit, which was admitted as Respondent's Exh. No. 1, and testified at the hearing. Respondent's Exh. No. 1 consists of a copy of the following: Respondent's administrative notice issued by TABC, Marcus Stokke's business card, and two affidavits. The affidavits are signed by Respondent and dated November 18, 2008; one is hand-written and the other is type-written. Respondent's affidavits provide further information about the violations referenced in the Agreement.

Respondent testified about the Agreement with TABC to cancel the Permit. He asserted that TABC repeatedly threatened to take him to jail unless he signed the Agreement. Respondent stated that he had a daughter at home and could not go to jail. He believed he had no choice but to sign the Agreement. He further testified about the process used by TABC to handle the Agreement and stated that he was not informed that he could have an attorney. Respondent acknowledged during cross-examination that the Agreement states, "I am waiving my right to have an attorney, waiving my right to a hearing, waiving my right to a re-hearing and waiving my right to appeal." Respondent continued to assert, however, that TABC clearly told him that he must either sign the Agreement or be taken to jail, and that he was unaware of his rights.

D. ALJ's Analysis

The hearing before the ALJ does not re-litigate the legitimacy of the Agreement or the underlying violations. The ALJ recommends that Respondent's \$5,000.00 conduct surety bond be forfeited based on the Agreement, which Respondent signed on November 18, 2008, and which TABC adopted by Waiver Order on November 19, 2008. Through the Agreement, Respondent waived his right to a hearing to contest the allegations of aggravated breach and subterfuge/application for the benefit of another and agreed to cancel the Permit for these violations. TABC is authorized to seek forfeiture of the conduct surety bond when a license or permit is cancelled. 16 TEX. ADMIN. CODE § 33.24(j). Further, the language of the Agreement advised that signing the Agreement may result in forfeiture of any conduct surety bond on file with TABC.

Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. FINDINGS OF FACT

1. During the time period from July 11, 2008, to November 18, 2008, Omar Marin Marin (Respondent) held a Mixed Beverage Permit and Mixed Beverage Late Hours Permit, MB697800, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises known as A Zero Bar, located at 703 McKinney #1, Dallas, Dallas County, Texas (Permit).
2. First Indemnity of America Insurance Company issued a conduct surety bond, bond number XTL08392, for Respondent in favor of the State of Texas in the amount of \$5,000.00.
3. On November 18, 2008, in TABC Docket No. 581288, Respondent agreed to cancel the Permit and signed a Settlement Agreement and Waiver (Agreement).
4. A Waiver Order issued by TABC on November 19, 2008, adopted the Agreement and cancelled the Permit, effective on November 18, 2008.
5. The Agreement shows Respondent committed two violations of the Texas Alcoholic Beverage Code, aggravated breach and subterfuge/application for the benefit of another.
6. On January 12, 2009, TABC informed Respondent that it intended to seek forfeiture of Respondent's \$5000.00 conduct surety bond based the Agreement that cancelled the Permit.
7. Respondent requested a hearing to determine if the bond should be forfeited.
8. On April 8, 2009, TABC issued the notice of hearing. The notice of hearing contained the time, date, and location of the hearing; the applicable rules and statutes involved; and a short, plain statement of the matters asserted.
9. The hearing in this matter convened on June 16, 2009, before ALJ Laura Kuchinsky with the State Office of Administrative Hearings (SOAH). Sandra K. Patton, Staff Attorney, represented TABC. Omar Marin Marin represented himself *pro se*. The hearing concluded and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11, and 16 TEX. ADMIN. CODE § 33.24.
2. SOAH has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with findings of fact and conclusions of law as provided by TEX. GOV'T CODE ANN.

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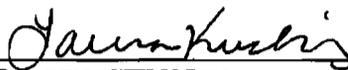
PROPOSAL FOR DECISION

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ch. 2003 and TEX. ALCO. BEV. CODE ANN. § 5.43(a).

3. The notice of hearing was provided as required by the Administrative Procedure Act. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's \$5,000.00 conduct surety bond should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TEX. ADMIN. CODE § 33.24(j).

SIGNED July 17, 2009.



LAURA KUCHINSKY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS