

DOCKET NO. 505298

IN RE E. CAMPBELL & CO.	§	BEFORE THE
D/B/A FIRST AND LAST BAR & GRILL	§	
PERMIT NO. N-514581, PE	§	
	§	TEXAS ALCOHOLIC
	§	
HENDERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1046)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 25th day of July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michelle Kallas. The hearing convened on May 15, 2006, and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 28, 2006. 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.

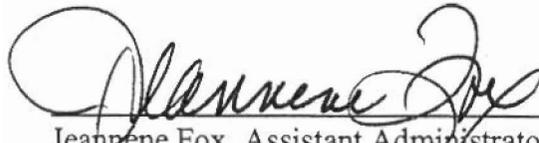
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond be **FORFEITED**.

This Order will become final and enforceable on August 15, 2006, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 25th day of July,
2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JLK/yt

The Honorable Michelle Kallas
Administrative Law Judge
State Office of Administrative Hearings - Dallas
VIA FACSIMILE: (214) 956-8611

E. Campbell & Co.
d/b/a First and Last Bar & Grill
RESPONDENT
P. O. Box 1669
Mabank, Tx. 75147-1669
CERTIFIED MAIL NO. 7005 0390 0005 7550 1739
RETURN RECEIPT REQUESTED

Judith L. Kennison
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

505 298

State Office of Administrative Hearings

JK+



Shelia Bailey Taylor
Chief Administrative Law Judge



June 28, 2006

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-1046
TABC VS. E. CAMPBELL & CO.,
D/B/A FIRST AND LAST BAR & GRILL

Dear Ms. Fox:

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 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Michelle Kallas
Administrative Law Judge

MK/sr
Enclosure

cc: Judith Kennison, Agency Council for Texas Alcoholic Beverage Commission, **Via Fax**,
E. Campbell & Co., D/B/A First and Last Bar & Grill, Respondent, **Via Mail**

SOAH DOCKET NO. 458-06-1046

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. E. CAMPBELL & COMPANY, d/b/a FIRST AND LAST BAR & GRILL, Respondent		

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC, Petitioner) brought this action seeking forfeiture of the conduct surety bond posted by E. Campbell & Company d/b/a First and Last Bar & Grill (Respondent). Petitioner requested that the bond be forfeited because Respondent has committed at least three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 §§ 11.11, 11.61, 32.01, 61.13, 61.71, and TEX. ADMIN. CODE ch. 16 § 33.24. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On January 17, 2006, Petitioner issued its notice of hearing directed to Respondent. On February 2, 2006, the case was continued to April 5, 2006, at 10:30 a.m. On April 3, 2006, the case was continued to May 15, 2006, at 10:30 a.m. On May 15, 2006, a hearing convened before SOAH ALJ Michelle Kallas at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Petitioner was represented by Judith Kennison, TABC Staff Attorney, who appeared by telephone.

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Respondent appeared *pro se*. The record closed on May 15, 2006.

II. DISCUSSION

A. Applicable Law

A private club registration permit holder must provide Petitioner with a conduct surety bond, in the amount of \$5,000.00, conditioned on the holders conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. § 11.11 (a) (1). When a permittee has been finally adjudicated of three violations of the Texas Alcoholic Beverage Code since September 1, 1995, Petitioner may seek forfeiture of the permittee's bond. Petitioner must notify the permittee of its intent to seek forfeiture of the bond. The permittee may request a hearing on the questions of whether the criteria for forfeiture of the bond has been satisfied. TEX. ADMIN. CODE ch. 16 § 33.24(j).

B. Evidence

1. Petitioner's Evidence

Petitioner's three exhibits were admitted at the hearing without objection. The exhibits include copies of the permits, violation history, correspondence, and the conduct surety bond.¹ On May 16, 2002, Petitioner issued to Respondent a Private Club Registration Permit, N-514581, and Beverage Cartage Permit, PE-514582. These permits have been continuously renewed.

On August 5, 2003, Respondent signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Petitioner's claim that on November 17, 2002, Respondent violated §§ 32.01 (a), 32.17 (a) (1), and 32.17 (b) of the Code. In

¹ The conduct surety bond was in the form of an assignment. Respondent assigned Certificate of Deposit No. 91177 to Petitioner in order to comply with §§ 11.11 and 61.13 of the Code.

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this waiver, the Respondent acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. This agreement became final and enforceable by the order signed by the Petitioner on August 7, 2003, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty reflected in that agreement.

On May 24, 2004, the Respondent entered into another "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Petitioner's claim that on August 16, 2003, Respondent violated §§ 32.01 (a), 32.17 (a) (1), and 32.17 (b) of the Code. In this waiver, the Respondent acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. This agreement became final and enforceable by the order signed by the Petitioner on June 2, 2004, finding that the Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty reflected in that agreement.

On April 1, 2005, ALJ Jerry Van Hamme issued a Proposal for Decision in which he recommended that Respondent's permits be suspended for a period of 15 days for selling or delivering an alcoholic beverage to an intoxicated person in violation of § 11.61 (b) (14) of the Code. On May 19, 2005, Petitioner issued its order adopting Judge Van Hamme's Findings of Fact and Conclusions of Law. The order became final and enforceable on June 10, 2005.

2. Respondent's Evidence

Eldon Campbell testified at the hearing regarding SOAH Case No. 458-04-8347 and the Proposal for Decision submitted on April 1, 2005, by Judge Van Hamme in that case. Mr Campbell testified that the individual in that case was not shown to be intoxicated since field sobriety tests were not administered. He pointed out that the individual was not arrested for public intoxication. He requested that this court conduct a further review of that case.

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Mr. Campbell did not think it was justified for him to have to pay another \$5,000.00 to Petitioner when he had already paid a fine of \$2,250.00 for the violation of selling to an intoxicated person.

C. Discussion and Recommendation

As the holder of a private club registration permit, Respondent was required to provide a conduct surety bond, in the amount of \$5,000.00, payable to Petitioner. TEX. ALCO. BEV. CODE ANN. § 11.11 (a) (1). Petitioner may seek forfeiture of that bond in the event that Respondent is found to have committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995. TEX. ADMIN. CODE ch. 16 § 33.24(j).

Petitioner provided evidence that Respondent has violated the Texas Alcoholic Beverage Code three times since September 1, 1995. Respondent admitted to committing two violations of the Code by entering into two Agreements and Waivers of Hearing. The third required violation was finally adjudicated following a hearing before SOAH, in which the ALJ found that Respondent had violated the Code and, Petitioner issued its order adopting the findings of the ALJ and suspended Respondent.

At the hearing, Mr. Campbell did not mention either one of the Agreements and Waivers of Hearing he had previously entered into with Petitioner. He focused his testimony on the third violation, selling an alcoholic beverage to an intoxicated person, which was decided by the ALJ. He questioned whether the individual in that case was intoxicated and requested this court to conduct a further review of that case. This ALJ does not have the authority or jurisdiction to conduct a further review of a decision which became final and enforceable on June 10, 2005. In order to seek further review of the case, Respondent needed to file a motion for rehearing or appeal the decision within the proper time frame. There is no evidence that Respondent exercised his appeal rights with regards to this decision.

The evidence on the record is sufficient to establish that Respondent, the holder of a private club registration permit, has been finally adjudicated of three violations of the Texas Alcoholic Beverage Code, since September 1, 1995. According to §33.24 (j) of the Rules, forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. FINDINGS OF FACT

1. E. Campbell & Co. (Respondent) holds a Private Club Registration Permit, N-514581 and a Beverage Cartage Permit, PE-514582, issued by the Texas Alcoholic Beverage Commission (Petitioner) for the premises located at 761 S. Gun Barrel Lane, Gun Barrel City, Henderson County, Texas.
2. On March 18, 2002, Respondent assigned, for conduct surety purposes, Certificate of Deposit No. 91177, in the amount of \$5,000.00, to the state.
3. On August 7, 2003, Petitioner issued a Waiver Order suspending Respondent's permits for a violation of §§ 32.01 (a), 32.17 (a) (1), and 32.17 (b) of the Texas Alcoholic Beverage Code.
4. On June 2, 2004, Petitioner issued a Waiver Order suspending Respondent's permits for a violation of §§ 32.01 (a), 32.17 (a) (1), and 32.17 (b) of the Texas Alcoholic Beverage Code.
5. On May 19, 2005, Petitioner issued its order adopting ALJ Van Hamme's Findings of Fact and Conclusions of Law and suspending Respondent's permits for violating § 11.61 (b)(14) of the Texas Alcoholic Beverage Code.
6. Respondent committed at least three violations of the Code or Rules since September 1, 1995.
7. By letter dated June 13, 2005, Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
8. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
9. On January 17, 2006, Petitioner sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing

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Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.

10. The hearing on the merits convened May 15, 2006, at the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150-A, Dallas, Texas 75235, before ALJ Michelle Kallas. Petitioner was represented by Judith Kennison, TABC attorney. Respondent appeared *pro se*. The record closed on May 15, 2006.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11, 11.61, 32.01, 61.13, 61.71, and TEX. ADMIN. CODE ch. 16 § 33.24.
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, 1 TEX. ADMIN. CODE (TAC) § 155.55 and 16 TAC § 37.3.
4. Respondent has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995.
5. The conduct surety bond posted by Respondent should be forfeited, TEX. ALCO. BEV. CODE ANN. § 11.11 and 16 TAC § 33.24 (j).

SIGNED June 28, 2006.



MICHELLE KALLAS

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. E. Campbell & Co. d/b/a First and Last Bar & Grill

DOCKET NUMBER: 458-06-1046

AGENCY CASE NO: 505298

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AGENCY COUNSEL

E. Campbell & Co.
d/b/a First and Last Bar & Grill
PO Box 1669
Mabank, TX 75147

**RESPONDENT
VIA REGULAR MAIL**

as of June 28, 2006