

DOCKET NO. 593337

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
P.M. INVESTMENTS L.L.C. D/B/A RHYTHM & BREWS, Respondent	§	ALCOHOLIC
	§	
PERMIT NOS. MB702997, LB & PE	§	
	§	
HIDALGO COUNTY, TEXAS (SOAH DOCKET NO. 458-11-0054)	§	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 Melissa M. Ricard presiding. The hearing convened on September 28, 2010 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 November 4, 2010. 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, determines that the citation to the Alcoholic Beverage Code in proposed Conclusion of Law No. 1 should be corrected to read:

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE § 11.11.

With this correction to Conclusion of Law No. 1, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate 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 Fact

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. XTL08453 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.

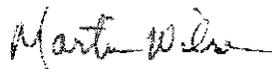
SIGNED this the 1st day of July, 2011, at Austin, Texas.



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

Administrative Law Judge
State Office of Administrative Hearings
Corpus Christi, TX
VIA FACSIMILE: 512.322.0470

Mario Garcia M.
ATTORNEY FOR RESPONDENT
4907 S. Jackson Road
Edinburg, TX 78539
VIA FACSIMILE: (956) 661-8026

P.M. Investments L.L.C.
d/b/a Rhythm & Brews
RESPONDENT
P.O. Box 6207

McAllen, TX 78502

David T. Duncan Jr.
ATTORNEY FOR PETITIONER
TABC Legal Division

SOAH DOCKET NO. 458-11-0054

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
P.M. INVESTMENTS L.L.C.	§	OF
d/b/a RHYTHM & BREWS	§	
PERMIT NOS. 702997 MB & PE	§	
MIDALGO COUNTY, TEXAS	§	
(TABC CASE NO. 59337)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against P.M. Investments L.L.C. d/b/a Rhythm and Brews (Respondent). The Respondent's permits have been cancelled for cause by the TABC. The TABC requests the Respondent's conduct surety bond be forfeited in accordance with Texas Alcoholic Beverage Code (Code) § 11.11. The Administrative Law Judge (ALJ) grants this request.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on September 28, 2010, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by telephone. The staff of the Commission (Staff) was represented by its counsel, David Duncan. Respondent was represented by Attorney Mario Garcia.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

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PROPOSAL FOR DECISION

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II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

CODE § 11.11(b)(2) and 16 TEXAS ADMINISTRATIVE CODE (TAC) § 33.24 provide that the holder of a permit must provide a conduct surety bond with an application for a permit and that the permittee agrees that the amount of the surety bond shall be paid to the state if the permit is revoked.

Staff introduced Exhibit 1 into evidence which is the affidavit of Amy Harrison, TABC Licensing Department Director, which shows that Permit No. MB-702997, which includes the Beverage Carthage Permit and the Mixed Beverage Late Hours Permit, was issued to P.M. Investments L.L.C., d/b/a Rhythm and Brews, 214 S. 17th Street, McAllen, Hidalgo County, Texas, by the Commission. The permittee's mailing address is P.O. Box 6207, McAllen, Texas, 78502. The affidavit states that the permit was cancelled for cause on March 31, 2010. Exhibit 1 further shows that Respondent posted Conduct Surety Bond Number XTL08453, dated August 15, 2008, in the amount of \$5,000, payable to the State of Texas.

III. RECOMMENDATION

At the hearing, the Respondent acknowledged that the applicable permit had been canceled for cause and that Respondent was aware of the consequences of such a cancellation, including a forfeiture of the surety bond.

Staff proved that the applicable permit was cancelled for cause, therefore under TAC § 33.24, the ALJ finds that the bond should be forfeited.

IV. FINDINGS OF FACT

1. Permit No. MB-702997 was issued to P.M. Investments L.L.C., d/b/a Rhythm and Brews, 214 S. 17th Street, McAllen, Hidalgo County, Texas (Respondent), by the Texas Alcoholic Beverage Commission (TABC).

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PROPOSAL FOR DECISION

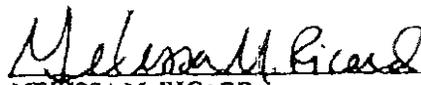
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2. Respondent posted Conduct Surety Bond Number XTI.08453, dated August 15, 2008, in the amount of \$5,000, payable to the State of Texas.
3. Respondent's permit history shows that the permit was canceled for cause on March 31, 2010.
4. TABC staff sent a notice of hearing regarding its intention to enforce the Texas Alcoholic Beverage Code to the Respondent on September 15, 2010. 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.
5. The hearing on the merits was held on September 28, 2010, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas by telephone. The staff of the Commission (Staff) was represented by its counsel, David Duncan. Respondent was represented by Attorney Mario Garcia.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE § 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue 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 upon the Findings of Fact, TEX. ALCO. BEV. CODE § 11.11(b)(2), and 16 TAC § 33.24, Conduct Surety Bond Number XTI.08453, dated August 15, 2008, in the amount of \$5,000, should be forfeited.

SIGNED November 4, 2010.


MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS