

**DOCKET NO. 618871**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>ANTONIO ADAN JR LLC D/B/A ENIGMA CLUB, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT/LICENSE BG774546, BL</b>	§	
	§	
<b>GREGG COUNTY, TEXAS (SOAH DOCKET NO. 458-13-5664)</b>	§	<b>BEVERAGE COMMISSION</b>

**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 Brenda Coleman presiding. The hearing convened on September 5, 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 November 7, 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. 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. 5109404, issued by SureTec Insurance Company as Surety and with Respondent as Principal, 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.



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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.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Brenda Coleman  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150A  
Dallas, Texas 75235  
**VIA FACSIMILE: (512) 322-2061**

Antonio Adan Jr LLC  
d/b/a Enigma Club  
**RESPONDENT**  
6051 Hwy 31 West  
Kilgore, Texas 75662  
**VIA FIRST CLASS MAIL, CMRRR #70120470000133009542**  
**AND**  
**VIA REGULAR FIRST CLASS MAIL (NOT CERTIFIED)**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
*VIA E-MAIL: [sandra.patton@tabc.state.tx.us](mailto:sandra.patton@tabc.state.tx.us)*

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED

NOV 12 2013

ADJUTANT  
LEGAL

November 7, 2013

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

VIA REGULAR MAIL

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
ANTONIO ADAN JR LLC d/b/a ENIGMA CLUB  
SOAH DOCKET NO. 458-13-5664**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Brenda Coleman".

Brenda Coleman  
Administrative Law Judge

BC/sp  
Enclosure

Xc: ✓ Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA REGULAR MAIL 5806 Mesa Drive, Austin Texas 78731  
Antonio Adan Jr., Respondent, VIA REGULAR MAIL, 6051 Hwy 31 West, Kilgore, Texas 75662

6333 Forest Park Road Suite 150A Dallas, Texas 75235  
214.956.8616 (Telephone) 214.956.8611 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

**SOAH DOCKET NO. 458-13-5664**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION,     Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>ANTONIO ADAN JR., LLC D/B/A ENIGMA,     Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Petitioner/Commission) brought this forfeiture action against Antonio Adan Jr., LLC d/b/a Enigma (Respondent). Petitioner seeks forfeiture of Respondent's \$5,000 conduct surety bond. Petitioner alleges that on May 3, 2013, Respondent's permit was canceled for cause by the Commission based on violations of the Texas Alcoholic Beverage Code (Code) and the Commission's rules (the Rules). This proposal finds that the allegation against Respondent is true. Therefore, 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 September 5, 2013, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Brenda Coleman. Sandra K. Patton, Staff Attorney, represented the Petitioner. Respondent's manager, Antonio Adan, Sr., appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

## II. DISCUSSION

### A. Applicable Law

Forfeiture of a conduct surety bond is governed by 16 Texas Administrative Code (TAC) § 33.24(l), which provides that the Commission may seek forfeiture when a license or permit has been canceled. 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.

### 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. The Commission issued Wine & Beer Retailer's On Premise Permit BG-774546, which includes the Retailer's On Premise Late Hours License, to Respondent on May 10, 2011, for the premises located at 605 Highway 31 West, Kilgore, Gregg County, Texas.

Respondent posted Conduct Surety Bond Number 5109404. Respondent executed the bond as principal; SureTec Insurance Company is the surety. The bond is in the amount of \$5,000 and is payable to the State of Texas.

On May 3, 2013, Respondent's manager, Antonio Adan, Sr., signed a Settlement Agreement and Waiver regarding two violations of the Code. In the Settlement Agreement and Waiver, Respondent agreed to waive its right to a hearing to contest Petitioner's claim that, on March 2, 2013, Respondent committed an aggravated breach of the peace and failed to report the breach, 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 May 17, 2011, in Docket No. 617817, finding that Respondent violated

sections of the Code and imposing the penalty reflected in the Order.

### C. Respondent's Evidence

Mr. Adan, Sr., testified on behalf of Respondent. Mr. Adan stated that he and his son, Antonio Adan, Jr., are shown as managers of the establishment, which is named after the son. However, Mr. Adan, Sr., was responsible for actually managing the day-to-day operation of the premises. Mr. Adan, Sr., testified that he was present at the establishment on the date of the underlying violations on March 2, 2013, which resulted in the Settlement and Waiver signed by him on May 3, 2013. According to Mr. Adan, Sr., he did not understand everything at the time, and he made the mistake of signing the Settlement and Waiver and thereby agreeing to cancellation of the permit for cause.

Mr. Adan, Sr., explained that TABC Agent Todd Turner told him that no criminal charges would be filed against Respondent if Mr. Adan, Sr., agreed to sign the Settlement and Waiver. Because the permit was due to expire the following week, Mr. Adan, Sr., said he signed the agreement believing that he was consenting merely to non-renewal of the permit rather than cancellation. He later received a letter cancelling the permit. Mr. Adan, Sr., added that in hindsight, he should have requested a hearing on the underlying violations, which are the only violations filed against Respondent since the permit was issued by the Commission.

### III. ANALYSIS

As the holder of an alcoholic beverage permit, Respondent was required to provide a \$5,000 conduct surety bond, payable to Petitioner.<sup>1</sup> Respondent also agreed not to violate the Code or the Rules. Petitioner may seek forfeiture of the bond when Respondent's permit is cancelled.<sup>2</sup>

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<sup>1</sup> Code § 11.11.

<sup>2</sup> 16 Tex. Admin. Code § 33.24(1).

Staff argues that Respondent's permit was cancelled for cause due to violations of the Code and Rules, and the conduct surety bond is now subject to forfeiture as a matter of law. Respondent's manager, Mr. Adan, Sr., argues that he was not aware that Respondent's bond could be forfeited prior to notification by Petitioner of its intention to seek forfeiture.

By signing the Settlement Agreement and Waiver on May 3, 2013, Mr. Adan, Sr., 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 two violations and agreed to the penalty set forth in the Settlement Agreement and Waiver, which states that Respondent understood that the violations would become part of the violation history and a forfeiture of any conduct surety bond could result.

The evidence in the record is sufficient to establish that Respondent's permit was cancelled for cause by the Commission on May 17, 2013. According to §33.24(l) 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.

#### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission) issued Wine & Beer Retailer's On Premise Permit BG-774546, which includes the Retailer's On Premise Late Hours License, to Antonio Adan Jr., LLC d/b/a Enigma Club (Respondent) on May 10, 2011.
2. As required by Texas Alcoholic Beverage Code § 11.11, Respondent obtained a conduct surety bond from SureTec Insurance Company.
3. The bond is in the amount of \$5,000 and is payable to the State of Texas.
4. On May 3, 2013, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Texas Alcoholic Beverage Code (the Code) which occurred on March 2, 2013.
5. On May 3, 2013, Respondent agreed to cancellation of the permit as penalty for the violations.

6. The Settlement Agreement and Waiver included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
7. The violations were adjudicated against Respondent by Commission Order, dated May 17, 2013, in Commission Docket No. 617817 .
8. Respondent's permit was cancelled for cause on May 17, 2013.
9. On June 4, 2013, the Commission's Staff (Petitioner) notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on the Commission's cancellation of Respondent's permit.
10. Respondent requested a hearing to determine whether the bond should be forfeited.
11. On August 6, 2013, Petitioner issued its notice of hearing to Respondent.
12. 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.
13. The hearing convened on September 5, 2013, before State Office of Administrative Hearings (SOAH) Administrative Law Judge Brenda Coleman. Sandra K. Patton, Staff Attorney, represented Petitioner. Antonio Adan, Sr., Respondent's manager, appeared on behalf of Respondent. The record closed the same day.

#### **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. Tex. Gov't Code ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act. Tex. Gov't. Code §§ 2001.051 and 2001.052.
4. Based on the foregoing findings and conclusions, Respondent's permit was cancelled for cause on May 17, 2013.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 Tex. Admin. Code § 33.24(1).

**SIGNED November 7, 2013.**

  
Brenda Coleman  
Administrative Law Judge  
State Office of Administrative Hearings