

DOCKET NO. 585235

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
GREGORY EUGENE BROWN	§	
VICTORIA LEE BROWN	§	
D/B/A THE PIT STOP	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG684806	§	
GRIMES COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-0362)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of January, 2010, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Steven M. Rivas. The hearing convened on the 15th 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 28th day of August, 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 conduct surety bond is hereby **Forfeited** .

This Order will become final and enforceable on the 15th day of February, 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 22nd day of January, 2010, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

MMC/cb

Honorable Judge Steven M. Rivas
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE: (512) 475-4994

Gregory Eugene Brown and
Victoria Lee Brown
RESPONDENT
d/b/a The Pit Stop
911 Victoria St.
Navasota, Tx 77868
VIA REGULAR MAIL

Matthew Clark
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Waco District Office

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5,000 surety bond conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. §11.11. The bond may be forfeited if the licensee has been finally adjudicated of three violations of the Code since September 1, 1995, and TABC notifies the licensee in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j).

B. Staff's Evidence

Staff's evidence consists of eight exhibits and no testimony. Amy Harrison is the Director of the TABC Licensing Department and is the custodian of all TABC records and files. By affidavit, Ms. Harrison provided true and correct copies of Respondents' permit, violation history, conduct surety bond, and correspondence concerning the bond. Included is a copy of the Wine & Beer Retailer's On Premise License, Permit BG684806. The holders named on the permits are the Respondents, and the licensed premise is located at 911 Victoria Street, Navasota, Texas. The TABC conduct surety bond, which is executed by Respondents, is also attached.

Also, included in the record, are a Waiver Order and a Settlement Agreement and Waiver of Hearing for past enforcement actions by TABC against Respondents. Each prior violation occurred on December 25, 2008, and TABC adjudicated each violation under TABC Docket No. 583369. Details concerning these enforcement actions are as follows:

1. By order dated February 24, 2009, TABC found that Respondents violated Section 69.13 of the Code by having a breach of peace on the premises; and (b) waived hearing on the matter.

2. By order dated February 24, 2009, TABC found that Respondents violated Section 11.61(b)(13) of the Code by allowing an intoxicated permittee/licensee on the licensed premises; and (b) waived hearing on the matter.

3. By order dated February 24, 2009, TABC found that Respondents violated Section 104.01(3) of the Code by rudely displaying a weapon; and (b) waived hearing on the matter.

By letter dated March 12, 2009, TABC notified Respondents that it intended to seek forfeiture of the full amount of conduct surety bond No. MS4877839. Respondents requested a hearing on the bond forfeiture.

C. Respondents' evidence

Respondents did not offer any documentary evidence. In fact, they agreed that they had signed the settlement agreement, citing three violations at the premises. Mrs. Brown, however, argues that she was under the impression that the violations would not be counted toward forfeiture if Respondents served a 30-day suspension, which they did in March 2009.

Respondents both maintain that in discussions with TABC employees, namely agent Randy Fields, they were informed that their record would be clear after serving a 30-day suspension. Had they known the violations would be used by TABC to forfeit the bond, Respondents claim they would not have signed the agreements and waivers but instead would have hired an attorney to dispute each alleged violation.

D. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted in favor of TABC by license and permit holders to encourage compliance with provisions of the Code and Rules. Staff argues that Respondents committed three violations of the Code and Rules since 1995 and that as a matter of law the pledged conduct surety bond is now subject to forfeiture. Respondents do not dispute the three violations, but simply argue that they would have challenged the violations instead of signing the settlement agreement and waiver had they known the violations would remain on their record after the 30-day suspension. The ALJ finds this argument to be without any legal merit in this case.

Respondents chose to waive their right to a contested hearing on, and admitted to, the three violations. Each of the violations qualifies under the current statutes and rules to be finally determined by the TABC. The language of the settlement agreement and waiver states that the Respondents understand that the violation will become part of their violation history and that by entering into the agreement, a forfeiture of any conduct surety bond may result. Thus, Respondents clearly were on notice of the effect of their agreement and cannot now assert otherwise. Any other interpretation of the parties' actions would negate the language and value of settlement agreements and waivers voluntarily entered into by licensees. Such a result could not be intended by the current rules and statutes.

Staff met its burden of proof for forfeiture of Respondents' conduct surety bond. Staff's evidence shows that Respondents posted a conduct surety bond in favor of the TABC, as was required. Respondents were finally adjudicated of three or more violations of the Code or Rules on February 24, 2009, by the execution of a Settlement Agreement and Waiver of Hearing on those violations. Staff notified Respondents in writing of the intent to seek forfeiture of the bond. 16 TEX. ADMIN. CODE § 33.24(j). Therefore, the ALJ recommends that Respondents' conduct surety bond be forfeited.

III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Gregory Eugene Brown and Victoria Lee Brown (Respondents), License No. BG684806 for their business, The Pit Stop.
2. Great American Insurance Company issued the conduct surety bond to Respondents in the amount of \$5,000.00.
3. The conduct surety 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 certificate of deposit shall be paid to the state."
4. By order of February 24, 2009 in Docket No. 583369, the TABC found: (a) that Respondents violated Texas Alcoholic Beverage Code § 69.13 by allowing a breach of peace on the premises; (b) that Respondents violated Texas Alcoholic Beverage Code § 11.61(b)(13) by allowing an intoxicated permittee/licensee on the licensed premises; (c) that Respondents violated Texas Alcoholic Beverage Code § 104.01(3) by rudely displaying a weapon; and (d) that Respondents waived hearing on these matters.
5. Respondents committed three or more violations of the Code or Rules since September 1, 1995.
6. On March 12, 2009, the Staff of TABC (Staff) sent Respondents written notice of the intent to seek forfeiture of the conduct surety bond.
7. Respondents requested a hearing on this matter.
8. On September 22, 2009, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
9. On October 15, 2009, the hearing was convened by Steven M. Rivas, Administrative Law Judge, at the State Office of Administrative Hearings, Waco, Texas. Both parties appeared and presented evidence. The record closed that same day.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE ch. 155.
4. Based on the foregoing findings and conclusions, Respondents' conduct surety bond No. MS4877839 should be forfeited. TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN CODE § 33.24(j).

SIGNED December 14, 2009.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**