

**DOCKET NO. 610148**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>STRATEGIC FUTURE INVESTMENTS LLC D/B/A SOUTH DALLAS, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT MB728019</b>	§	
	§	
<b>HIDALGO COUNTY, TEXAS (SOAH DOCKET NO. 458-12-6727)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 10th 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 John H. Beeler presiding. The hearing convened on July 11, 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 September 10, 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 Conduct Surety Bond No. 2-87-59-48, 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 3rd day of August, 2013, unless a Motion for Rehearing is filed on or before the 2nd day of August, 2013.

**SIGNED** this the 10th day of July, 2013, at Austin, Texas.



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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 10th day of July, 2013.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

John H. Beeler  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
**VIA FACSIMILE: 512-322-2061**

Strategic Future Investments LLC  
d/b/a South Dallas  
**RESPONDENT**  
225 E. Laurel Ave.  
McAllen, TX 78501  
**VIA FIRST CLASS MAIL, CMRRR #70120470000133006640**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [sandra.patton@tabc.state.tx.us](mailto:sandra.patton@tabc.state.tx.us)**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 10, 2012

Sherry Cook  
Acting Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA INTERAGENCY MAIL

**RE: SOAH Docket No. 458-12-6727; *In the Matter of Strategic Future Investments, LLC d/b/a South Dallas***

Dear Ms. Cook:

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

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "John Beeler".

John Beeler  
Administrative Law Judge

JB/vg  
Enclosure

xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with Certified Evidentiary Record and 1 Hearing CD)  
Juanita Inez Cano, Strategic Future Investments, LLC d/b/a South Dallas, 225 E. Laurel Ave., McAllen, TX 78501 - VIA REGULAR MAIL



**SOAH DOCKET NO. 458-12-6727  
TABC CASE NO. 610148**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>STRATEGIC FUTURE INVESTMENTS, LLC, D/B/A SOUTH DALLAS, PERMIT NO. MB728019, HIDALGO COUNTY, TEXAS, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (TABC) alleges that on or about March 8, 2012, Strategic Future Investments, LLC, d/b/a South Dallas (Respondent), permit was canceled for cause pursuant to the Texas Alcoholic Beverage Code. Staff seeks forfeiture of Respondent's conduct surety bond. The Administrative Law Judge (ALJ) recommends that Respondent's conduct surety bond be forfeited.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened by telephone on July 11, 2012, before ALJ John H. Beeler. Sandra Patton, TABC Legal Services Division attorney, represented Staff, and Juanita Inez Cano represented Respondent. 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 Texas Alcoholic Beverage Code (Code) requires the holder of a retail dealer's permit to provide TABC with a surety bond conditioned on the holder's conformance with alcoholic beverage law. The bond may be forfeited if the licensee has been canceled for cause.<sup>1</sup>

### B. Relevant Facts

By Waiver Order dated March 8, 2012, Respondent's permit was canceled for cause. By letter dated May 24, 2012, TABC notified Respondent that it intended to seek forfeiture of the full amount of the Conduct Surety Bond. The letter referenced the aforementioned cancellation. Respondent requested a hearing on the bond forfeiture.

### C. Respondent's Argument

Ms. Cano argues that the violation resulting in the cancellation of her permit concerned action taken by her husband and did not involve the licensed premises. It should, therefore, not affect the bond.

### D. Analysis

Conduct surety bonds are posted by TABC license and permit holders to encourage compliance with provisions of the Code and the rules promulgated by TABC (Rules). Staff argued that Respondent's permit was canceled for cause and that, as a matter of law, the conduct surety bond is now subject to forfeiture. As set out above, Respondent argued the underlying violation should not affect the bond.

Although Respondent may have had a defense to the violation when it was alleged, Respondent waived any defenses when she executed the Settlement Agreement and Waiver of Hearing and allowed that adjudication of the violation to become final.

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<sup>1</sup> 16 Tex Admin. Code § 33.24(j).

The language in each waiver clearly states that Respondent understood that the waiver might result in a forfeiture of any conduct surety bond on file.

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 TABC. Respondent's permit was canceled for cause pursuant to a Settlement Agreement and Waiver of Hearing on those violations. Staff notified Respondent in writing of its intent to seek forfeiture of the bond as authorized by 16 Tex. Admin. Code § 33.24(j). Therefore, Respondent's Conduct Surety Bond No. S914-4091 should be forfeited.

### III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Strategic Future Investments, LLC, d/b/a South Dallas (Respondent), Permit No. MB728019, LB, and PE for its licensed premises.
2. On July 15, 2009, Great American Insurance Company issued a Conduct Surety Bond for the licensed premises in the amount of \$10,000.
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. By Waiver Order dated November 29, 2011, TABC found that Respondent violated the Texas Alcoholic Beverage Code (Code) and canceled Respondent's permit for cause.
5. On April 2, 2012, the staff of TABC (Staff) sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
6. Respondent requested a hearing on this matter.
7. On June 12, 2012, 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.
8. The hearing convened on July 11, 2012. Both parties appeared by telephone. Sandra Patton, TABC Legal Services Division attorney, represented TABC at the hearing, and Juanita Inez Cano represented Respondent. The hearing concluded and the record closed that same day.

**IV. CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this matter under 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 Tex. Gov't Code ch. 2003.
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. S914-4091 should be forfeited. Code § 11.11 and 16 Tex. Admin. Code § 33.24(j).

**SIGNED September 10, 2012.**

  
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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**