

DOCKET NO. 458-03-1666

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

OF

San Miguel Beverage Inc.
D/B/A Rodeo Marcos
Harris County, Texas

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) initiated this action seeking forfeiture of the conduct surety bond posted by San Miguel Beverage Inc. d/b/a Rodeo Marcos (Respondent). Respondent posted a conduct surety bond on April 4, 2002, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). The Commission's Staff (the Staff) recommended that the bond be forfeited because Respondent's license and permits were cancelled for cause. This proposal for decision agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I.

Jurisdiction, Notice, and Procedural History

There are no contested issues of jurisdiction or notice in the proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On February 14, 2003, Timothy J. Horan, Administrative Law Judge for the State Office of Administrative Hearings (SOAH), convened a public hearing at the Hearing Facility of the State Office of Administrative Hearings, Houston, Texas. Respondent appeared and was represented by attorney Ray L. Shackelford. Staff attorney Lindy To represented TABC. Evidence and argument were heard, and the record was closed on February 24, 2003.

II.

Conduct Surety Bond

On June 26, 2002, TABC issued a *Wine and Beer Retailer's Permit, BG-516872*, to Respondent for the premises known as Rodeo Marcos at 13500 Karalis, Houston, Harris County, Texas. On April 4, 2002, Respondent, as holder of a permit, executed a conduct surety bond for Rodeo Marcos for \$5,000 as required by Sections 11.11 and 61.13 of the Code.



**III.
Events Leading to the Request to Forfeit
Respondent's Conduct Surety Bond**

On July 25, 2002, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code. The waiver agreement stated that on April 4, 2002, Respondent gave false statements on an original/renewal application. The agreement contained the following language:

My name is Elida Sanchez. I am permittee. I neither admit or deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$CANCEL must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission (TABC) entered an Order on July 30, 2002. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permit be cancelled.

**IV.
Forfeiture of Conduct Surety Bond**

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE Sections 6.01 and 61.71. Section 33.24 of the Texas Administrative Code governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been cancelled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995. According to Section 33.24, the Code sets forth the criteria for forfeiture of a bond in Sections 11.11 and 61.13. Those sections specify the requirements for posting a conduct surety bond and forfeiture.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a TABC rule. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked, or, on final adjudication, that the holder violated a provision of the alcoholic beverage code. Rule 33.24 also applies and requires forfeiture upon cancellation, or upon final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

Respondent testified that TABC pressured her to give a voluntary statement admitting that she gave false statements on her TABC application and that she signed the "Agreement and Waiver

of Hearing” on July 25, 2002, in which she agreed to the cancellation of her permit. She stated she signed the documents under duress because she was threatened with going to jail for perjury if she did not.

Respondent signed the waiver agreement, although she had a right to a hearing to dispute the charge that she gave false statements on her TABC application for San Miguel Beverage Inc. d/b/a Rodeo Marcos. The waiver clearly stated that the conduct surety bond was at risk for being forfeited. Although Respondent now asserts that she was pressured to sign the “Agreement and Waiver of Hearing”, it is clear that Respondent signed the document knowing the conduct surety bond could be forfeited and so doing, her permit was cancelled for cause. Therefore, the Administrative Law Judge recommends that the bond be forfeited as provided in Sections 11.11 and 61.13 of the Code.

PROPOSED FINDINGS OF FACT

1. On June 26, 2002, the Texas Alcoholic Beverage Commission (TABC) issued a *Wine and Beer Retailer's Permit, BG-516872*, to San Miguel Beverage Inc. d/b/a Rodeo Marcos (Respondent) for the premises 13500 Karalis, Houston, Harris County, Texas.
2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (TABC) in a notice of hearing, dated January 15, 2003.
3. The hearing was convened on February 14, 2003, at the Hearings Facility of the State Office of Administrative Hearings, Houston, Texas. Attorney Ray L. Shackelford appeared and represented Respondent. Staff attorney, Lindy To appeared to represent the Commission (TABC). Evidence and argument were heard, and the record closed on February 24, 2003.
4. On April 4, 2002, Respondent, as holder of a permit, executed a conduct surety bond for San Miguel Beverage Inc. d/b/a Rodeo Marcos in the amount of \$5,000 as required by Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code).
5. On July 25, 2002, Respondent signed an Agreement and Waiver of her right to a hearing on a violation of the Code that involved giving false statements on an application on April 4, 2002. By signing that agreement, she acknowledged that her primary permit and any related license would be cancelled by the Commission and that her conduct surety bond could be forfeited.
6. On July 30, 2002, the Commission (TABC) entered an order finding Respondent had violated the Code and cancelled her permit for cause.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and sections 6.01, and 11.11 of the TEX. ALCO. BEV. CODE.

2. The State Office of Administrative Hearings has jurisdiction over the matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN., Sections 2003.
3. As referenced in Findings of Fact Nos. 2 and 3, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN Section 2001.051 and 2001.052.
4. Based upon Findings of Fact Nos. 1 and 4, Respondent holds permit no. BG-516872, and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE Sections 11.11 and 61.13.
5. Based upon Findings of Fact Nos. 5-6, Respondent violated 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE Sections 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding a *Wine and Beer Retailer's Permit*, BG-516872 issued by the Commission (TABC).
6. Based on Finding of Fact Nos. 5-6, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED this 24th day of April, 2003.


TIMOTHY J. HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601954

IN RE SAN MIGUEL BEVERAGE INC.	§	BEFORE THE
D/B/A RODEO MARCOS	§	
LICENSE NO. BG516872	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1666)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 28th day of May 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy J. Horan. The hearing convened on February 14, 2003, and adjourned on February 14, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 24, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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 Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

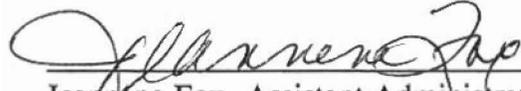
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on June 18, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 28th day of May, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Timothy J. Horan
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (713) 812-1001

Ray L. Shackelford
ATTORNEY FOR RESPONDENT
1406 Southmore Blvd.
Houston, TX 77004
CERTIFIED MAIL NO. 7001 2510 0003 8687 0413

SAN MIGUEL BEVERAGE INC.
D/B/A RODEO MARCOS
RESPONDENT
9118 Troulon Dr.
Houston, TX 77036
CERTIFIED MAIL NO. 7001 2510 0003 8687 0406

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Houston District Office