

TABC DOCKET NO. 606411

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Petitioner	§	
	§	
VS.	§	
	§	
422 PRIVATE CLUB	§	
D/B/A 422 PRIVATE CLUB,	§	ALCOHOLIC
Respondent	§	
	§	
PERMITS NO. N772447, PE	§	
	§	
HUTCHINSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-12-4599)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of May, 2012, 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 B. L. Phillips presiding. The hearing convened on March 6, 2012 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 20, 2012. 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.

After review and due consideration of the Proposal for Decision, 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 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 Certificate of Deposit No. 9706, assigned by Respondent in lieu of a conduct surety bond pursuant to Alcoholic Beverage Code §11.11, is hereby **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 19th day of June, 2012, unless a Motion for Rehearing is filed on or before the 18th day of June, 2012.

SIGNED this the 25th day of May, 2012, 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 25th day of May, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. B.L. Phillips
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th St., Ste. 502
Austin, TX 78701
VIA FACSIMILE: (512) 322-2061

422 Private Club
d/b/a 422 Private Club
RESPONDENT
422 N. Main St.
Borger, TX 79007
VIA REGULAR MAIL & CERTIFIED MAIL: 7006 2760 0004 7904 2350

Clay Ballman
ATTORNEY FOR RESPONDENT
301 W 6th St. Ste. 302
Borger, TX 79008
VIA REGULAR MAIL
AND VIA FACSIMILE: (806) 274-9546

Matthew Clark
ATTORNEY FOR PETITIONER
TABC Legal Division

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner

VS.

422 PRIVATE CLUB
D/B/A 422 PRIVATE CLUB
Respondent

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

RECEIVED
MAR 26 2012
MAL UTERRIANS/IABL

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission’s Staff (Petitioner) brought this disciplinary action against 422 Private Club dba 422 Private Club (Respondent), alleging that Respondent or her agent, servant, or employee had three or more adjudicated violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent must forfeit her conduct surety bond, certificate of deposit, or letter of credit. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner proved the allegations by a preponderance of the evidence and recommends that Respondent’s letter of credit be forfeited.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

On March 6, 2012, a hearing convened before ALJ B. L. Phillips at the State Office of Administrative Hearings (SOAH), 8212 Ithaca, Suite W3, Lubbock, Texas. Petitioner appeared at the hearing by telephone and was represented by Matthew Clark, attorney. Respondent appeared at the hearing by telephone and was represented by Clay Ballman, attorney. After presentation of evidence and argument, the hearing concluded and the record was closed.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may revoke, or deny renewal of, a license or permit if the holder violates a provision of the Code or rule of the Commission pursuant to Code §§ 6.01 and 61.71. The Commission's rule found at 16 Texas Administrative Code (TAC) § 33.24(j) governs forfeiture of a conduct surety bond. It provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that a licensee or permittee has committed three violations of the Code since September 1, 1995.

Code § 11.11 applies to conduct surety instruments required for holders of permits issued under chapter 28. Pursuant to § 11.11, in a letter of credit held for conduct surety purposes, the holder must agree: (1) not to violate a state law relating to alcoholic beverage; and (2) that the amount of the conduct surety instrument shall be paid to the state if the permit is revoked.

III. DISCUSSION AND ANALYSIS

A. Background

On April 8, 2011, the Commission issued a Private Club Registration Permit, N-772447, which included a Beverage Cartage Permit, to Respondent. Respondents posted a conduct surety bond for \$5,000 as required by §§ 11.11 and 61.13 of the Code.

B. Petitioner's and Protestant's Evidence and Contentions

Petitioner presented two exhibits as evidence in the case. Exhibit number 1 is the notice of hearing sent to Respondent on February 17, 2012. Exhibit number 2 is the certified record pertaining to Respondent's permit. The records show that Borger Inter Bank established Certificate of Deposit No. 9706 for conduct surety purposes, in the amount of \$5,000 and in favor of the State of Texas, for Respondents' account. The Letter of Credit 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," and "The

condition of the obligation of this letter of credit is such that the permittee or licensee shall faithfully conform with the Texas Alcoholic Beverage Code and Rules of the commission.”

By Order dated September 29, 2011, the Commission found the Respondent violated the Code by permitting a minor to possess/consume on the licensed premises, permitting consumption of alcoholic beverages during prohibited hours by the licensee/permittee and possessing un-invoiced or unauthorized alcoholic beverages. Respondent signed a Settlement Agreement and Waiver for this violation accepting an 18 day suspension or payment of a \$5,400 fine. Petitioner notified Respondent by letter dated October 3, 2011, that the Commission intended to seek forfeiture of the full amount of the letter of credit, and Respondent requested a hearing on the forfeiture of the conduct surety bond.

C. Respondent's Evidence and Contentions

Respondent testified that she was not aware of the events which took place on the license premises leading to the violations; however, she did not deny responsibility for the events. Further, she did not deny signing Settlement Agreements and Waivers for the alleged violations. She stated that the bartender involved in the incident had a TABC-issued training certificate. Finally, she argued that the alleged violations were not fully adjudicated because they were handled in a settlement agreement.

D. Analysis

After considering the evidence, the ALJ concludes that Petitioner proved that Respondent violated Code provisions relating to alcoholic beverages as set forth above. As a result, Respondent's conduct surety bond provides for a forfeiture of the full amount of the letter of credit.

IV. RECOMMENDATION

Having reviewed all the evidence, the ALJ finds that the evidence proved that the criteria for forfeiture of the conduct surety have been satisfied. The ALJ recommends that the conduct surety bond be forfeited and that the full amount of the surety should be remitted to the State of Texas.

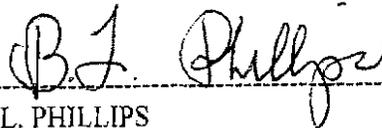
V. FINDINGS OF FACT

1. On April 8, 2011, the Texas Alcoholic Beverage Commission (Commission or TABC) issued a Private Club Registration Permit, N-772447, which included a Beverage Cartage Permit, to Respondent.
2. Respondents posted a conduct surety bond for \$5,000.00 as required by § 11.11 of the Texas Alcoholic Beverage Code (Code).
3. Respondent received proper and timely notice of the hearing from TABC in a notice of hearing dated February 17, 2012.
4. The hearing on the merits convened March 6, 2012, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Texas. The TABC's staff was represented by attorney Matthew Clark. Respondent appeared and was represented by attorney Clay Ballman. The record closed on the same day.
5. By Order dated September 29, 2011, the Commission found the Respondent violated the Code by permitting a minor to possess/consume on the licensed premises, permitting consumption of alcoholic beverages during prohibited hours by the licensee/permittee and possessing un-invoiced or unauthorized alcoholic beverages.
6. Respondent signed a Settlement Agreement and Waiver for these three violations accepting an 18 day suspension or payment of a \$5,400 fine.
7. Petitioner notified Respondents by letter dated October 3, 2011, that the Commission intended to seek forfeiture of the full amount of the conduct surety bond.
8. Respondent timely requested a hearing on the forfeiture of the conduct surety bond.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§ 5.35, 25.04, and 61.71.
2. SOAH has jurisdiction to conduct the hearing in this matter and 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 TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the Findings of Fact, the Staff proved that the criteria for forfeiture of the conduct surety bond have been satisfied.
5. Based on the foregoing, forfeiture of Respondent's conduct surety bond is warranted.

SIGNED: MARCH 20, 2012



B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS