

SOAH DOCKET NO. 458-11-2537

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
OASIS HOSPITALITY d/b/a HOLLYWOOD NITES PERMIT NOS. 746210, LB HIDALGO COUNTY, TEXAS (TABC CASE NO. 597536)	§	OF
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

AMENDED PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Oasis Hospitality d/b/a Hollywood Nites (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 March 22, 2011, 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 Lisa Crissman, Staff Attorney. Respondent was represented by Russell Salinas, President.

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.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

Code § 11.11(b)(2) and 16 TEX. ADMIN. CODE (TAC) § 33.24 provides 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-746210, which includes the Mixed Beverage Late Hours Permit, was issued to Oasis Hospitality Inc., d/b/a Hollywood Nites, 710 FM 493 North, Donna, Hidalgo County, Texas, by the Commission. The affidavit states that the permit was cancelled for cause on August 30, 2010. Exhibit 1 further shows that Respondent posted Conduct Surety Bond Number 5068974, dated February 23, 2010, in the amount of \$5,000, payable to the State of Texas.

Exhibit 1 shows that Mr. Salinas, as President of Respondent, signed a Settlement Agreement and Waiver on August 30, 2010, in which he agreed that Code § 745 (Subterfuge) had been violated and he further agreed that the applicable permit would be cancelled. Mr. Salinas initialed the portions of the Settlement Agreement and Waiver that state: "This agreement may result in forfeiture of any conduct surety bond I have on file" and the box marked "cancellation." Mr. Salinas waived any right to a hearing on the violation.

At the hearing for this matter, Mr. Salinas testified that TABC Agent Mario Villarreal led him to believe he could surrender the old permit and reapply for a new permit, so that his bond would not be forfeited. He stated he cooperated fully with the TABC by going into the TABC office to surrender the permit. He acknowledged that he signed the Settlement Agreement and Waiver but argues it only states the bond "may" be forfeited. He further stated that he was not told that he could appeal the TABC's decision to cancel the permit, and he was led to believe that he did not need a lawyer at the time but now wishes he had his attorney review the matter.

Staff argued that it met its burden of showing that the permit was cancelled and that TABC

Rule 16 TAC § 33.31(d) contemplates a voluntary suspension of a permit only if there is no administrative action pending. Even though Mr. Salinas may have thought he surrendered the license, he admitted that he violated the Code, and he agreed the permit was cancelled. Further, as indicated by his initials on the Settlement Agreement and Wavier next to the box marked “cancellation”, Mr. Salinas acknowledged that his permit was cancelled.

III. RECOMMENDATION

Staff proved that the applicable permit was cancelled; therefore under 16 TAC § 33.24 (j), the ALJ finds that the bond should be forfeited. Respondent agreed in writing that the permit was cancelled, but argues that he should not be held to the terms of the Settlement and Wavier Agreement because, alternatively, the TABC Agent misled him or he failed to understand the terms to which he agreed. There is no other evidence in the record to indicate that Respondent did not understand what the terms “cancelled” or “cancellation” meant. The Settlement and Wavier Agreement clearly shows the permit was cancelled. Respondent’s arguments taken in the light most favorable, would only mean that Respondent failed to understand the implications of cancellation of the permit.

IV. FINDINGS OF FACT

1. Permit No. MB- 746210, which includes the Mixed Beverage Late Hours Permit, was issued to Oasis Hospitality Inc., d/b/a Hollywood Nites, 710 FM 493 North, Donna, Hidalgo County, Texas (Respondent) by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent posted Conduct Surety Bond Number 5068974, dated February 23, 2010, in the amount of \$5,000, payable to the State of Texas.
3. Respondent’s permit was cancelled on August 30, 2010.
4. TABC staff sent a notice of hearing regarding its intention to enforce the Texas Alcoholic Beverage Code to the Respondent on January 18, 2011. 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 March 22, 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, Lisa Crissman, Staff Attorney. Respondent was represented by Russell Salinas, President.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE § 61.71.
2. SOAH 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 and 16 § 33.24 (j), Conduct Surety Bond Number 5068974, dated February 23, 2010, in the amount of \$5,000, should be forfeited.

SIGNED May 18, 2011.


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

AMENDED JUNE 20, 2011 to reflect actual date of bond. [MR]

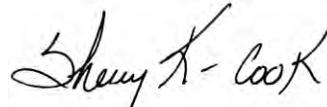
The modification to Conclusion of Law No. 1 corrects the Alcoholic Beverage Code citation to the Commission's jurisdiction. The modification to Conclusion of Law No. 4 corrects the Texas Administrative Code citation to the Commission's bond forfeiture rule.

With these corrections to Conclusions of Law No. 1 and No. 4, I also adopt the remaining Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Amended 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 Respondent's Conduct Surety Bond No. 5068974 is hereby **FORFEITED**.

This Order will become final and enforceable on the 8th day of May, 2012, unless a Motion for Rehearing is filed by the 7th of May, 2012.

SIGNED this the 12th day of April, 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 12th day of April, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

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