

DOCKET NO. 619648

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
COWTOWN BAR & GRILL LLC D/B/A COWTOWN BAR & GRILL, Respondent	§	ALCOHOLIC
	§	
PERMITS MB780922, LB	§	
	§	
TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-14-0694)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 16th of May, 2014, 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 Jeremy A. Valdez presiding. The hearing convened on November 22, 2013, 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 December 4, 2013. 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. No exceptions were 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 Certificate of Deposit No. 16415 from First National Bank of Burleson, which Respondent assigned in lieu of filing a conduct surety bond, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 10th day of June, 2014, unless a Motion for Rehearing is filed on or before the 9th day of June, 2014.

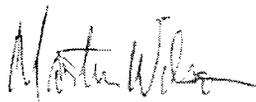
SIGNED this the 16th day of May, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
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 16th day of May, 2014.



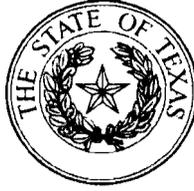
Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Jeremy A. Valdez
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, Texas 78701
VIA FACSIMILE: (512) 322-2061

Cowtown Bar & Grill LLC
d/b/a Cowtown Bar & Grill
RESPONDENT
6387 Camp Bowie Blvd., Suite B-306
Fort Worth, Texas 76116-5486
VIA FIRST CLASS MAIL, CMRRR #70120470000133009535
AND
VIA REGULAR FIRST CLASS MAIL (NOT CERTIFIED)

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: shelia.lindsey@tabc.state.tx.us

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 4, 2013

RECEIVED

DEC 9 2013

LEGAL

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

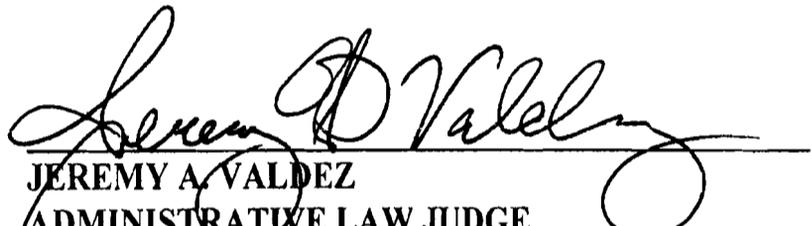
**RE: SOAH Docket No. 458-14-0694; TABC Docket No. 619648
Texas Alcoholic Beverage Commission vs Cowtown Bar & Grill LLC,
D/B/A Cowtown Bar & Grill**

Dear Ms. Cook:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


JEREMY A. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[JV/lal]

Enclosure

xc ✓ Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)
Cowtown Bar & Grill LLC, 6387 Camp Bowie Blvd., Suite B-306, Fort Worth, Texas 76116 - VIA REGULAR MAIL

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

On October 25, 2013, Staff issued a notice of hearing directed to Respondent at its address of record. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by Texas Government Code § 2001.052. The notice of hearing also contained the following language in at least 12-point or larger boldface type: “If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true and the relief sought may be granted by default. (1 TAC, § 155.501).”

On November 22, 2013, a hearing convened before SOAH ALJ Jeremy A. Valdez at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented at the hearing by its attorney, Shelia A. Lindsey, who appeared by telephone as permitted by 1 Texas Administrative Code § 155.405. Respondent did not appear and was not represented at the hearing. Based on the failure of Respondent to appear at the hearing, Staff requested that the default provisions of 1 Texas Administrative Code § 155.501 be invoked. Following presentation of evidence regarding notice, jurisdiction and Respondent’s compliance history, the record closed on November 22, 2013.

II. DISCUSSION

A. Applicable Law

Pursuant to the default provisions of 1 Texas Administrative Code § 155.501, when a party not bearing the burden of proof in a contested case has been served or provided with notice of the hearing but fails to appear, the allegations contained in the notice of hearing are deemed admitted as true.

Pursuant to Texas Alcoholic Beverage Code § 11.11, applicants or holders of permits issued under Chapter 28 of that Code must furnish TABC with a surety bond—or in the alternative, a certificate of deposit or letter of credit—conditioned on the applicant’s or holder’s conformance with alcoholic beverage law. The TABC rule at 16 Texas Administrative Code § 33.24(l) states that “upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the [C]ommission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.” The same rule provides that for purposes of an enforcement action seeking forfeiture of the permittee’s conduct surety bond (or one of the alternate instruments), “an order issued pursuant to an agreement of the parties in which the permittee or licensee waives its right to a hearing is a final adjudication of the violation that is the subject of the agreement and order.”

B. Evidence

Staff for TABC offered five exhibits. All of Petitioner’s exhibits were admitted into evidence and the record closed on November 22, 2013.

The ALJ finds that Notice of Hearing issued by the Commission complied with the requirements of Texas Government Code § 2001.052, and 1 Texas Administrative Code §§ 155.401, .501. Accordingly, factual allegations in the Notice of Hearing are deemed admitted and have been incorporated in the Proposed Findings of Fact below.¹ As discussed below, the factual allegations contained in the notice of hearing, when taken together with the TABC

¹ The ALJ notes that although the surety bond forfeiture rule at 16 Texas Administrative Code § 33.24(l)(1) requires Staff to show that a permittee “has committed three violations of the Alcoholic Beverage Code *since September 1, 1995*,” (emphasis added) the notice of hearing does not allege when Respondent’s violations occurred in relation to September 1, 1995. The notice does not appear to incorporate by reference any other record showing the timing of the violations, nor does it allege other events, like the issuance date of Respondent’s permit, that could show that the violations relied upon occurred after September 1, 1995. While the notice would have been more complete had this information been included, it was sufficient to afford the Respondent sufficient understanding of and a meaningful opportunity to prepare for the hearing, and a preponderance of the other evidence offered at the hearing establishes that Respondent’s violations occurred within the period required by the TABC rule.

records offered at the hearing, show by a preponderance of evidence that forfeiture of Respondent's conduct surety bond, certificate of deposit, or letter of credit is appropriate.

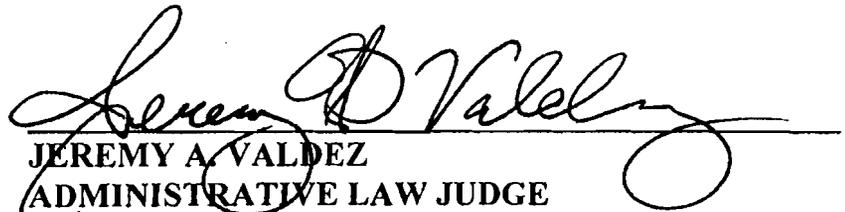
III. PROPOSED FINDINGS OF FACT

1. Respondent Cowtown Bar & Grill LLC d/b/a Cowtown Bar & Grill holds a Mixed Beverage Permit, No. MB780922, with an accompanying Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 7108 Camp Bowie Boulevard West, Fort Worth, Tarrant County, Texas.
2. Respondent's Mixed Beverage Permit was issued under Chapter 28, Texas Alcoholic Beverage Code, as a new permit on July 27, 2011.
3. In lieu of a conduct surety bond, Respondent furnished TABC with Certificate of Deposit No. 16415 from First National Bank of Burleson in Burleson, Texas, assigned to the state as required.
4. On or about July 12, 2013, Respondent had three or more adjudicated violations of the Texas Alcoholic Beverage Code.
5. On October 25, 2013, Staff for TABC issued notice of hearing, directed to the Respondent at its address of record.
6. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
7. The notice of hearing also contained the following language in at least 12-point or larger boldface type: "If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true and the relief sought may be granted by default. (1 TAC, § 155.501)."
8. On November 22, 2013, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Jeremy A. Valdez at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
9. Staff for TABC was represented at the hearing by its attorney, Shelia A. Lindsey. Respondent did not appear and was not represented at the hearing.
10. Following presentation of evidence regarding notice, jurisdiction and Respondent's permit information and compliance history, the record closed on November 22, 2013.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction in this case pursuant to Texas Government Code ch. 5 and § 11.11.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Texas Alcoholic Beverage Code § 5.43 and Texas Government Code chs. 2001 and 2003.
3. Respondent was provided timely, proper notice of the hearing. Texas Gov't Code §§ 2001.051-.052.
4. Forfeiture of Respondent's certificate of deposit is proper pursuant to 16 Texas Administrative Code § 33.24(1).

SIGNED December 4, 2013.


JEREMY A. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

FT. WORTH OFFICE

6777 Camp Bowie Blvd Suite 400

Fort Worth, Texas 76116

Phone: (817) 731-1733

Fax: (512) 322-0473

SERVICE LIST

AGENCY: Alcoholic Beverage Commission, Texas (TABC)
STYLE/CASE: COWTOWN BAR & GRILL LLC DBA COWTOWN BAR & GRILL
SOAH DOCKET NUMBER: 458-14-0694
REFERRING AGENCY CASE: 619648

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ JEREMY VALDEZ**

REPRESENTATIVE / ADDRESS

PARTIES

SHELIA A. LINDSEY
STAFF ATTORNEY
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(713) 862-7478 (FAX)
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TEXAS ALCOHOLIC BEVERAGE COMMISSION

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D/B/A COWTOWN BAR & GRILL
6387 CAMP BOWIE BLVD., SUITE B-306
FORT WORTH, TX 76116
(817) 291-7707 (PH)

COWTOWN BAR & GRILL LLC

xc: Docket Clerk, State Office of Administrative Hearings
Emily Helm GENERAL COUNSEL, TABC, Fax No. 512-206-3498