

**DOCKET NO. 586339**

IN RE JACK PETER MAZZOLA	§	BEFORE THE
D/B/A SPLASH	§	
PERMIT NOS. MB-404983, LB-404984,	§	
PE-404985	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0303)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of June, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on April 6, 2000 and adjourned April 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 6<sup>th</sup>, 2000. This 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.

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 July 20, 2000**, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 29th day of June, 2000.

On Behalf of the Administrator,



---

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (713) 812-1001

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
VIA FACSIMILE (512) 475-4994

Jack Peter Mazzola  
**RESPONDENT**  
d/b/a Splash  
3535 Nasa Rd. 1, #43  
Seabrook, Texas 77586  
VIA CERTIFIED MAIL RRR Z 473 041 958

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

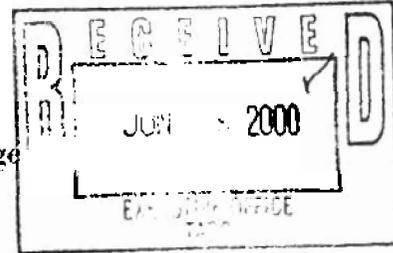
Licensing Division  
Houston District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 7, 2000



Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731

**CERTIFIED MAIL NO. P 332 127 585**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-00-0303; TABC vs. Jack Peter, Mazzola d/b/a Splash,  
(Permit Nos. MB-404983, LB-404984 and PE-404985) (TABC Case No.  
586339)**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Jack Peter Mazzola d/b/a Splash. For reasons discussed in the Proposal for Decision, I have recommended forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited, to certificates of deposit and letters of credit), is warranted.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Veronica B. Dorsey".

Veronica B. Dorsey  
Administrative Law Judge

VD/rfm  
Enclosure

CC: **Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - REGULAR MAIL**  
**Jack Peter, Mazzola, d/b/a Splash, 3535 Nasa Road 1 #43, Seabrook, Texas 77586 -**  
**VIA CERTIFIED MAIL NO. P 332 127 586, RETURN RECEIPT REQUESTED**  
**Holly Wise, Docket Clerk, State Office of Administrative Hearings - VIA REGULAR MAIL**

North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

vs.

OF

JACK PETER MAZZOLA,  
d/b/a Splash, Respondent  
PERMIT NOS.  
MB-404983, LB-404984, PE-404985  
JEFFERSON COUNTY, TEXAS  
(TABC CASE NO. 586339)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Jack Peter Mazzola, d/b/a/ Splash (the Permittee) for forfeiture of the full amount of its conduct surety bond in conjunction with TEX. ALCO. BEV. CODE ANN. §61.13(b)(2) and Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24. TABC alleged that Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules 16 TAC §33.24. A violation of TEX. ALCO. BEV. CODE ANN §61.71 (31) occurred on or about December 10, 1998. A violation of TEX. ALCO. BEV. CODE ANN §§28.06 and 32.08 also occurred on February 6, 1998. Finally, violations of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(13) and/or 104.01 occurred on May 30, 1999.

The Permittee did not make an appearance at the hearing on April 6, 2000. This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of TABC that the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), should be forfeited.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened on April 6, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent was not represented, and Respondent did not appear. Veronica B. Dorsey, Administrative Law Judge (ALJ), presided. Because the hearing proceeded on a default basis, and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and the State Office of Administrative Hearings 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**

Texas Alcoholic Beverage Commission Rules 16 TAC §33.24 authorizes TABC to notify a permittee or licensee of its intent to seek forfeiture of the bond when a licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995. As described in the Findings of Fact, the Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24 by committing three violations of the Alcoholic Beverage Code between February 6, 1998, and May 30, 1999.

The TABC's attorney introduced the following two exhibits into evidence:

Commission 1 is the unclaimed Notice of Hearing to Jack Peter Mazzola, d/b/a Splash which shows Respondent received two notices before the Notice of Hearing was returned.

Commission 2 is the file of Permittee with permit numbers MB-404983, LB-404984, and PE-404985, including three signed "Agreement and Waivers of Hearing."

The ALJ took judicial notice of the Court's file which shows the hearing was scheduled on April 6, 2000. A Notice of Hearing was sent via certified mail on February 25, 2000. The Notice of Hearing was returned to sender due to Respondent moving without leaving a forwarding address.

## **III. RECOMMENDATION**

Because the Permittee committed three violations of the Alcoholic Beverage Code between February 6, 1998., and May 30, 1999, in violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

## **V. FINDINGS OF FACT**

1. Texas Alcoholic Beverage Commission (TABC) issued Permit Nos. MB-404983, LB-404984, and PE-404985 to Jack Peter Mazzola, d/b/a Splash. The mailing address of Jack Peter Mazzola, d/b/a is 3535 Nasa Rd. 1 #43, Seabrook, Texas 77586.
2. TABC forwarded a Notice of Hearing regarding the violation of the Texas Alcoholic Beverage Code to Jack Peter Mazzola, d/b/a Splash (the Permittee) on February 25, 2000.

Jack Peter Mazzola

3. The hearing on the merits was held on April 6, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Respondent did not appear, and Respondent was not represented at the hearing. Veronica B. Dorsey, Administrative Law Judge (ALJ) presided.
4. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee committed a violation of TEX. ALCO. BEV. CODE ANN. §61.71 (31) on or about December 10, 1998.

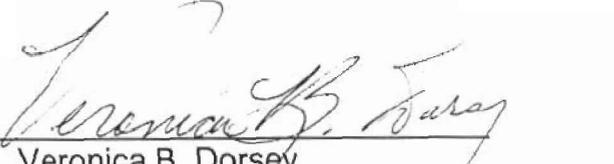
Permittee committed a violation of TEX. ALCO. BEV. CODE ANN. §§28.06 and 32.08 on or about February 6, 1998.

Finally, Permittee committed a violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(13) or 104.01 on or about May 30, 1999.

#### **V. CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings 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. The Notice of Hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 TEX. ADMIN. CODE §155.55.
5. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing three violations of the Alcoholic Beverage Code between February 6, 1998, and May 30, 1999.
6. Based on the foregoing Findings of Fact and Conclusions of Law, forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

SIGNED this \_\_\_\_\_ day of June 2000.



Veronica B. Dorsey  
Administrative Law Judge  
State Office of Administrative Hearings

—  
Jack Peter Mazzola