

DOCKET NO. 621334

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
PETE'S PATIO RESTAURANTE INC. D/B/A PETE'S PATIO RESTAURANTE, Respondent	§	ALCOHOLIC
	§	
PERMIT/LICENSE BG802579	§	
	§	
STARR COUNTY, TEXAS (SOAH DOCKET NO. 458-14-1252)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 2nd of June, 2015, 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 Steven M. Rivas presiding. The hearing convened on February 20, 2014, 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 April 16, 2014. 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.

The conduct surety bond at issue in this proceeding was not contained in the record of the case forwarded to the Commission from SOAH. On October 3, 2014, I issued an Order remanding the case to SOAH to complete the record by including the conduct surety bond at issue or, alternatively, to explain its absence.

The SOAH hearing on remand convened before Administrative Law Judge Steven M. Rivas on December 3, 2014, and the SOAH record closed on that same date. The conduct surety bond at issue in the case was introduced into evidence as Petitioner's Exhibit No. 1. On January 15, 2015, the Administrative Law Judge made and filed a new Proposal for Decision on Remand containing Findings of Fact and Conclusions of Law. The Proposal for Decision on Remand 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.

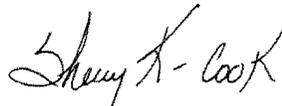
After review and due consideration of the Proposal for Decision on Remand, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision on Remand, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if 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. 100189841, issued by Texas Bonding Company as Surety and with Respondent as Principal, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 26th day of June, 2015, unless a Motion for Rehearing is filed on or before the 25th day of June, 2015.

**SIGNED** this the 2nd day of June, 2015, 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 2nd day of June, 2015.



---

Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Steven M. Rivas  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701  
***VIA FACSIMILE: (512) 322-2061***

Pete's Patio Restaurante Inc.  
d/b/a Pete's Patio Restaurante  
**RESPONDENT**  
P.O. Box 5  
San Juan, TX 78589  
***VIA FIRST CLASS MAIL, CMRRR #70090960000121490783***  
***AND***  
***VIA REGULAR FIRST CLASS MAIL (NOT CERTIFIED)***

Mauro Barreiro  
**ATTORNEY FOR RESPONDENT**  
3603 West Alberta Road  
Edinburg, Texas 78539  
***VIA FIRST CLASS MAIL, CMRRR# 70090960000121490790***  
***AND***  
***VIA FACSIMILE: (956) 682-2432***

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



On March 19, 2014, the ALJ requested TABC Staff to supplement the record by providing a copy of Respondent's conduct surety bond to the ALJ. Staff informed the ALJ it did not have a copy of Respondent's conduct surety bond at that time. April 16, 2014, the ALJ issued a Proposal for Decision on this matter. Neither party filed exceptions. On October 3, 2014, the Commission remanded this matter back to the ALJ in order to obtain a copy of Respondent's conduct surety bond from TABC Staff and include it as part of the record.

On December 3, 2014, the hearing on remand convened before SOAH ALJ Steven M. Ivas. Judith Kennison, Staff Attorney, appeared by phone and represented the Petitioner. Respondent also appeared by phone and was represented by Roel Trevino, attorney. The hearing on remand 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 33.24(1), 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 three exhibits were admitted at the original hearing on February 20, 2014, without objection.<sup>1</sup> Exhibit No. 2 included a copy of the permit and violation history. The Commission issued Wine & Beer Retailer's On Premise Permit BG-802579 to Respondent on April 3, 2012, for the premises located at 1674 FM 2294, San Isidro, Starr County, Texas.

---

<sup>1</sup> The ALJ no longer has a copy of the exhibits that were offered in the original hearing.

At the hearing on remand, Staff offered into evidence a copy of Respondent's conduct surety bond showing that Texas Bonding Company issued a \$5,000 Conduct Surety Bond No. 100189841 for Respondent, and in favor of the State of Texas.<sup>2</sup> The bond provides, "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state."

On July 15, 2013, Respondent signed a Settlement Agreement and Waiver regarding one violation 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 February 25, 2012, Respondent was cited for human trafficking, a place and manner violation of the Code. Respondent also agreed that its permit would be canceled for cause effective September 15, 2013.

In addition, Respondent acknowledged that 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 July 26, 2013, in Docket No. 611664, finding that Respondent violated a section of the Code and imposing the penalty reflected in the Order. Respondent offered no evidence.

### 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>3</sup> Respondent also agreed not to violate the Code or the rules relating to alcoholic beverages. Petitioner may seek forfeiture of the bond when Respondent's permit is cancelled.<sup>4</sup> The evidence in the record is sufficient to establish that Respondent's permit was cancelled for cause by the Commission on September 15, 2013. According to 16 Texas Administrative Code §33.24(1), forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

---

<sup>2</sup> Staff Ex. 1A.

<sup>3</sup> Code § 11.11.

<sup>4</sup> 16 Tex. Admin. Code § 33.24(1).

## IV. FINDINGS OF FACT

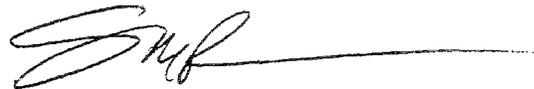
1. The Texas Alcoholic Beverage Commission (Commission) issued Wine & Beer Retailer's On Premise Permit BG-802579 to Pete's Patio Restaurante Inc. d/b/a Pete's Patio Restaurante (Respondent) on April 3, 2012.
2. As required by Texas Alcoholic Beverage Code (Code) § 11.11, Respondent obtained a conduct surety bond.
3. Texas Bonding Company issued Conduct Surety Bond No. 100189841 to Respondent in the amount of \$5,000, and in favor of the State of Texas.
4. On July 15, 2013, Respondent signed a Settlement Agreement and Waiver for a violation of the Code, which occurred on February 25, 2013.
5. Respondent agreed to cancellation of the permit effective September 15, 2013, as penalty for the violation.
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 violation was adjudicated against Respondent by Commission Order, dated July 26, 2013, in Commission Docket No. 611664.
8. Respondent's permit was cancelled for cause on September 15, 2013.
9. 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. On December 5, 2013, 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 original hearing convened on February 20, 2014, before State Office of Administrative Hearings (SOAH) Administrative Law Judge Steven M. Rivas. Judith [redacted], Staff Attorney, appeared by phone and represented Petitioner. Respondent also appeared by phone and was represented by Mauro Barreiro, attorney. The record closed the [redacted] day.

13. On March 19, 2014, the ALJ requested TABC Staff to supplement the record by providing a copy of Respondent's conduct surety bond to the ALJ. Staff informed the ALJ it did not have a copy of Respondent's conduct surety bond at that time.
14. On April 16, 2014, the ALJ issued a Proposal for Decision in this matter. Neither party filed exceptions.
15. On October 3, 2014, the Commission remanded this matter back to the ALJ in order to obtain a copy of Respondent's conduct surety bond from TABC Staff and include it as part of the record.
16. On December 3, 2014, the hearing on remand convened before SOAH ALJ Steven M. Rivas. Judith Kennison, Staff Attorney, appeared by phone and represented the Petitioner. Respondent also appeared by phone and was represented by Roel Trevino, attorney. The hearing on remand concluded and the record closed the same day.

#### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. and § 11.11.
2. SOAH has jurisdiction over all matters relating to conducting a hearing 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 September 15, 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 January 15, 2015.**



---

STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS