

DOCKET NO. 458-99-0259

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

vs.

HORSESHOE STEAKHOUSE AND
PRIVATE CLUB
PERMIT NOS. N-431070, NL-431071,
& PE-431072
CORYELL COUNTY, TEXAS
(TABC CASE NO. 580728)

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Dolores Haferkamp d/b/a Horseshoe Steakhouse and Private Club (Respondent). Respondent posted a conduct surety bond on the 3rd day of April, 1998, in compliance with Section 11.11 of the Texas Alcoholic Beverage Code (the Code). The Commission's Staff (Staff) recommended that the bond be forfeited because Respondent had committed three violations of the Code subsequent to September 1, 1995. This proposal for decision agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

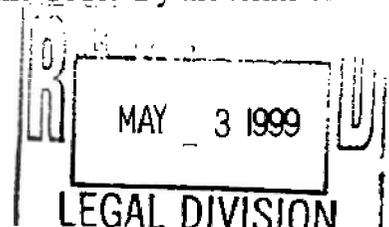
There are no contested issues of jurisdiction or notice in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On March 19, 1999, Suzan M. Shinder, Administrative Law Judge for the State Office of Administrative Hearings (SOAH), convened a public hearing at the Hearings Facility of the State Office of Administrative Hearings, Waco, Texas. Respondent appeared in person, pro se. The Commission appeared by and through its staff attorney, Dewey Brackin. A record of the proceedings was made by the court reporter. At the conclusion of the hearing the record was closed.

II. Conduct Surety Bond

On May 13, 1998, the Commission issued a Private Club Registration Permit, N-431070, a Private Club Late Hours Permit, NL-431071, and a Beverage Cartage Permit, PE-431072, to Respondent for the premises known as Horseshoe Steakhouse and Private Club, 1216 Hwy 36 North, Gatesville, Coryell County, Texas.

On April 3, 1998, Respondent executed a conduct surety bond for Horseshoe Steakhouse and Private Club in the amount of \$5,000 as required by Section 11.11 of the Code. By the terms of



this bond, it became effective on the date of the issuance of the permit, which was May 13, 1998.

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

On August 11, 1998, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 580067, regarding three violations of the Code. The waiver agreement stated that on July 25, 1998, Respondent refused inspection, permitted consumption during prohibited hours, and possessed two distilled spirit bottles with no local distributor stamp, in violation of Sections 32.17(a)(2), 105.06, 32.17(a)(8), and 32.20 of the Code, respectively. The agreement contained the following language:

My name is Dolores Laverne Haferkamp. I am the President of the Club. I neither admit nor 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/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1800.00 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 Administrator entered an Order on August 17, 1998. The Order stated that the violations, as stated, did occur. Further, the Order adopted the above described waiver of hearing and assessed the penalty of suspension of Respondent's permit for a period of twelve days beginning on September 23, 1998, unless the permittee paid a civil penalty in the amount of \$1,800.00 on or before September 9, 1998.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke or suspend a permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE §6.01 (Vernon 1995). "Permittee" means a person who is the holder of a permit provided for in the Code, or an agent, servant, or employee of that person. TEX. ALCO. BEV. CODE §1.04(11)(Vernon 1995). TEX. ADMIN. CODE §33.24(j)(1998) governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

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 Commission 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 Code. The Commission's rule at TEX. ADMIN. CODE §33.24 (1998) 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.

PROPOSED FINDINGS OF FACT

1. On May 13, 1998, the Commission issued a Private Club Registration Permit, N-431070, a Private Club Late Hours Permit, NL-431071, and a Beverage Cartage Permit, PE-431072, to Respondent for the premises known as Horseshoe Steakhouse and Private Club, 1216 Hwy 36 North, Gatesville, Coryell County, Texas. On April 3, 1998, Respondent, executed a conduct surety bond for Horseshoe Steakhouse and Private Club in the amount of \$5,000 as required by Section 11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of the permit, which was May 13, 1998.
2. The hearing was convened on March 19, 1999 at the Hearings Facility of the State Office of Administrative Hearings, 4201 Lake Shore Drive, Village Green Center, Suite F, Waco, Texas. Respondent appeared in person and represented herself. Dewey Brackin, Assistant Attorney General, appeared in person to represent the Staff. Evidence and argument were heard, and the record was closed at the conclusion of the hearing.
3. Both parties stipulated that Respondent received proper and timely notice of the hearing.
4. On April 3, 1998, Respondent executed a conduct surety bond for Horseshoe Steakhouse and Private Club in the amount of \$5,000 as required by Section 11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of the permit, which was May 13, 1998.
5. On August 11, 1998, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 580067, regarding three violations of the Code. By signing the waiver agreement, Respondent did not deny that: on July 25, 1998, Respondent refused inspection, in violation of Section 32.17(a)(2) of the Code; on July 25, 1998, Respondent permitted consumption during prohibited hours, in violation of Section 105.06 of the Code; and, on July 25, 1998, Respondent possessed two distilled spirit bottles with no local distributor stamp, in violation of Sections 32.17(a)(8) and 32.20 of the Code. Respondent waived her right to a hearing to contest these violations of the Code and acknowledged that her permit would be suspended or canceled by the Commission unless she paid a civil penalty. By her signature, she further acknowledged that the forfeiture of any related conduct surety bond could result.
6. On August 17, 1998, the Commission Administrator entered an order finding Respondent had committed three violations of the Code consistent with Respondent's admissions found in Findings of Fact No. 5.
7. Respondent has committed at least three violations of the Code and had at least three

final adjudications regarding these violations since September 1, 1995.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the TEX. ALCO. BEV. CODE (Vernon 1995).
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. §§2003.021(b) and 2003.042(6) (Vernon 1998).
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 §§2001.051 and 2001.052 (Vernon 1998).
4. Based upon Findings of Fact Nos. 1 and 4, Respondent holds a Private Club Registration Permit, N-431070, a Private Club Late Hours Permit, NL-431071, and a Beverage Cartage Permit, PE-431072, 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 §11.11 (Vernon 1995 and Vernon Supp. 1999).
5. Based upon Findings of Fact Nos. 5-7, Respondent violated 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE §11.11 (Vernon 1995 and Vernon Supp. 1999) by violating a Commission rule and law of the State of Texas relating to alcoholic beverages while holding a Private Club Registration Permit, N-431070, a Private Club Late Hours Permit, NL-431071, and a Beverage Cartage Permit, PE-431072, issued by the Commission, having three violations of the Code since September 1995.
6. Based on Finding of Fact No. 5-7, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED and entered this 30th day of April, 1999.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS