

DOCKET NO. 596740

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
HUEBELS-HOFFMAN, LLC D/B/A HUEBELS BIER GARDEN, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. BG675562	§	
	§	
BASTROP COUNTY, TEXAS (SOAH DOCKET NO. 458-11-1918)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 1st day of July, 2011, the above-styled and numbered cause.

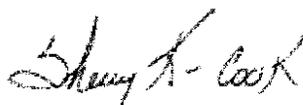
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge John H. Beeler presiding. The hearing convened on February 9, 2011 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 11, 2011. 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that 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 motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that Conduct Surety Bond No. FS 8361712 is hereby **FORFEITED**.

This Order will become final and enforceable on the 25th day of July, 2011, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 1st day of July, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 1st day of July, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

John H. Beeler
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 West 15th Street Suite 502
Austin, Texas 78701
VIA FACSIMILE: (512) 322-2061

Huebels-Hoffman, LLC
d/b/a Huebels Bier Garden
RESPONDENT
P.O. Box 1030
Smithville, Texas
VIA REGULAR MAIL

Judith Kennison
ATTORNEY FOR PETITIONER
TABC Legal Division

SOAH DOCKET NO. 458-11-1918

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

BEFORE THE STATE OFFICE

VS.

HUEBELS-HOFFMAN, LLC, D/B/A
HUEBELS BIER GARDEN
PERMIT NO. BG675562
BASTROP COUNTY, TEXAS
(TABC DOCKET NO. 596740),
Respondent

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) alleges that Respondent, Huebels-Hoffman, d/b/a Huebels Bier Garden has had three or more violations of the Texas Alcoholic Beverage Code since September 1, 1995, in violation of TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TEX. ADMIN CODE § 33.24(j). Staff seeks forfeiture of Respondent's \$5,000 conduct surety bond. Respondent argues that the bond should not be forfeited. The evidence shows that, as of May 5, 2010, three violations had occurred on the premises since September 1, 1995, and, therefore, the Administrative Law Judge (ALJ) recommends that Respondent's \$5,000 conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing in this matter convened on February 9, 2011. Judith Kennison, staff attorney, represented TABC and appeared by telephone. Connie Maley, owner, appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

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.

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. Agreed facts

The parties agreed that Respondent has had three violations of the Code since September 1, 1995. On March 9, 2010, TABC, based upon a waiver of hearing by Respondent, entered an order finding that, on January 30, 2010, Respondent committed the Code violations of "Consumption During Prohibited Hours By Lic/Perm," and "Permit Consumpt. During Prohibited Hours by Lic/Perm." On August 19, 2010, TABC, based upon a waiver of hearing by Respondent, entered an order finding that, on May 5, 2010, Respondent committed the Code violation of "Breach, Failure to Report."

By letter dated September 2, 2010, TABC notified Respondent that it intended to seek forfeiture of the full amount of its conduct surety bond No. MS 2942836. Respondent requested a hearing on the bond forfeiture.

C. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted by TABC license and permit holders to encourage compliance with provisions of the Code and the TABC Rules. Staff argues that Respondent committed three violations of the Code and Rules and that as a matter of law the conduct surety bond is now subject to forfeiture. Respondent argues that, because Great American Insurance Company has already canceled her bond and she has had to secure another one, the bond should not be forfeited.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. The evidence shows that Respondent posted a conduct surety bond in favor of the TABC, as was required. Respondent was finally adjudicated of three or more violations of the Code or Rules since September 1, 1995. Staff notified Respondent in writing of the intent to seek forfeiture of the bond as authorized by 16 TEX. ADMIN. CODE § 33.24(j). The fact that the bond has been canceled has no effect on any issue here. The cancelation of the bond by the surety does not preclude TABC's authority to revoke it. Therefore, Respondent's conduct surety bond should be forfeited.

III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Huebels-Hoffman, d/b/a Huebels Bier Garden (Respondent), License No. BG675562.
 2. Great American Insurance Company issued the conduct surety bond to Respondent 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. On March 9, 2010, TABC, based upon a waiver of hearing by Respondent, entered an order finding that, on January 30, 2010, Respondent committed the Code violations of "Consumption During Prohibited Hours By Lic/Perm," and "Permit Consumpt. During Prohibited Hours by Lic/Perm."
 5. On August 19, 2010, TABC, based upon a waiver of hearing by Respondent, entered an order finding that, on May 5, 2010, Respondent committed the Code violation of "Breach, Failure to Report."
 6. Respondent has committed three or more violations of the Code since September 1, 1995.
 7. On September 10, 2010, the Staff of TABC (Staff) sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
 8. Respondent requested a hearing on this matter.
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9. On December 29, 2010, 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.
10. The hearing convened on February 9, 2010. Both parties appeared. 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 findings of fact and conclusions of law, Respondent's conduct surety bond No. FS 8361712 should be forfeited. TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN CODE § 33.24(j).

SIGNED March 11, 2011.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS