

DOCKET NO. 632270

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
HARLEY'S HIDEAWAY SOCIAL CLUB, INC. D/B/A	§	
HARLEY'S HIDEAWAY, Respondent	§	ALCOHOLIC
	§	
PERMIT N821995, PE	§	
	§	
REAL COUNTY, TEXAS (SOAH DOCKET NO. 458-15-4287)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th of December, 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 John H. Beeler presiding. The hearing convened on August 21, 2015, 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 October 12, 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.

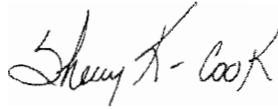
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set 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. 10018764, issued by Hudson 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 23rd day of January, 2016, unless a Motion for Rehearing is filed on or before the 22nd day of January, 2016.

SIGNED this the 30th day of December, 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 30th day of December, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

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

Harley's Hideaway Social Club Inc.
d/b/a Harley's Hideaway
RESPONDENT
P.O. Box 18
Camp Wood, TX 78833
VIA FIRST CLASS MAIL, CMRRR #70150640000460343368

David Cunningham
ATTORNEY FOR RESPONDENT
Hayden and Cunningham, PLLC
7750 Broadway
San Antonio, TX 78209
VIA FIRST CLASS MAIL, CMRRR #70150640000460343375

Judith Kennison
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: Judith.kennison@tabc.texas.gov

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 for three violations of the Code since September 1, 1995. 16 Tex. Admin. Code (TAC) § 33.24(1).

B. Staff's Evidence

Staff's exhibits were admitted at the hearing without objection. Exhibit No. 2 included a copy of the permit, conduct surety bond, and violation history.

On October 25, 2014, TABC issued Private Club Registration Permit N-821995, which included the Beverage Cartage Permit, for Respondent's premises located at 500 E. 4th Street, Camp Wood, Texas. Respondent posted a Conduct Surety Bond Number 10018764 in the amount of \$5,000 payable to the State of Texas.

On November 5, 2014, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. TABC found that Respondent violated the Code by selling an alcoholic beverage to a non-member. The Settlement Agreement and Waiver became final and enforceable on November 7, 2014.

On January 27, 2015, Respondent signed a Settlement Agreement and Waiver regarding violation of the Code. TABC found that Respondent violated the Code by failing to maintain membership records. The Settlement Agreement and Waiver became final and enforceable on January 30, 2015.

On April 21, 2015, Respondent signed a Settlement Agreement and Waiver regarding violation of the Code. TABC found that Respondent violated the Code by failing to report a breach of the peace. The Settlement Agreement and Waiver became final and enforceable on April 23, 2015.

TABC notified Respondent that it intended to seek forfeiture of the full amount of the conduct surety bond, and Respondent requested a hearing on the bond forfeiture.

C. Respondent's Argument

Respondent argued that two of the three violations were not related in any way to the sale of alcohol and should not be the basis of 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 asserts that Respondent had committed three or more violations of the Code since September 1, 1995, and that, as a matter of law, the conduct surety bond is now subject to forfeiture. Although Respondent argues that two of the three violations were not alcohol related, the statute provides that any violations of the Code may be the basis for the forfeiture.

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 Private Club Registration Permit N-821995, which included the Beverage Cartage Permit, for Respondent's premises located at 500 E. 4th Street, Camp Wood, Texas.
2. Respondent posted a Conduct Surety Bond Number 10018764 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 November 5, 2014, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code, which occurred on September 5, 2014.
5. On January 27, 2015, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code, which occurred on December 9, 2014.
6. On April 21, 2015, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code, which occurred on February 5, 2015.
7. Each Settlement Agreement and Waiver included the statement, "this agreement may result in the forfeiture of any conduct surety bond on file."
8. Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995.
9. TABC Staff sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
10. Respondent requested a hearing on this matter.
11. On June 15, 2015, 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.
12. The hearing in this matter convened on August 21, 2015, before State Office of Administrative Hearings (SOAH) ALJ John H. Beeler. Judith Kennison, staff attorney, appeared by telephone and represented TABC at the hearing. David Cunningham, 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 Texas Alcoholic Beverage Code (Code) ch. 5 and § 11.11, as well as 16 Texas Administrative Code § 33.24(1).
2. SOAH 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 Texas Government Code ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Texas Government Code § 2001.051 and 2001.052.
4. 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 October 12, 2015



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 12, 2015

VIA INTERAGENCY MAIL

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

RE: SOAH Docket No. 458-15-4287; Texas Alcoholic Beverage Commission v. Harley's Hideaway Social Club Inc. d/b/a Harley's Hideaway

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,

A handwritten signature in cursive script, appearing to read "John Beeler".

John Beeler
Administrative Law Judge

JB/lh

Enclosure

xc Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL**
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - **VIA INTERAGENCY MAIL** (with Certified Evidentiary Record and 1Hearing C)
David Cunningham, Hayden & Cunningham, P.L.L.C., 7750 Broadway, San Antonio, TX 78209 - **VIA REGULAR MAIL**