

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

ABRAHAM SIGALA & SAUL ALVIDREZ

D/B/A KNOCK OUT SPORTS BAR
PERMIT/LICENSE NO(s). MB717978, LB &
PE
EL PASO COUNTY, TEXAS
(SOAH DOCKET NO. 458-10-0366)

§ BEFORE THE TEXAS
§
§
§
§ ALCOHOLIC
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§
§
§ BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of December, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica S. Najera. The hearing convened on the 20th day of October, 2009 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 30th day of October, 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 and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 your bond is hereby forfeited.

This Order will become **final and enforceable** on the 31st day of December, 2009, 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 7th day of December, 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

JLK/cb

Abraham Sigala & Saul Alvidrez

RESPONDENT

d/b/a Knock Out Sports Bar

12569 Tierra Norte Rd.

El Paso, TX 79938

VIA REGULAR MAIL

Judith L. Kennison

ATTORNEY FOR PETITIONER

TABC Legal Section

Licensing Division

El Paso District Office

SOAH Docket No. 458-10-0366

PROPOSAL FOR DECISION

PAGE 2

Cartage Permit, and a Mixed Beverage Late Hours Permit, on March 25, 2009.¹ These permits were issued by the TABC for the premises known as Knock Out Sports Bar located at 12569 Tierra Norte Road, El Paso, Texas.

In June 2009, the TABC issued a Waiver Order finding that Respondents violated provisions of the Texas Alcoholic Beverage Code. The permit was cancelled on August 5, 2009.² The exact violation is not enumerated in the settlement. The agreement simply states a "miscellaneous place or manner" violation.³

On August 6, 2009, the TABC notified the Respondents of its intention to seek forfeiture of the full amount of the conduct surety bond.⁴ A hearing was requested on this forfeiture and, on September 22, 2009, the TABC sent Respondents a Notice of Hearing.⁵ 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 Respondents must forfeit their conduct surety bond, certificate of deposit, or letter of credit."

II. CONDUCT SURETY BOND

A surety bond is required of certain licensees and permittees.⁶ A holder of a permit issued under Chapters 25, 28, or 32 of the Texas Alcoholic Beverage Code "shall file with the [TABC] a surety bond in the amount of \$5,000 conditioned on . . . the holder's conformance with alcoholic beverage law . . ."⁷ Pursuant to these statutory requirements, Respondents procured a surety bond in the amount of \$5,000.00.⁸

On June 23, 2009, a Waiver Order was issued based on a "Settlement Agreement and Waiver

¹ Petitioner's Exhibit No. 2, permit MB-717978.

² *Id.*, Waiver Order.

³ *Id.*, Settlement Agreement and Waiver.

⁴ *Id.*, TABC letter dated August 6, 2009.

⁵ Petitioner's Exhibit No. 1.

⁶ TEX. ALCO. BEV. CODE ANN. § 11.11; 16 TEX. ADMIN. CODE (TAC) § 33.24.

⁷ TEX. ALCO. BEV. CODE ANN. § 11.11(a)(1).

⁸ Petitioner's Exhibit No. 2, conduct surety bond.

SOAH Docket No. 458-10-0366

PROPOSAL FOR DECISION

PAGE 3

of Hearing" signed by Respondent Abraham Sigala on June 18, 2009.⁹ The June 23, 2009, Waiver Order cancelled the permit and found that "the Respondents violated those sections of the TABC Code stated in the Agreement and Waiver of Hearing." As stated earlier, the Settlement Agreement is not specific as to the violation. No particular facts or details are provided besides a reference to "VIOLATION CODE 783."

III. POSITIONS OF THE PARTIES

The TABC takes the position that it has established that the permit has been cancelled and that the surety bond is subject to forfeiture.

The Respondents stated that they were not advised that a result of the agreement may be the forfeiture of the conduct surety bond they are required to maintain. Respondents thought that agreeing to the permit cancellation "would be the end of it." Respondents did not have legal representation.

IV. ALJ'S RECOMMENDATION

TABC rule provides for forfeiture by two means: when a license or permit is cancelled or if the permittee has three adjudicated violations.¹⁰ Obviously, the first is applicable to this case. The Respondents want the ALJ to re-visit the reason for the permit cancellation. The ALJ has no authority to do that. The rule provides a hearing on "the question of whether the criteria for forfeiture of the bond have been satisfied." The criterion in this case is the permit cancellation. Therefore, the TABC has met its burden to prove that forfeiture is warranted in this matter.

⁹ *Id.*, Settlement Agreement and Waiver.

¹⁰ 16 TAC § 33.24 (j) [Forfeiture of a Bond].

V. FINDINGS OF FACT

1. Abraham Sigala and Saul Alvidrez d/b/a Knock Out Sports Bar (Respondents) held a Mixed Beverage Permit, which includes a Beverage Cartage Permit, and a Mixed Beverage Late Hours Permit No. MB-717978, issued by the TABC for the premises known as Knock Out Sports Bar located at 12569 Tierra Norte Road, El Paso, Texas.
2. A \$5,000.00 conduct surety bond was obtained by Respondents through the American States Insurance Company on March 10, 2009.
3. In a Waiver Order signed on June 23, 2009, the TABC cancelled for cause Permit No. MB-717978. The Waiver Order was based on a "Settlement Agreement and Waiver of Hearing" executed on June 18, 2009. The Settlement Agreement and Waiver of Hearing alleged a "miscellaneous place or manner violation."
4. On August 6, 2009, the TABC notified the Respondents of its intent to seek forfeiture of the full amount of the conduct surety bond.
5. The October 20, 2009, Notice of Hearing notified the Respondents of the date of the hearing; the matters asserted against it; the time, place and nature of the hearing; the legal authority, jurisdiction under which the hearing was to be held; and the statutes and rules involved.
6. The hearing convened October 20, 2009 at the El Paso State Office of Administrative Hearings. Judith Kennison, attorney for the TABC, appeared telephonically on behalf of the TABC. Abraham Sigala and Saul Alvidrez both appeared. On that date, the hearing was held and the record closed.

VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (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. Notice of Hearing was provided pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.401 and Code § 11.63.
4. A conduct surety bond may be forfeited when a license or permit is cancelled, pursuant to 16 TAC § 33.24(j).

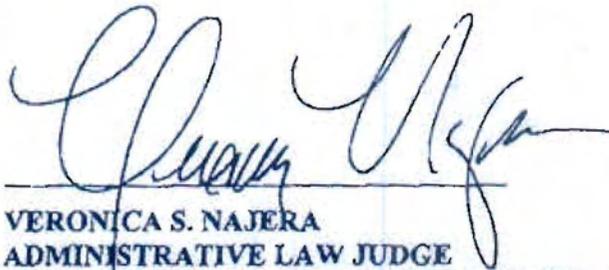
SOAH Docket No. 458-10-0366

PROPOSAL FOR DECISION

PAGE 5

5. Respondent's permit was cancelled for cause effective August 5, 2009.
6. 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.
7. In compliance with Code § 11.11(b)(2), the Respondent's surety bond shall be forfeited.

Signed October 30, 2009.



VERONICA S. NAJERA
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
EL PASO-REGIONAL OFFICE