

DOCKET NO. 458-04-2338

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
Petitioner	§	
	§	
V.	§	
	§	OF
D. BURCH, INC.	§	
D/B/A BABY DOLLS TOPLESS SALOON	§	
DALLAS COUNTY, TEXAS	§	
TABC NO. 606845	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) initiated this action seeking forfeiture of the conduct surety bond posted by D. Burch, Inc. d/b/a Baby Dolls Topless Saloon (Respondent). Staff recommended that the bond be forfeited because Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's bond be forfeited.

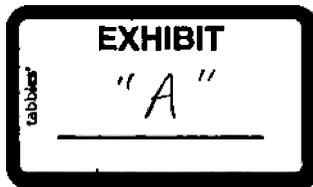
I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On March 18, 2004, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, attorney. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, pursuant to 1 TEX. ADMIN. CODE § 155.55. Accordingly, Staff's factual allegations are deemed admitted as true, and the ALJ has incorporated those allegations into the findings of fact without further discussion. The record was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

An applicant for a permit or a holder of a permit must file with the Commission a surety bond conditioned on the applicant's or holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. §§ 11.11(a) (1) & (2). When a permit is cancelled, or a final adjudication has been made that the permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. 16 TEX. ADMIN. CODE § 33.24(j)(1).



The permittee may, within 30 days of the notice, request a 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 hearing is conducted in accordance with the Administrative Procedure Act. 16 TEX. ADMIN. CODE § 33.24(j)(2).

If a party who does not have the burden of proof fails to appear on the day and time set for hearing, the judge may proceed in that party's absence on a default basis and issue a proposal for decision, where provided by law, against the defaulting party. In the proposal for decision, the factual allegations against that party in the notice of hearing will be deemed admitted. 1 TEX. ADMIN. CODE § 155.55(a).

III. ANALYSIS

Based on the deemed factual findings in this case, Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. The Commission issued Mixed Beverage Permit, MB 236753, and Mixed Beverage Late Hours Permit, LB 236754, to Respondent for the premises known as Baby Dolls Topless Saloon, 3039 West Northwest Highway, Suite 103, Dallas, Dallas County, Texas.
2. Respondent has been found by the Commission to have committed three violations of the Code and has had three final adjudications regarding these violations since September 1, 1995.
3. On January 27, 2004, Staff sent a Notice of Hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing Respondent that Respondent had forfeited its conduct surety bond because Respondent had committed three violations of the Code with three final adjudications since September 1, 1995.
4. The Notice of Hearing also informed Respondent of the date, time, and place of the hearing; the statutes and rules involved; the legal authorities under which the hearing was to be held; and contained language in 12-point type stating that if Respondent failed to appear at the hearing Staff's factual allegations would be deemed admitted as true and the relief sought in the notice of hearing may be granted by default.
5. Staff received a signed "green card" from the U.S. Postal Service showing that the Notice of Hearing was received and signed for at Respondent's mailing address.
6. The hearing on the merits convened March 18, 2004, at the State Office of Administrative Hearings, 6333 Forest Park Rd., Suite 150-A, Dallas, Texas, 75235. Staff was represented by Timothy E. Griffith, attorney. Respondent did not appear and was not represented at the hearing. The record was closed on that date.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.61(b)(2)
2. SOAH has jurisdiction to conduct the 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. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. A default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
5. Based on the foregoing findings and conclusions, the conduct surety bond posted by Respondent should be forfeited. TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TEX. ADMIN. CODE § 33.24(j).

SIGNED April 15, 2004.



JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 606845

IN RE D. BURCH, INC.	§	BEFORE THE
D/B/A BABY DOLLS TOPLESS SALOON	§	
PERMIT/LICENSE NOS. MB236753,	§	
LB236754	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-2338)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of May, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on March 18, 2004 and adjourned on March 18, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 15, 2004. 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.

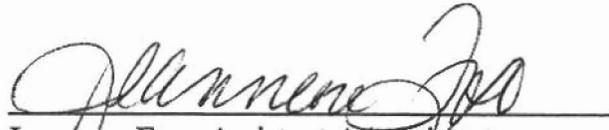
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on May 26, 2004, 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 on this 5th day of May, 2004.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (214) 956-8611

D. Burch, Inc.
d/b/a Baby Dolls Topless Saloon
RESPONDENT
PO Box 542225
Dallas, TX 75354
VIA CERTIFIED MAIL/RRR NO. 7000 1530 0003 1903 4767

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8700 N. Stemmons Frwy., Ste. 470
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VIA FACSIMILE (214) 920-2498

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office