

**DOCKET NO. 593338**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>VS.</b>	§	
	§	
<b>JP CONCEPTS INC. D/B/A WATERDOGS SPORTS LOUNGE, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT NOS. MB673908, PE &amp; LB</b>	§	
	§	
<b>HAYS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-4476)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

The above-styled and numbered cause is before the Assistant Administrator of the Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

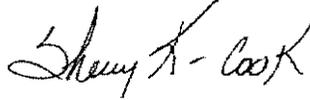
After proper notice was given, this case was heard by the State Office of Administrative Hearings, with Administrative Law Judge Wendy K. L. Harvel presiding. The hearing convened on June 23, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 23, 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, 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 other 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, which are not specifically adopted herein, are denied.

**IT IS THEREFORE ORDERED** that conduct surety bond No. FS 8361712 is hereby **FORFEITED**.

This Order will become final and enforceable on the 17th day of December, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the 22<sup>nd</sup> day of November, 2010, 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 22<sup>nd</sup> day of November, 2010.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Wendy K. L. Harvel  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701  
**VIA FACSIMILE: (512) 322-2061**

JP Concepts, Inc.  
d/b/a Waterdogs Sports Lounge  
**RESPONDENT**  
217 E Hopkins  
San Marcos, Texas 78666  
**AND**  
387 Suttles Ave.  
San Marcos, Texas 78666  
**VIA REGULAR MAIL**

Wells Fargo Bank  
**SURETY, BANK OR SAVINGS INSTITUTION**  
123 N. Edward Gary Street  
San Marcos, Texas 78666  
*VIA REGULAR MAIL*

Great American Insurance Company  
**SURETY, BANK OR SAVINGS INSTITUTION**  
580 Walnut Street  
Cincinnati, Ohio 45202  
*VIA REGULAR MAIL*

John W. Sedberry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

TABC Licensing Division



## 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 presented Waiver Orders and a Settlement Agreement and Waiver of Hearing for past enforcement actions by TABC against Respondent. Details concerning these enforcement actions are as follows:

1. By order dated October 16, 2008, TABC found that Respondent violated Section 61.761 of the Code by violating the cash law; and (b) waived hearing on the matter.
2. By order dated November 17, 2009, TABC found that Respondent violated Section 104.01(5) of the Code by allowing an intoxicated permittee/licensee on the licensed premises; and (b) waived hearing on the matter.
3. By order dated March 18, 2010, TABC found that Respondent violated Section 11.61(b)(21) of the Code by failing to report a breach; and (b) waived hearing on the matter.

By letter dated April 1, 2010, TABC notified Respondent that it intended to seek forfeiture of the full amount of conduct surety bond No. FS 8361712. Respondent requested a hearing on the bond forfeiture.

**C. Respondent's Evidence**

Respondent acknowledged all three violations. Respondent made two arguments: (1) alterations to the cash and credit rules since his violation should preclude bond forfeiture, and (2) the termination of his liquor license should prevent bond forfeiture.

Respondent contends that the cash credit rules have changed since Docket No. 580345 was first adjudicated. He argues that the cash credit law violation should not be used because, if the violation occurred today, it would result in a warning rather than an adjudicated violation.

Respondent further asserts that the bond should not be forfeited because his liquor license has been terminated. He argues that he no longer operates with a license from TABC.

**D. 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 since 2008 and that as a matter of law the conduct surety bond is now subject to forfeiture. Respondent argues that the cash law violation is no longer considered a violation under the penalty matrix currently in effect, and therefore, should not be counted against him. At the time of the cash law violation, however, Respondent received an adjudicated violation, which now counts toward the three violations. Any change to a statute does not affect the prior action taken before the change.<sup>1</sup> Thus, although the law has changed, the law in effect at the time of the violation still applies to that violation. Therefore, Respondent's previous cash law violation stands as an adjudicated violation under §33.24 of the Code.

Respondent's second argument, that the termination of his liquor license makes enforcement of his surety bond moot, is not compelling. The TABC still has jurisdiction over

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<sup>1</sup> TEX. GOV'T CODE § 311.031(a).

the bond, even after the license is terminated. The bond forfeiture is still enforced even when the license no longer is valid.

Respondent chose to waive the right to a contested hearing on, and admitted to, the three violations. The language of the settlement agreements and waivers state that the Respondent understood that the violations would become part of the violation history and a forfeiture of any conduct surety bond may result.

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 within three years on April 1, 2010, by the execution of a Settlement Agreement and Waiver of Hearing on those violations. Staff notified Respondent in writing of the intent to seek forfeiture of the bond as authorized by 16 TEX. ADMIN. CODE § 33.24(j). Therefore, Respondent's conduct surety bond should be forfeited.

### III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued JP Concepts (Respondent), License No. MB673908 for its business, Waterdogs Sports Lounge.
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. TABC has found (a) by order dated October 16, 2008 that Respondent violated Section 61.761 of the Texas Alcoholic Beverage Code (Code) by violating the cash law; and (b) by order dated November 17, 2009 TABC found that Respondent violated Section 104.01(5) of the Code by allowing an intoxicated permittee/licensee on the licensed premises; (c) by order dated March 18, 2010, TABC found that Respondent violated Section 11.61(b)(21) of the Code by failing to report a breach; and (d) that Respondent waived hearings on these matters.
5. Respondent committed three or more violations of the Code since September 1, 1995.

6. On April 1, 2010, the Staff of TABC (Staff) sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
7. Respondent requested a hearing on this matter.
8. On June 4, 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.
9. The hearing convened on June 23, 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 July 23, 2010.**

  
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**WENDY K. L. HARVEL**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**