

DOCKET NO. 613322

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
DOGGIES RESTAURANT COMPANY LLC D/B/A DOGGIES RESTAURANT, Respondent	§	ALCOHOLIC
	§	
PERMIT MB736474	§	
	§	
HIDALGO COUNTY, TEXAS (SOAH DOCKET NO. 458-13-1078)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of July, 2013, the above-styled and numbered cause.

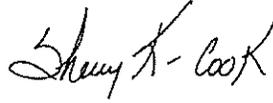
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Steven M. Rivas presiding. The hearing convened on December 19, 2012, and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 19, 2013. 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 Conduct Surety Bond No. MS 2104361, issued by Great American Insurance Company as Surety with Respondent as Principal, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 6th day of August, 2013, unless a Motion for Rehearing is filed on or before the 5th day of August, 2013.

SIGNED this the 12th day of July, 2013, at Austin, Texas.



Sherry K-Cook, 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 July, 2013.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Steven M. Rivas
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State Office of Administrative Hearings
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SOAH DOCKET NO. 458-13-1078
(TABC CASE NO. 613322)

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
DOGGIES RESTAURANT COMPANY LLC, D/B/A DOGGIES RESTAURANT, PERMIT NO. MB736474, HIDALGO COUNTY, TEXAS, Respondent		ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission brought this disciplinary action against Doggies Restaurant Company LLC, d/b/a Doggies Restaurant (Respondent), alleging that Respondent had its permit canceled over a violation of the Texas Alcoholic Beverage Code (Code), for which Respondent must forfeit its conduct surety bond. Based on the evidence, the Administrative Law Judge (ALJ) finds that Staff proved the allegation by a preponderance of the evidence and recommends that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing in this matter convened on December 19, 2012, before ALJ Steven M. Rivas. Judith L. Kennison, a Staff attorney with the Commission's Legal Services Division, appeared by telephone. Respondent was represented by Richard Schell, attorney, who appeared by telephone. The hearing concluded and the record closed that same day.

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

II. DISCUSSION

A. Applicable Law

Section 11.11 of the Code requires the holder of a retail dealer's permit to provide the Commission with a \$5,000 surety bond conditioned on the holder's conformance with alcoholic beverage law. The Commission may seek forfeiture of the surety bond if a license or permit has been canceled by the Commission under the Commission's rule at 16 Texas Administrative Code § 33.24(j) and Section 11.11(b)(2) of the Code.

B. Relevant Facts

On October 9, 2009, the Commission issued License number MB-736474 to Respondent, and Respondent posted a conduct surety bond for \$5,000 as required by §§ 11.11 and 61.13 of the Code. The records show that Great American Insurance Company established a \$5,000 Conduct Surety Bond, Number MS2104361, for Respondent and in favor of the State of Texas. The 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 bond shall be paid to the state." By Order dated August 21, 2012, the Commission found the Respondent violated the Code by committing subterfuge on July 12, 2012, and Respondent signed a Settlement Agreement and Waiver for this violation accepting cancellation of the permit.

By letter dated September 12, 2012, Staff notified Respondent that it intended to seek forfeiture of the full amount of the conduct surety bond. The letter referenced the aforementioned violation and Respondent requested a hearing on the bond forfeiture.

C. Evidence and Argument

Respondent's attorney, Mr. Schell, did not dispute the subterfuge allegation but instead argued the individual who signed the Settlement Agreement and Waiver form did not have authority to do so. The person who signed the form was David Blasquez; Mr. Schell argued that although Mr. Blasquez held himself out as Respondent's owner, he did not have a controlling interest in the company at that time. Following the hearing, Mr. Schell submitted documents to

the ALJ purportedly reflecting that on September 30, 2011, Mr. Blasquez assigned 90% of Respondent's ownership to his parents: 45% ownership interest to Victor Blasquez and 45% ownership interest to Orfelinda Blasquez. As such, Mr. Schell argued, David Blasquez, had only 10% ownership interest and had no authority to sign the Settlement Agreement and Waiver form.

Staff argued the subterfuge violation had already been fully adjudicated. And, while not conceding it would have made a difference, Staff asserted that any issues regarding Respondent's ownership or controlling interest should have been brought to the attention of the Commission in July 2012.

D. ALJ's Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted by license and permit holders to encourage compliance with provisions of the Code and the rules promulgated by the Commission. Staff argued that Respondent committed a subterfuge violation in July 2012 and that, as a matter of law, the conduct surety bond is now subject to forfeiture. Mr. Schell argued that based on corporate business documents he submitted, David Blasquez did not have a controlling interest in the company and had no authority to sign the Settlement Agreement and Waiver form.

Mr. Schell failed to present any evidence to the ALJ that, because David Blasquez held a non-controlling ownership interest (10%) in the company, he had no authority to sign the Settlement Agreement and Waiver form, and presumably, because he had no authority, Respondent should not be bound to the terms of the Settlement Agreement and Waiver.

The evidence reflects David Blasquez became a part-owner in the company when he assigned 90% ownership interest to his parents. But, it is beyond the scope of this matter to determine whether or not a person with a non-controlling interest in a company has authority to represent or bind a company to terms of any agreement, including a settlement agreement. The language in the Settlement Agreement and Waiver form clearly stated that the person who signed the form (David Blasquez) had authority to act on behalf of the permit/license holder. David Blasquez also represented on the form that he was Respondent's owner, which is true to the extent that he had 10% ownership interest.

The ALJ has no details regarding the underlying subterfuge investigation and does not know why David Blasquez signed the Settlement Agreement and Waiver form instead of having one of his parents sign the form since each of them held 45% ownership interest. Regardless of whether or not David Blasquez had authority to sign the Settlement Agreement and Waiver form, no evidence was presented that the Commission erred in assessing a subterfuge violation against Respondent. The ALJ need not re-litigate a prior violation that has already been fully adjudicated by a Settlement Agreement and Waiver.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. The evidence shows that Respondent posted the required conduct surety bond in favor of the Commission. Respondent agreed to the penalty of permit cancellation for a subterfuge violation by the execution of a Settlement Agreement and Waiver form. Staff notified Respondent in writing of its intent to seek forfeiture of the bond as authorized by 16 Texas Administrative Code § 33.24(j). Therefore, Respondent's conduct surety bond should be forfeited.

III. FINDINGS OF FACT

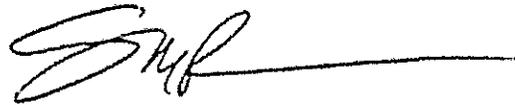
1. The Texas Alcoholic Beverage Commission (Commission) issued Permit No. MB736474 to Doggies Restaurant Company LLC d/b/a Doggies Restaurant (Respondent).
2. Great American Insurance Company issued conduct surety bond No. MS2104361 to Respondent in the amount of \$5,000.
3. The conduct surety bond provides: "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 bond shall be paid to the state."
4. On July 12, 2012, Respondent executed a Settlement Agreement and Waiver form for the subterfuge violation and agreed to the penalty of permit cancellation.
5. By Waiver Order dated August 21, 2012, the Commission found that Respondent committed a subterfuge violation.
6. On September 12, 2012, the Commission's staff (Staff) sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond and Respondent requested a hearing on this matter.
7. On November 27, 2012, Staff issued a notice of hearing informing all parties of the hearing in this matter.

8. 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 December 19, 2012, before ALJ Steven M. Rivas. Staff attorney, Judith Kennison, appeared by telephone, and Respondent appeared by telephone through its attorney Richard Schell. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under the Texas Alcoholic and Beverage Code (Code) 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 Texas Government Code ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Texas Government Code § 2001.051 and 1 Texas Administrative Code ch. 155.
4. Respondent's permit was canceled following a subterfuge violation.
5. Respondent's conduct surety bond No. MS2104361 should be forfeited. Code § 11.11 and 16 Texas Administrative Code § 33.24(j).

SIGNED February 19, 2013.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS