

**DOCKET NO. 627109**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>VS.</b>	§	
	§	
<b>ANGLETON ROADHOUSE, INC. D/B/A ROADHOUSE, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
<b>PERMIT/LICENSE MB789867, PE</b>	§	
	§	
<b>BRAZORIA COUNTY, TEXAS (SOAH DOCKET NO. 458-15-0815)</b>	§	<b>BEVERAGE COMMISSION</b>

**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 Timothy Horan presiding. The hearing convened on December 12, 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 January 29, 2015. 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 Conduct Surety Bond No. BUIFSU0566192, issued by International Fidelity 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 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.



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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 2nd day of June, 2015.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Timothy Horan  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, TX 77018  
**VIA FACSIMILE: (512) 322-2061**

Angleton Roadhouse, Inc.  
d/b/a Roadhouse  
**RESPONDENT**  
5 Pine View  
Angleton, TX 77515  
**VIA FIRST CLASS MAIL, CMRRR #70090960000121490806**

Albert Van Huff

**ATTORNEY FOR RESPONDENT**

1225 North Loop West, Suite 640

Houston, TX 77008

***VIA FIRST CLASS MAIL, CMRRR#70090960000121490813***

***AND VIA FACSIMILE: (713) 880-5297***

Ramona Perry

**ATTORNEY FOR PETITIONER**

TABC Legal Division

***VIA E-MAIL: [Ramona.perry@tabc.texas.gov](mailto:Ramona.perry@tabc.texas.gov)***

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

RECEIVED  
FEB 2 2015  
REGISTRATION  
DIVISION

January 29, 2015

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

**VIA REGULAR MAIL**

**RE: SOAH Docket No. 458-15-0815; Texas Alcoholic Beverage Commission vs. Angleton Roadhouse, Inc. d/b/a Roadhouse**

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 black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan  
Administrative Law Judge

TH/mr  
Enclosure

xc Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> 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**  
Al Van Huff, Attorney at Law, 1225 North Loop West, Suite 640, Houston, TX 77008 - **VIA REGULAR MAIL**



## II. DISCUSSION

### A. Applicable Law

The holder of a retail dealer's permit must provide TABC with a \$5,000 surety bond conditioned on the holder's conformance with alcoholic beverage law. Code § 11.11. The bond may be forfeited if the licensee has been finally adjudicated of three violations of the Code since September 1, 1995. 16 Tex. Admin. Code (TAC) § 33.24(1).

### B. Petitioner's Evidence

Petitioner's exhibits were admitted at the hearing without objection. Exhibit No. 3 included a copy of the permit, violation history, the conduct surety bond, and correspondence.

On November 10, 2011, TABC issued a Mixed Beverage Permit MB-789867, which included the Beverage Cartage Permit, for Respondent's premises located at 2610 Hwy 288 North "B", Angleton, Brazoria County, Texas. Respondent posted a Conduct Surety Bond Number BUIFSU0566192 in the amount of \$5,000 payable to the State of Texas.

On May 29, 2013, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code. TABC found that Respondent violated the Code by:

1. Breach-Simple, and waived hearing on the matter.
2. Breach, Failure to Report, and waived hearing on the matter.

The Settlement Agreement and Waiver became final and enforceable by on June 5, 2013.

On June 24, 2014, Respondent signed a Settlement Agreement and Waiver regarding one additional violation of the Code. TABC found that Respondent violated the Code by:

1. Intoxicated Licensee/Permittee, and waived hearing on the matter.

The Settlement Agreement and Waiver became final and enforceable on July 1, 2014.

By letter dated August 4, 2014, TABC notified Respondent that it intended to seek forfeiture of the full amount of the conduct surety bond. Respondent requested a hearing on the bond forfeiture.

**C. Respondent's Evidence**

Respondent's President, David Holcutt, testified that he signed the Settlement Agreement and Waiver Orders, but he was not aware that the violations could result in the forfeiture of the conduct surety bond.

**III. ANALYSIS.**

Conduct surety bonds are posted by TABC license and permit holders to encourage compliance with provisions of the Code and the TABC Rules. Staff argues that Respondent had 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 argues David Holcutt was not fully apprised by TABC, that by signing the Settlement Agreement and Waiver Orders, the conduct surety bond could be forfeited. Respondent further argues that the Settlement and Waiver Order dated May 29, 2013, was signed but not initialed by Mr. Holcutt, and is therefore invalid.

Respondent chose to waive the right to contested hearings and admitted to the three violations by executing two separate Settlement Agreement and Waiver Orders. The language of each Settlement Agreement and Waiver Order states that Respondent understood the violations would become part of the violation history and a forfeiture of any conduct surety bond may result. Respondent clearly signed the waivers on all three violations and TABC entered final waiver orders. Respondent did not offer any evidence that the TABC waiver orders were appealed or contested. This is not the proper forum to do so now.

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. Staff notified

Respondent in writing of the intent to seek forfeiture of the bond as authorized by 16 TAC § 33.24(1).

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Therefore, Respondent's conduct surety bond should be forfeited.

#### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued a Mixed Beverage Permit, which includes the Beverage Cartage Permit, to Angleton Roadhouse, Inc. d/b/a Roadhouse (Respondent). The permit number is MB-789867.
2. Respondent posted a Conduct Surety Bond Number BUIFSU0566192 in the amount of \$5,000 payable to the State of Texas.
3. The conduct surety 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 certificate of deposit shall be paid to the state."
4. On May 29, 2013, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code, which occurred on February 3, 2013.
5. On June 24, 2014, Respondent signed a Settlement Agreement and Waiver regarding one violation of the Code which occurred on May 18, 2014.
6. Each Settlement Agreement and Waiver included the statement, "this agreement may result in the forfeiture of any conduct surety bond on file."
7. Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995.
8. On August 4, 2014, TABC Staff sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
9. Respondent requested a hearing on this matter.
10. On October 21, 2014, 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.

11. The hearing in this matter convened on December 12, 2014, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Ramona M. Perry, staff attorney, represented TABC at the hearing. Al Van Huff, attorney, represented Respondent. The hearing concluded and the record closed the same day.

## V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Code ch. 5 and § 11.11, as well as 16 TAC § 33.24(1).
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 ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Tex. Gov't Code § 2001.051 and 2001.052.
4. Based on the foregoing findings of and conclusions, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on the findings of fact and conclusions of law, Respondent's conduct surety bond should be forfeited. Code §11.11 and 16 TAC § 33.24(1).

**SIGNED JANUARY 29, 2015.**

  
TIMOTHY HORAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS