

DOCKET NO. 590477

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE TEXAS

VS.

D OFFICE LION PRIVATE CLUB
D/B/A D OFFICE LION PRIVATE CLUB
PERMIT/LICENSE NO(s). N691791, NL & PE
DALLAS COUNTY, TEXAS
(SOAH DOCKET NO. 45-10-2952)

ALCOHOLIC

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 Brenda Coleman. The hearing convened on the 17th day of March, 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 17th day of May, 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 of the Administrative Law Judge.

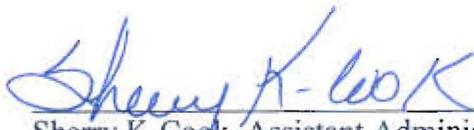
IT IS THEREFORE ORDERED, that pursuant to rules adopted by the commission found in Title 16, Texas Administrative Code §33.24, your conduct surety bond is FORFEITED to the STATE OF TEXAS.

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 26th day of July, 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 2nd day of July, 2010, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

MW/cb

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 2nd day of July, 2010.



Cecelia Brooks, Paralegal
Texas Alcoholic Beverage Commission
Legal Division

Honorable Judge Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE: (214) 956-8611

United Central Bank
SURETY, BANK OR SAVINGS INSTITUTION
11235 Harry Hines Blvd.
Dallas, Texas 75229
VIA REGULAR MAIL

D Office Lion Private Club
d/b/a D Office Lion Private Club
RESPONDENT
P.O. Box 29794
Dallas, TX 75229
VIA REGULAR MAIL

Martin Wilson
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-10-2952

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
D OFFICE LION PRIVATE CLUB D/B/A D OFFICE LION PRIVATE CLUB, Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this forfeiture action against D Office Lion Private Club d/b/a D Office Lion Private Club (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging that Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (Code) or Commission's rules (the Rules) since September 1, 1995. Petitioner also alleged that the violations have been finally adjudicated. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

On March 17, 2010, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Staff was represented at the hearing by Martin Wilson, Commission Staff Attorney. Respondent's President, Chae Raymond, appeared on behalf of Respondent. Evidence and argument were presented. The record closed on March 17, 2010.

II. DISCUSSION

A. Applicable Law

Petitioner alleged that (1) Respondent had been issued a permit; (2) Respondent was found to have committed at least three violations of the Code or the Commission's Rules since September 1, 1995; (3) the violations have been finally adjudicated; and (4) Respondent has forfeited the full amount of the conduct surety bond.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law or the Rules relating to alcoholic beverages. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked or after final adjudication that determines the holder violated a provision of the Code.

Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE (TAC) § 33.24(j), which provides that the Commission may seek forfeiture when a license or permit has been canceled, or when there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

B. Petitioner's Evidence

Petitioner's two exhibits were admitted at the hearing without objection. Exhibit No. 2 included a copy of the permit, violation history, the conduct surety bond, and correspondence. Petitioner issued Private Club Registration Permit N-691791, which includes the Beverage Cartage Permit and the Private Club Late Hours Permit, to Respondent on May 2, 2008, for the premises is located at 11353 Emerald Street, Dallas, Dallas County, Texas. The permit has been continuously renewed.

Respondent posted Commission Conduct Surety Bond Number FS2874883. Respondent

executed the bond as principal; Great American Insurance Company is the surety. The bond is in the amount of \$5,000 and is payable to the State of Texas.

On October 7, 2009, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claims that, on August 8, 2009, Respondent possessed an empty spirits bottle with an unmutilated stamp in violation of the Code, and Respondent refused to permit inspection of its premises during prohibited hours in violation of the Code. Respondent also acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated October 12, 2009, in Docket No. 588702, finding that Respondent violated the sections of the Code as stated and imposing the penalty reflected in the Order.

On May 28, 2009, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claim that, on May 8, 2009, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of the Code. Respondent also acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated June 2, 2009, in Docket No. 585912, finding that Respondent violated the section of the Code as stated and imposing the penalty reflected in the Order.

C. Respondent's Evidence

Respondent's President, Chae Raymond, testified on behalf of Respondent. Ms. Raymond acknowledged that the violations occurred, and she presented testimony as to the facts of the violations and the penalties assessed. She stated that she tries to follow the Rules, and she explained that the forfeiture of Respondent's conduct surety bond would create a financial hardship for Respondent. Finally, Ms. Raymond requested a second chance to avoid bond forfeiture.

III. ANALYSIS

As the holder of an alcoholic beverage permit, Respondent was required to provide a conduct surety bond, in the amount of \$5,000, payable to Petitioner.¹ Respondent also agreed not to violate the Code or the Rules. Petitioner may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995.²

Petitioner provided evidence that Respondent has violated the Code three times. Respondent entered into a Settlement Agreement and Waiver on two occasions regarding the three violations of the Code, all of which occurred after September 1, 2005. Final orders regarding these violations were issued by the Commission.

Ms. Raymond admitted at the hearing that the violations occurred. She also signed the agreements which included the following language, "This agreement may result in the forfeiture of any conduct surety bond I have on file." This statement put Respondent on notice that there was a possibility that Petitioner would seek forfeiture of the conduct surety bond.

The evidence in the record is sufficient to establish that Respondent has been finally adjudicated of three violations of the Code since September 1, 1995. According to §33.24 (j) of the Rules, forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

¹ Code § 11.11.

² 16 TAC § 33.24(j).

IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission) issued Private Club Registration Permit N-691791, which includes the Beverage Cartage Permit and Private Club Late Hours Permit, to D Office Lion Private Club d/b/a D Office Lion Private Club (Respondent) on May 2, 2008.
2. Respondent's premise is located at 11353 Emerald Street, Dallas, Dallas County, Texas.
3. Respondent has posted a conduct surety bond. The bond is Commission Conduct Surety Bond Number FS2874883. Respondent, acting through Chae Raymond, executed the bond as principal. Great American Insurance Company is the surety. The bond is in the amount of \$5,000 and is payable to the State of Texas.
4. On October 7, 2009, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Texas Alcoholic Beverage Code (the Code) which occurred on August 8, 2009.
5. The Settlement Agreement and Waiver included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
6. The violations were adjudicated against Respondent by Commission Order, dated October 12, 2009, in Commission Docket No. 588702.
7. On May 28, 2009, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code which occurred on May 8, 2009.
8. The Settlement Agreement and Waiver included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
9. The violation was adjudicated against Respondent by Commission Order, dated June 2, 2009, in Commission Docket No. 585912.
10. Respondent committed three violations of the Code or the Commission's Rules since September 1, 1995.
11. On November 3, 2008, the Commission's Staff (Petitioner) notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on the Commission's final adjudication of Respondent's violations of the Code.
12. Respondent requested a hearing to determine whether the bond should be forfeited.

13. On March 2, 2010, Petitioner issued its notice of hearing to Respondent.
14. 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.
15. The hearing was convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge, Brenda Coleman, on March 17, 2010. Petitioner was represented by Martin Wilson, Commission Staff Attorney. Respondent's President, Chae Raymond, appeared on behalf of Respondent. The record closed the same day.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11, as well as 16 TEX. ADMIN. CODE (TAC) § 33.24.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of 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. Based on the foregoing findings and conclusions, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

SIGNED May 17, 2010.


BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS