

DOCKET NO. 458-03-3070

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

BEFORE THE STATE OFFICE

Vs.

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§
§

AUG 5 2003

OF

**GENEVA URIBE
d/b/a J & J SALOON
PERMIT NOS. BG528828 & BL528829
BEXAR COUNTY, TEXAS
(TABC CASE NO. 604695)**

ADMINISTRATIVE HEARINGS

(SAN ANTONIO, TEXAS)

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Geneva Uribe (Respondent) seeking forfeiture of the full amount of the Respondent's conduct surety bond. TABC alleged the Respondent's permits were canceled for cause. The Respondent appeared and presented a statement on her behalf. This Proposal for Decision finds the Respondent's conduct surety bond should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on June 10, 2003. Attorney Dewey Brackin represented TABC. Respondent appeared and represented herself. Administrative Law Judge Leah Davis Bates (ALJ), presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

II. EVIDENCE

A. Evidence.

1. TABC Evidence

The staff of TABC (Staff) introduced Exhibit A as documentary evidence establishing the following:

(a) On December 16, 2002, the Respondent posted a conduct surety bond in the amount of \$5,000.00 asserting she would faithfully conform with the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.

(b) On January 9, 2003, Respondent was issued Wine and Beer Retailer's Permit BG-528828 and Retail Dealer's On Premise Late Hours License BL-528829 by TABC.

(c) On February 19, 2003, the Respondent signed a document entitled "Agreement and Waiver of Hearing" that included the following language: "I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing... The signing of this waiver may result in the forfeiture of any related conduct surety bond."

(d) The waiver document alleged an aggravated breach had occurred on the licensed premises.

(e) On March 5, 2003, TABC entered a waiver order stating that Respondent violated the Code as set out in the waiver signed by Respondent and canceled the licences.

2. Respondent's Statement

Respondent introduced a written statement on her own behalf. The statement contained a short detailed account of the aggravated breach of the peace which occurred on the licensed premises. On February 7, 2003, a TABC agent awoke the Respondent and her husband and asked that they come down and open up the bar. The agent explained to Respondent that a person had been killed and that the blood trail led from inside the bar to outside the front door.

Respondent decided not to reopen the bar after that incident and on February 19, 2003, went to turn in her license to the TABC. At that time she was informed of the bar being cited for four individuals consuming alcoholic beverages after hours and one arrested for public intoxication. Respondent's statement notes "this incident that constituted the third (3rd) strike."

Respondent stated she signed the waiver at the advice of TABC Agent Dewitt, and had she known that her bond would have been forfeited she would not have signed.

III. STATUTORY AUTHORITY

The rules of TABC, at 16 TEX. ADMIN. CODE CODE (TAC) §33.24(j) provide:

(1) **When a license or permit is canceled**, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may . . . request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13 and this rule have been satisfied.

The applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. §11.11(b)(2) state:

(b) . . . the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code. . . .

III. RECOMMENDATION AND ANALYSIS

Based on a preponderance of the evidence, the Respondent's permits were canceled, and in accordance with Texas Alcoholic Beverage Commission rules, 16 TAC §33.24, the conduct surety bond is forfeited. The full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

Apparently from the Respondent's statements, she is of the belief the forfeiture is being requested on the basis of three violations of the Code, however, the evidence is clear the TABC proceeded on the signed waiver and then on the subsequent cancellation of the permits.

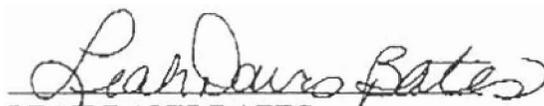
IV. FINDINGS OF FACT

1. Geneva Uribe d/b/a J & J Saloon (Respondent) is the holder of Wine and Beer Retailer's Permit BG-528828 and Retail Dealer's on Premise Late Hours License BL-528829, issued by the Texas Alcoholic Beverage Commission (TABC) on January 9, 2003.
2. On December 16, 2002, the Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On February 19, 2003, the Respondent signed an "Agreement and Waiver of Hearing" regarding the cancellation of her permits based upon an aggravated breach of the peace which occurred on the licensed premises.
4. On May 12, 2003, the staff of TABC (the Staff) sent a Notice of Hearing by certified mail, return receipt requested, to the Respondent asserting that TABC was seeking to forfeit the Respondent's surety bond. The Respondent timely received the notice letter.
5. The hearing on the merits was held by telephone on June 10, 2003. Dewey Brackin appeared and represented the Staff. The Respondent represented herself. Leah Davis Bates, Administrative Law Judge (ALJ) presided.
6. The Respondent permits were canceled on March 5, 2003.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Respondent's bond is subject to forfeiture based upon violations of the rules of TABC found at 16 TEX. ADMIN. CODE §33.24, specifically by the cancellation of her permits.
5. TABC is permitted by TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24 to forfeit the conduct surety bonds of permittees who commit three or more violations of the Code since September 1, 1995, or by the cancellation of the permits.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by the Respondent should be forfeited to the State.

SIGNED this 5th day of August, 2003.



LEAH DAVIS BATES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 604695

IN RE GENEVA URIBE	§	BEFORE THE
D/B/A J & J SALOON	§	
PERMIT NOS. BG528828, BL528829	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-3070)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 3rd day of September, 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Davis Bates. The hearing convened on June 10, 2003 and adjourned on June 10, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 5, 2003. This 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.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

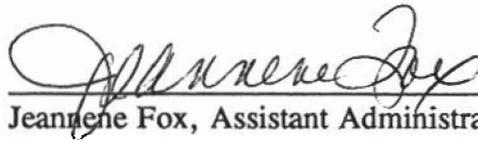
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond be **FORFEITED**.

This Order will become final and enforceable on September 24, 2003, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this the 3rd day of September, 2003.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

The Honorable Leah Davis Bates
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

Geneva Jimenez Uribe
d/b/a J & J Saloon
RESPONDENT
9823 N. Meadow St.
Converse, Tx. 78109-2609
CERTIFIED MAIL RRR #7001 2510 0003 8687 3049

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

San Antonio District Office