

**DOCKET NO. 597686**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
<b>ANA VILLA D/B/A VILLANA'S NIGHT CLUB, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT NOS. MB683480, LB &amp; PE</b>	§	
	§	
<b>EL PASO COUNTY, TEXAS (SOAH DOCKET NO. 458-11-1467)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

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

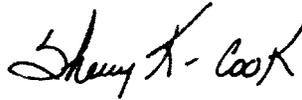
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Veronica S. Najera presiding. The hearing convened on January 10, 2011 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on January 18, 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. MS4877546 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.

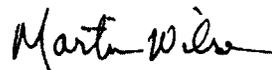


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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

**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.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
401 East Franklin Avenue Suite 580  
El Paso, Texas 79901  
**VIA FACSIMILE: 512.322.0472**

Ana Villa  
d/b/a Villana's Night Club  
**RESPONDENT**  
7245 Barker Road  
El Paso, Texas 79915  
**VIA REGULAR MAIL**

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

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge  
January 18, 2011

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

**VIA REGULAR MAIL**

**RE: Docket No. 458-11-1467**  
***TABC v. Ana villa d/b/a Villana's Night Club***

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Sincerely,

Veronica S. Najera  
Administrative Law Judge

Enclosure

xc Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, **VIA Regular Mail**  
Sandra Patton Attorney, Texas Alcoholic Beverage Commission, **VIA Regular Mail**  
Ana Villa, **-VIA Regular**  
**SOAH-Austin-Docketing- VIA DOCKET CHANGE FORM**

El Paso State Office Building  
401 East Franklin Avenue Suite 580 El Paso, Texas 79901  
915.834.5650 (Telephone) 915.834.5657 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



by the TABC for the premises known as Villanas Night Club located in El Paso, Texas.

On November 1, 2010, the TABC notified the Respondent of its intention to seek forfeiture of the full amount of the conduct surety bond. A hearing was requested on this forfeiture and, on December 6, 2010, the TABC sent Respondent a Notice of Hearing. The Notice of Hearing alleged Respondent had three adjudicated violations for which Respondent must forfeit her conduct surety bond, certificate of deposit, or letter of credit, pursuant to Texas Alcoholic Beverage Code (Code) § 11.11 and the Texas Alcoholic Beverage Commission Rule § 33.24(j).

## II. DISCUSSION

A surety bond is required of certain licensees and permittees.<sup>2</sup> A holder of a permit issued under Chapters 25, 28, or 32 of the 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.”<sup>3</sup> Pursuant to these statutory requirements, Respondent procured a surety bond.<sup>4</sup>

Section 33.34 of the Code allows the Commission to seek forfeiture of a surety bond when the permittee has three adjudicated violations or the permit has been cancelled. The evidence of record indicates three adjudicated violations, as follows:

- On October 14, 2010, a Waiver Order was issued based on a “Settlement Agreement and Waiver of Hearing” signed by the Respondent on October 5, 2010, for possession of alcoholic beverages not covered by invoice.
- On March 31, 2009, a Waiver Order was issued based on a Settlement Agreement signed by the Respondent on March 24, 2009, for consumption of alcohol during prohibited hours.
- A third Waiver Order was issued on June 10, 2008, based on a settlement agreement signed by the Respondent on May 29, 2008, for possession of alcoholic beverages not covered by invoice.

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<sup>2</sup> Code § 11.11; 16 TAC § 33.24 (j).

<sup>3</sup> Code § 11.11(a)(1).

<sup>4</sup> Petitioner’s Exhibit No. 1, p.12, conduct surety bond.

Further, Rule § 33.24(j)(2) provides for a hearing on “the question of whether the criteria for forfeiture of the bond have been satisfied.” The criteria in this case are the three adjudicated violations detailed above. Therefore, Staff has met its burden to prove that forfeiture is warranted in this matter.

### III. FINDINGS OF FACT

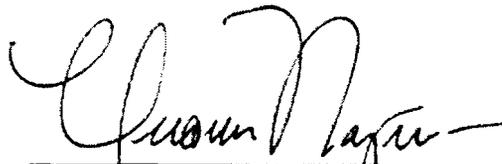
1. Ana Villa d/b/a Villana’s Night Club (Respondent) held a mixed beverage permit, which includes a beverage cartage permit and a mixed beverage late hours permit, on February 8, 2008. The permit number is MB-683480.
2. Villana’s Night Club is currently operating.
3. A conduct surety bond in the amount of \$5,000.00 was obtained by the Respondent through the Great American Insurance Company on January 29, 2008.
4. Respondent has three adjudicated violations of record:
  - On October 14, 2010, a Waiver Order was issued based on a “Settlement Agreement and Waiver of Hearing” signed by the Respondent on October 5, 2010, for possession of alcoholic beverages not covered by invoice.
  - On March 31, 2009, a Waiver Order was issued based on a Settlement Agreement signed by the Respondent on March 24, 2009, for consumption of alcohol during prohibited hours.
  - A third Waiver Order was issued on June 10, 2008, based on a settlement agreement signed by the Respondent on May 29, 2008, for possession of alcoholic beverages not covered by invoice.
5. On November 1, 2010, the TABC’s Staff notified the Respondent of its intent to seek forfeiture of the full amount of the conduct surety bond.
6. The December 6, 2010, Notice of Hearing notified the Respondent 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.

7. The hearing convened January 10, 2011 at the El Paso State Office of Administrative Hearings. Sandra K. Patton, staff attorney, appeared telephonically on behalf of the TABC. Ana Villa, owner and permittee, appeared in person. On that date, the hearing was held and the record closed.

#### VI. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to 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 §§ 2003.021(b) and 2003.042(6).
3. Notice of Hearing was provided pursuant to 1 TAC § 155.401 and Code § 11.63.
4. A conduct surety bond may be forfeited when a licensee has three adjudicated Code violations, pursuant to 16 TAC § 33.24(j).
5. Based upon these Findings of Fact and Conclusions of Law, the criteria in 16 TAC § 33.24(j) for forfeiture of a conduct surety bond have been met.
6. In compliance with Code § 11.11(b)(2), the Respondent's surety bond shall be forfeited.

Signed January 18, 2011.



Veronica S. Najera  
Administrative Law Judge  
State Office of Administrative Hearings