

**DOCKET NO. 588208**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
ROGER PINEDA	§	
D/B/A HONG KONG LOUNGE	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG708328, BL	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-1863)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 27th day of July, 2010, the above-styled and numbered cause.

The hearing in the above matter was conducted by the State Office of Administrative Hearings, Administrative Law Judge Stephen J. Burger, presiding. The hearing convened on January 29, 2010, and the record was closed on the same date. The Administrative Law Judge made and filed a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law on March 25, 2010. The time for filing and ruling on any Exceptions and Replies to the PFD has passed.

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

**It is Ordered** that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

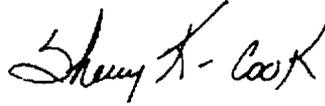
**It is further Ordered** that the sanctions and penalties found to be warranted by the findings and conclusions of the Administrative Law Judge are adopted by the Administrator as the sanctions and penalties of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that Respondent's conduct surety bond in the amount of \$5,000.00 be FORFEITED.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on August 20, 2010, unless a Motion for Rehearing is filed before that date.

**SIGNED** this the 27<sup>th</sup> day of July, 2010, at  
Austin, Texas.

On Behalf of the Administrator,



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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 July 27, 2010, 2010.



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Joan C. Bates, Assistant General Counsel  
Texas Alcoholic Beverage Commission  
Legal Division

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (713) 812-1001**

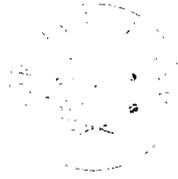
Roger Pineda  
d/b/a Hong Kong Lounge  
**RESPONDENT**  
8025 Clinton Drive  
Houston, Texas 77029  
**VIA U.S. FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

SKP/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 25, 2010

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-10-1863; Texas Alcoholic Beverage Commission v. Roger Pineda d/b/a Hong Kong Lounge**

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, a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "S. Burger".

Stephen Burger  
Administrative Law Judge

SB:rlm  
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Sandra Patton, Staff Attorney Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with exhibits and 1 cd)  
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Roger Pineda d/b/a Hong Kong Lounge, 8025 Clinton Drive, Houston, TX 77029 -**VIA REGULAR MAIL**



## II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code §11.11, an applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with Texas alcoholic beverage law. Pursuant to Rule § 33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee in writing of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond as established by Code §11.11 and Rule § 33.24 have been satisfied.

## III. EVIDENCE, ANALYSIS AND RECOMMENDATION

### A. Testimony of witnesses is summarized as follows:

#### 1. Roger Pineda, Respondent

Respondent testified that he does not speak or read English. He claims that he did not understand the waivers that he signed. He also claims that he felt compelled to sign the waivers by TABC employees.

#### 2. Maria Martinez

Maria Martinez is the wife of Respondent. She testified that her husband cannot read or speak English. She claims that there were no translators when they signed the waivers, and that Mr. Pineda did not know what he had signed.

### B. Exhibits

The Staff's exhibits show that Respondent signed two "Settlement Agreement and Waiver"

documents (Waivers) on July 23, 2009. In these Waivers, the Respondent waived its right to a hearing to contest the Commission's assertions that: on April 8, 2009, the Respondent had committed a violation of the Code: "Possession of Drugs by Licensee/Permitee;" and on June 11, 2009, the Respondent had committed the violation of the Code: "Place or Manner, Misc." and "Possess Uninvoiced/Unauthorized AB."

The Respondent acknowledged that the signing of the Waivers could result in the forfeiture of any related conduct surety bond. The Waivers also stated that the Respondent was waiving his right to an attorney, and that the waiver could be rescinded within three days.

The Waivers became final and enforceable by waiver orders signed by the Commission Administrator on July 29, 2009.

Also included among the TABC's exhibits was a copy of a Conduct Surety Bond in the amount of \$5,000 signed on October 21, 2008 by Roger Pineda d/b/a Hong Kong Lounge; two Waiver Orders dated July 29, 2009; and a copy of the August 5, 2009 notice that the TABC intended to seek forfeiture of Respondent's conduct surety bond.

The Respondent submitted 15 Dismissal Orders signed October 8, 2009, by a Houston Municipal Court regarding various health and safety code violations.

### **C. Analysis and Recommendation**

There is no dispute that the Respondent signed waiver agreements regarding three prior violations. The Respondent contends that he did not understand the repercussions of these waivers because he does not read or speak English, and also that he felt compelled by the TABC to sign those waivers.

However, the waivers signed by Respondent include a provision that the Respondent could

rescind the agreement within three days. The Respondent had adequate time to re-consider the waiver, and consult counsel or other help in understanding what he signed and agreed to. Therefore, based on the foregoing, the Respondent's conduct surety bond should be forfeited.

#### IV. FINDINGS OF FACT

1. Roger Pineda, d/b/a Hong Kong Lounge (Respondent) is the holder of Wine and Beer Retailer's Permit and Retailer's On Premise Late Hours License, BG-708328, BL, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 8025 Clinton Drive, Houston, Harris County, Texas 77029.
2. On January 8, 2010, the TABC's Staff sent a Notice of Hearing to Respondent.
3. The January 8, 2010 Notice of Hearing contained a statement of the time, date, location 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 allegations and the relief sought by the TABC.
4. On January 29, 2010, a public hearing was held in Houston, Texas, before Administrative Law Judge Stephen J. Burger. The TABC was represented by its staff attorney Sandra Patton. Respondent represented himself. The record was closed the same day.
5. On October 21, 2008, the Respondent executed a conduct surety bond for Roger Pineda, d/b/a Hong Kong Lounge in the amount of \$5000.
6. On July 23, 2009, the Respondent signed two "Settlement Agreement and Waiver" documents (Waivers) in which the Respondent waived his right to a hearing to contest the Commission's assertion that Respondent was in violation of the following TABC rules: on April 8, 2009, Respondent was in possession of drugs by a licensee/permittee; and on June 11, 2009, Respondent committed a Place or Manner violation, and possessed un invoiced/unauthorized alcoholic beverages. The Respondent also acknowledged that the signing of the Waivers could result in the forfeiture of any related conduct surety bond.
7. As a result of the July 23, 2009 Waivers, the TABC entered two waiver orders on July 29, 2009, finding that the Respondent violated the Texas Alcoholic Beverage Code as set forth in the Waivers.
8. The Respondent did not appeal the Commission's orders of July 29, 2009.
9. On August 5, 2009, the TABC notified Respondent of its intent to seek forfeiture of the full

amount of its conduct surety bond.

#### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61.
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 TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided as required under the Administrative Procedures Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. ALCO. BEV. CODE ANN. § 11.63; and 1 TEX. ADMIN. CODE § 155.501.
4. Based on the above finding of fact, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on Conclusion of Law 4, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TEX. ADMIN. CODE § 33.24.
6. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

**SIGNED March 25, 2010.**



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**STEPHEN J. BURGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**