

DOCKET NO. 608911

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
EMMAMAY SCHMITZ DRYER D/B/A CLUB LEGACY, Respondent	§	ALCOHOLIC
	§	
	§	
PERMITS MB763370, LB & PE	§	
	§	
BELL COUNTY, TEXAS (SOAH DOCKET NO. 458-12-6020)	§	BEVERAGE COMMISSION

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 P.W. Cranz presiding. The hearing convened on June 19, 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 August 14, 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. 6741462, issued by American States 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.



---

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.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

P.W. Cranz  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6777 Camp Bowie Blvd., Suite 400  
Fort Worth, TX 76116  
**VIA FACSIMILE: (512) 322-2061**

Emmamay Schmitz Dryer  
d/b/a Club Legacy  
**RESPONDENT**  
18620 Dry Pond Drive  
Pflugerville, TX 78660  
**VIA FIRST CLASS MAIL, CMRRR # 70120470000133006626**

Judith Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA E-MAIL: [judith.kennison@tabc.state.tx.us](mailto:judith.kennison@tabc.state.tx.us)**

**SOAH DOCKET NO. 458-12-6020  
(TABC CASE NO. 608911)**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner**

**V.**

**EMMAMAY SCHMITZ DRYER,  
D/B/A CLUB LEGACY,  
PERMIT NO(s). MB763370, PE & LB  
BELL COUNTY, TEXAS,  
Respondent**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Staff (Staff) of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Emmamay Schmitz Dryer D/B/A Club Legacy (Respondent). Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated of committing three violations of the Texas Alcoholic Beverage Code (the Code) or rules promulgated by the TABC (the Rules). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

**I. PROCEDURAL HISTORY**

On February 1, 2012, Staff sent Respondent written notice of its intention to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative Hearings (SOAH) for the requested hearing. On May 2, 2012, Staff issued a notice of hearing to all parties. On June 19, 2012, ALJ P.W.Cranz convened the hearing in this matter by telephonic conference calls from the SOAH offices in Fort Worth, Tarrant County, Texas. Judith Kennison, Staff's attorney, appeared by telephone and represented Staff. Respondent appeared by telephone.

There were no contested issues of notice, jurisdiction, or venue in the proceeding. Therefore, those matters are set out in the proposed Findings of Facts and Conclusions of Law

without further discussion. Following the presentation of evidence, the record closed on June 19, 2012.

## II. DISCUSSION

### A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5,000.00 surety bond, conditioned on the holder's conformance with alcoholic beverage law. Tex. Alco. Bev. Code §§ 11.11 and 61.13. The bond may be forfeited if: (1) the licensee has provided the TABC a conduct surety bond; (2) the licensee has been finally adjudicated of three violations of the Code since September 1, 1995; and (3) the TABC notifies the licensee in writing of its intent to seek forfeiture of the bond. 16 Tex. Admin Code § 33.24(j).

### B. Evidence

Staff's evidence consists of two exhibits: the Notice of Hearing issued on May 2, 2012, and the Affidavit of Amy Harrison with its attachments. Ms. Harrison is the Director of the TABC Licensing Department, and is the custodian of all TABC records and files. She identified the attachments to her affidavit as true and correct copies of Respondent's permits, violation history, Conduct Surety Bond No. 6741462, and correspondence concerning the bond.

Respondent's Mixed Beverage Permit with Beverage Cartage Permit and the Mixed Beverage Late Hours Permit, MB763370, are attached to the affidavit. The licensed premises were located at 201 West Veterans Memorial Boulevard, Harker Heights, Texas. The required conduct surety bond is issued by the surety, American States Insurance Company, and executed by Respondent as principal.

Also attached to the affidavit are two Waiver Orders and Settlement Agreements and Waivers of Hearing for enforcement actions by TABC Staff taken against Respondent. Details concerning these enforcement actions are as follows:

1. On January 27, 2012, the TABC issued its Waiver Order in TABC Docket No. 600560 styled "Emmamay Schmitz Dryer, d/b/a Club Legacy." The Waiver

Order found that Respondent was responsible on December 26, 2010, for two violations including the violation of conducting business against the public's general welfare, health, peace, morals, safety, and sense of decency in violation of Tex. Alco. Bev. Code §11.61(b)(7) and a violation of Tex. Alco. Bev. Code §11.61 (b)(21) by failing to promptly report a breach of the peace on the licensed premises.

These violations were admitted in the Settlement Agreement and Waiver of Hearing signed on January 25, 2012. This document further advises that signing of the waiver may result in the forfeiture of any related conduct surety bond.

2. On September 30, 2011, the TABC issued its Waiver Order in TABC Docket No. 604603, styled "Emmamay Schmitz Dryer, d/b/a Club Legacy." The Waiver Order found that Respondent was responsible on July 30, 2011, for the violation of failing to promptly report a breach of the peace on the licensed premises.

This violation was admitted in the Settlement Agreement and Waiver of Hearing signed by both parties on August 31, 2011. This document further advises that signing of the waiver may result in the forfeiture of any related conduct surety bond.

Finally, the affidavit includes a copy of Staff's letter dated February 1, 2012, addressed to Respondent at its mailing address, which reads:

A review of your file indicates that there have been three or more violations. In accordance with Rule 33.24(j), we are notifying you of our intention to seek forfeiture of the full amount of your surety bond.

By signing the February 1, 2012, letter and returning it to TABC's Staff, Respondent requested a hearing to determine if its bond should be forfeited. Respondent testified that the club has ceased to exist. Respondent stated that she had satisfied the penalties on each of the violations and requested that the surety bond not be forfeited.

### **C. Analysis, Conclusion, and Recommendation**

Conduct surety bonds are posted in favor of TABC by license and permit holders to encourage compliance with provisions of the Code and Rules. Respondent, by her own admissions, committed three violations of the Code and Rules since 1995.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Staff's evidence shows that Respondent posted a conduct surety bond in favor of the TABC, as was required. This bond has continued to be posted by Respondent and is still in effect in favor of TABC. Respondent was finally adjudicated of three or more violations of the Code or Rules on December 26, 2010, and on July 30, 2011, by her execution of Settlement Agreements and Waivers of Hearing on those violations. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

### III. PROPOSED FINDINGS OF FACT

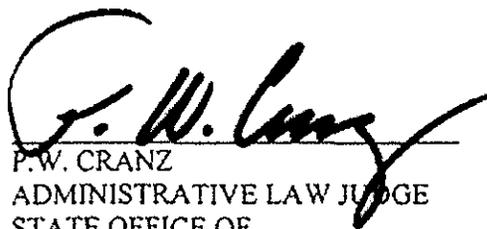
1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent, Emmamay Schmitz Dryer, d/b/a Club Legacy, a Mixed Beverage Permit with Beverage Cartage Permit and the Mixed Beverage Late Hours Permit, MB763370, PE and LB.
2. Respondent posted a conduct surety bond No. 6741462 for \$5,000.00 on November 16, 2010, with TABC. The bond is executed by Respondent, and American States Insurance Company is the surety.
3. Respondent admitted that three violations of the Texas Alcoholic Beverage Code (Code) occurred on the licensed premises on July 30, 2011, and on December 26, 2010, by executing Settlement Agreements and Waivers of Hearing with the TABC Staff.
4. On January 27, 2012, the TABC issued its Waiver Order in TABC Docket No. 600560 styled "Texas Alcoholic Beverage Commission vs. Emmamay Schmitz Dryer, d/b/a Club Legacy." The Waiver Order found that Respondent was responsible on December 26, 2010, for two violations including the violation of conducting business against the public's general welfare, health, peace, morals, safety, and sense of decency in violation of Tex. Alco. Bev. Code §11.61(b)(7) and a violation of Tex. Alco. Bev. Code §11.61(b)(21) by failing to promptly report a breach of the peace on the licensed premises.
5. On September 30, 2011, the TABC issued its Waiver Order in TABC Docket No. 604603, styled "Texas Alcoholic Beverage Commission vs. Emmamay Schmitz Dryer, d/b/a Club Legacy." The Waiver Order found that Respondent was responsible on July 30, 2011, for the violation of failing to promptly report a breach of the peace on the licensed premises.
6. Respondent has committed three or more violations of the Code or TABC's Rules since September 1, 1995.

7. On February 1, 2012, TABC Staff sent Respondent written notice of its intent to seek forfeiture of the bond. Respondent requested a hearing on this matter.
8. On May 2, 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.
9. On June 19, 2012, the hearing was convened by P. W. Cranz, Administrative Law Judge, via telephonic conference calls from the State Office of Administrative Hearings, Fort Worth, Tarrant County, Texas. Both parties appeared and presented evidence. The record closed on June 19, 2012.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code ch. 5 and §§ 11.11, 11.61, 61.13, and 61.71, and 16 Tex. Admin. Code § 33.24.
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 § 2003.021.
3. Respondent received notice of the proceedings and hearing, pursuant to Tex. Gov't Code § 2001.051 and 1 Tex. Admin. Code § 155.401.
4. Based on the foregoing findings and conclusions, TABC Conduct Surety Bond No. 6741462 should be forfeited. Tex. Alco. Bev. Code §§ 11.11 and 61.13 and 16 Tex. Admin Code § 33.24(j).

**SIGNED August 14, 2012.**

  
P. W. CRANZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS