

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

ROBERT C. HAGGERTON JR.
D/B/A BOTTOM'S UP SALOON
PERMIT/LICENSE NO(s). BG714000
ECTOR COUNTY, TEXAS
(SOAH DOCKET NO.458-10-1410)

§ BEFORE THE TEXAS
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§ ALCOHOLIC
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§ 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 B.L. Phillips. The hearing convened on 31st day of July, 2009 and adjourned the same day. The Administrative Law Judge entered a Proposal For Decision making Findings of Fact and Conclusions of Law on the 3rd day of February, 2010. The Proposal For Decision was properly served and all parties were given an opportunity to file Exceptions and Replies. No exceptions were filed.

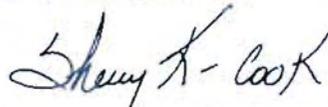
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

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

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 IS FINAL AND ENFORCEABLE ON March 22, 2010.

SIGNED on February 26, 2010, in Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that I have served copies of the above Order on the parties shown below in the manner indicated on February _____, 2010.

Matthew M. Clark
ATTORNEY FOR PETITIONER
TABC Legal Section

Honorable Judge B.L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
Lubbock, Texas
VIA FACSIMILE: (806) 792 - 0149

Robert C. Haggerton Jr.
d/b/a Bottom's Up Saloon
RESPONDENT
7584 Crd 550
Brownwood, TX 76801
VIA REGULAR MAIL

Matthew M. Clark
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Lubbock District Office

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

VS.

**ROBERT C. HAGGERTON, JR.
D/B/A BOTTOM'S UP SALOON
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission's Staff (Petitioner) brought this disciplinary action against Robert C. Haggerton, Jr. dba Bottom's Up Saloon (Respondent), alleging that Respondent had his license canceled for cause due to violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent must forfeit his conduct surety bond. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner proved the allegations by a preponderance of the evidence and recommends that Respondent's conduct surety bond be forfeited.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

On January 12, 2010, a hearing convened before ALJ B. L. Phillips at the State Office of Administrative Hearings (SOAH), 8212 Ithaca, Suite W3, Lubbock, Texas. Petitioner appeared at the hearing by telephone and was represented by Matthew Clark, attorney. Respondent appeared by telephone at the hearing *pro se*. After presentation of evidence and argument, the hearing concluded and the record was closed.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may revoke, or deny renewal of, a license or permit if the holder violates a provision of the Code or rule of the Commission pursuant to Code §§ 6.01 and 61.71. The Commission's rule found at 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24(j) governs forfeiture of a conduct surety bond. It provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that a licensee or permittee has committed three violations of the Code since September 1, 1995.

Code § 11.11 applies to required conduct surety bonds and letters of credit. Pursuant to § 11.11, in a letter of credit held for conduct surety purposes, the holder must agree: (1) not to violate a state law relating to alcoholic beverage; and (2) that the amount of the conduct surety instrument shall be paid to the state if the permit is revoked.

III. DISCUSSION AND ANALYSIS

A. Background

On February 4, 2009, the Commission issued License number BG-714000 to Respondent. Respondent posted a conduct surety bond for \$5,000 as required by §§ 11.11 and 61.13 of the Code.

B. Petitioner's and Protestant's Evidence and Contentions

Petitioner presented two exhibits as evidence in the case. Exhibit number 1 is the notice of hearing sent to Respondent on December 3, 2009. Exhibit number 2 is the certified record pertaining to Respondent's permit. The records show that First Indemnity of America Insurance Company established Conduct Surety Bond No. XLT08549 in the amount of \$5,000, and in favor of the State of Texas, for Respondent's account. The Bond provides, "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state," and "The condition of the

obligation is such that the Principal shall faithfully conform with the Texas Alcoholic Beverage Code and rules of the commission.”

By Order dated March 16, 2009, the Commission found the Respondent violated the Code by committing a subterfuge violation on February 26, 2009, and Respondent signed a Settlement Agreement and Waiver for this violation accepting cancellation of his license.

C. Respondent's Evidence and Contentions

Respondent testified that he did violate the law by committing the subterfuge violation. However, he argued that the licensed premises never went into operation and the penalty was therefore unwarranted.

D. Analysis

After considering the evidence, the ALJ concludes that Petitioner proved that Respondent violated Code provisions relating to alcoholic beverages as set forth above and therefore had his license cancelled. As a result, Respondent's conduct surety bond provides for a forfeiture of the full amount of the bond. The fact that the business never was in operation does not change the outcome under the Code and the provisions of the bond.

IV. RECOMMENDATION

Having reviewed all the evidence, the ALJ finds that the evidence proved that the criteria for forfeiture of the conduct surety have been satisfied. The ALJ recommends that the conduct surety bond be forfeited and that the full amount of the surety should be remitted to the State of Texas.

V. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission or TABC) issued a License number BG714000 to Respondent.
2. Respondents posted a conduct surety bond for \$5,000.00 as required by § 11.11 of the Texas Alcoholic Beverage Code (Code).
3. Respondent received proper and timely notice of the hearing from TABC in a notice of hearing dated December 3, 2009.
4. The hearing on the merits convened January 12, 2010, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Texas. The TABC's staff was represented by attorney Matthew Clark. Respondent appeared *pro se*. The record closed on the same day.
5. By order dated March 16, 2009, the Commission found that Respondent violated the Code being committing a subterfuge violation, and Respondent signed a Settlement Agreement and Waiver for this violation accepting a cancellation of his license.
6. Petitioner notified Respondents by letter dated April 15, 2009, that the Commission intended to seek forfeiture of the full amount of the conduct surety bond.
7. Respondent timely requested a hearing on the forfeiture of the conduct surety bond.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§ 5.35, 25.04, and 61.71.
2. SOAH has jurisdiction to conduct the hearing in this matter and issue a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2008).
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2008).
4. Based on the Findings of Fact, the Staff proved that the criteria for forfeiture of the conduct surety bond have been satisfied.
5. Based on the foregoing, forfeiture of Respondent's conduct surety bond is warranted.

SIGNED: FEBRUARY 3, 2010.

B. L. Phillips

B. L. Phillips
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS