

DOCKET NO. 601715

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
LONE STAR SALOON PRIVATE CLUB, INC. D/B/A LONE STAR SALOON, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. N710576, PE	§	
	§	
FRANKLIN COUNTY, TEXAS (SOAH DOCKET NO. 458-11-6499)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of June, 2012, 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 Brenda Coleman presiding. The hearing convened on July 13, 2011, 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 12, 2011. 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 Letter of Credit No. 960, posted by Respondent in lieu of a conduct surety bond pursuant to Alcoholic Beverage Code §11.11, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 17th day of July, 2012, unless a Motion for Rehearing is filed on or before the 16th day of July, 2012.

SIGNED this the 22nd day of June, 2012, at Austin, Texas.



Sherry K-Cook, Interim 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 22nd day of June, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Hon. Brenda Coleman
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150A
Dallas, TX 75235
VIA FACSIMILE: 512-322-0471

Lone Star Saloon Private Club, Inc.
d/b/a Lone Star Saloon
RESPONDENT
P.O. Box 1253
Mt. Vernon, TX 75457
VIA REGULAR MAIL

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Division

SOAH DOCKET NO. 458-11-6499

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
V.	§	OF
LONE STAR SALOON PRIVATE CLUB	§	
INC. D/B/A LONE STAR SALOON,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this forfeiture action against Lone Star Saloon Private Club Inc. d/b/a Lone Star Saloon (Respondent). Petitioner seeks forfeiture of Respondent's \$5,000 conduct surety bond. Petitioner alleges that as of May 3, 2011, Respondent had had three or more violations of the Texas Alcoholic Beverage Code (Code) or Commission's rules (the Rules) since September 1, 1995. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

On July 13, 2011, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Judith Kennison, Staff Attorney, represented the Petitioner. Respondent's president, Brenda Smith, appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

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PROPOSAL FOR DECISION

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II. DISCUSSION

A. Applicable Law

Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE (TAC) § 33.24(j), which provides that the Commission may seek forfeiture when a license or permit has been canceled or when 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 or the Rules relating to alcoholic beverages. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked or after final adjudication that determines the holder violated a provision of the Code.

B. Petitioner's Evidence

Petitioner's two exhibits were admitted at the hearing without objection. Exhibit No. 2 included a copy of the permit, violation history, the conduct surety bond, and correspondence. Petitioner issued Private Club Registration Permit N-710576, which includes the Beverage Cartage Permit, to Respondent on December 17, 2008, for the premises located at 102 IH 30 East, Mount Vernon, Franklin County, Texas.

Respondent posted Letter of Credit No. 960 (for conduct surety purposes only). Guaranty Bond Bank issued the Letter of Credit to Respondent in the amount of \$5,000, payable to the State of Texas.

On March 22, 2011, Respondent's officer, Carol Anders, signed two separate Settlement Agreements and Waivers regarding five violations of the Code. In the first Settlement Agreement and Waiver, Respondent agreed to waive its right to a hearing to contest Petitioner's claims that, on September 18, 2010, Respondent committed a simple breach of the peace, failed to report the breach, and interfered with an inspection or investigation, all in violation of the Code. Respondent also

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acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated March 30, 2011, in Docket No. 600511, finding that Respondent violated the sections of the Code as stated and imposing the penalty reflected in the Order.

In the second Settlement Agreement and Waiver, Respondent agreed to waive its right to a hearing to contest Petitioner's claims that, on February 27, 2010, Respondent operated an open saloon by selling an alcoholic beverage to a non-member, and committed "PC membership/membership committee violations," all in violation of the Code. Respondent also acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated March 30, 2011, in Docket No. 600512, finding that Respondent violated the sections of the Code as stated and imposing the penalty reflected in the Order.

C. Respondent's Evidence

Respondent's President, Brenda Smith, testified on behalf of Respondent and presented one exhibit. Ms. Smith testified that Petitioner never informed Respondent, prior to issuance of the permit, that Respondent's bond could be forfeited for three violations in a given period. According to Ms. Smith, she first learned of the Commission rule concerning bond forfeiture when Petitioner notified Respondent of its intention to seek forfeiture of the bond after the violations occurred. Ms. Smith also disputed that the membership violation occurred on February 27, 2010. However, she acknowledged that the other violations occurred, and Respondent's permit was suspended for the period reflected in the two Commission Orders as penalty. Ms. Smith explained that forfeiture of Respondent's conduct surety bond would create a financial hardship for Respondent, and she requested a second opportunity to avoid bond forfeiture.

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III. ANALYSIS

As the holder of an alcoholic beverage permit, Respondent was required to provide a \$5,000 conduct surety bond, payable to Petitioner.¹ Respondent also agreed not to violate the Code or the Rules. Petitioner may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995.²

Staff argues that Respondent has committed three or more violations of the Code and Rules since September 1, 1995 and that as a matter of law the conduct surety bond is now subject to forfeiture. Respondent's President, Ms. Smith, argues that she was not made aware that Respondent's bond could be forfeited prior to notification by Petitioner of its intention to seek forfeiture.

By signing the two Settlement Agreement and Waivers, Respondent's officer, Carol Anders, acknowledged that the Commission would make a finding that the listed violations occurred. Respondent chose to waive the right to a contested hearing on the five violations. The Settlement Agreements and Waivers state that Respondent understood that the violations would become part of the violation history and a forfeiture of any conduct surety bond may result.

The evidence in the record is sufficient to establish that Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995. According to §33.24 (j) of the Rules, forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

¹ Code § 11.11.

² 16 TAC § 33.24(j).

IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission) issued Private Club Registration Permit N-710576, which includes the Beverage Cartage Permit, to Lone Star Saloon Private Club Inc. d/b/a Lone Star Saloon (Respondent) on December 17, 2008.
2. As required by TEX. ALCO. BEV. CODE § 11.11, Respondent obtained a conduct surety bond from Guaranty Bond Bank.
3. The bond is in the amount of \$5,000 and is payable to the State of Texas.
4. On March 22, 2011, Respondent signed two Settlement Agreements and Waivers regarding five violations of the Texas Alcoholic Beverage Code (the Code) which occurred on September 18, 2010, and February 27, 2010.
5. The Settlement Agreements and Waivers included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
6. The violations were adjudicated against Respondent by two Commission Orders, dated March 30, 2011, in Commission Docket Nos. 600511 and 600512.
7. Respondent has committed three violations of the Code or the Commission's Rules since September 1, 1995.
8. On April 1, 2011, the Commission's Staff (Petitioner) notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on the Commission's final adjudication of Respondent's violations of the Code.
9. Respondent requested a hearing to determine whether the bond should be forfeited.
10. On June 14, 2011, Petitioner issued its notice of hearing to Respondent.
11. The notice informed Respondent of the time, date, and location of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
12. The hearing convened on July 13, 2011, before State Office of Administrative Hearings (SOAH) Administrative Law Judge, Brenda Coleman. Judith Kennison, Staff Attorney, represented Petitioner. Brenda Smith, Respondent's president, appeared on behalf of Respondent. The record closed the same day.

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V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of 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. Based on the foregoing findings and conclusions, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

SIGNED September 12, 2011.



BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS