

DOCKET NO. 511872

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE TEXAS
COMMISSION §
§
VS. §
§ ALCOHOLIC
ERICKA ANGELA MORIN §
D/B/A OMALLEY'S §
PERMIT/LICENSE NO(s). MB530250 §
NUECES COUNTY, TEXAS §
(SOAH DOCKET NO.458-06-2588) § BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 12th day of February, 2007, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on October 17, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 18, 2006. 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. 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 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.

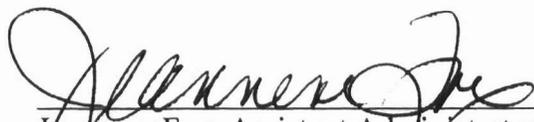
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's conduct surety bond be **FORFEITED**.

This Order will become final and enforceable on March 8, 2007, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED on February 12th, 2007, at Austin, Texas.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Ericka Angela Morin
RESPONDENT
d/b/a O Malley's
2829 Topeka
Corpus Christi, TX 784114310
CERTIFIED MAIL NO. 7005 3110 0000 0768 2989

Hon. Melissa M. Ricard
State Office of Administrative Hearings
Corpus Christi, Texas
VIA FAX (361) 884-5427

Christopher G. Gee
ATTORNEY FOR PETITIONER
TABC Legal Services

Licensing Division
Corpus Christi District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



December 19, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

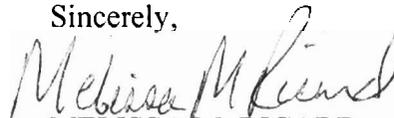
RE: Docket No. 458-06-2588/ TABC vs. ERICKA ANGELA MORIN

Dear Mr. Steen:

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,


MELISSA M. RICARD
Administrative Law Judge

MMR/MAR

Enclosure

xc: **Natalie Howard, State Office of Administrative Hearings- VIA REGULAR MAIL**
Christopher G. Gee, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-VIA REGULAR MAIL
Ericka Angela Morin, 2829 Topeka, Corpus Christi, Tx 78411 -VIA REGULAR MAIL

DOCKET NO. 458-06-2588

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

VS.

**ERICKA ANGELA MORIN
D/B/A O'MALLEY'S,
PERMIT NO. MB-530250
NUECES COUNTY, TEXAS
(TABC NO. 511872)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) initiated this action against Ericka Angela Morin (Respondent), seeking the forfeiture of the conduct surety bond posted by the Respondent. The Commission recommended that the bond be forfeited because the Respondent has committed three violations of the Texas Alcoholic Beverage Code (Code) after September 1, 1995, and its permits were cancelled for cause, in violation of § 11.11, of the Code and 16 TEX. ADMIN. CODE (Rules) § 33.24. The undersigned Administrative Law Judge (ALJ) concludes that the Commission's allegations are true and agrees with the Commission's recommended penalty.

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 October 17, 2006, a public hearing was held before Melissa M. Ricard, ALJ, at the offices of the State Office of Administrative Hearings (SOAH) at 5155 Flynn Parkway, Suite 200, Corpus

Christi, Texas, by telephone. The Commission appeared through its attorney, Christopher G. Gee. Respondent, Ericka Angela Morin appeared and represented herself. Evidence and argument were heard, and the record closed the same day.

II. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to Code § 11.11, 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. Pursuant to Rule § 33.24, when a permit is canceled, or a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995, the Commission must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on the question of whether the criteria for forfeiture of the bond, as established by Code § 11.11, and Rule § 33.24, have been satisfied.

III. ANALYSIS

Commission's Exhibit No. 1, which includes copies of the Respondent's permit, violation history, and conduct surety bond, reveals that on June 4, 2004, the Respondent, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on June 9, 2003 and on August 17, 2003, the Respondent, or her servant, agent or employee was intoxicated on the licensed premises in violation of Code § 11.61(b)(13). In this waiver the Respondent also 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 Commission Administrator on June 9, 2004, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing."

According to the Commission's Exhibit No. 1, on January 31, 2005, the Respondent, signed another "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to

a hearing to contest the Commission's assertion that on December 4, 2004, the Respondent had committed two violations of the Code: "Sale/Serve/Deliver to Intoxicated Person" and "Permit Minor to possess/consume." In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered an order on February 8, 2005, finding that the Respondent's violations were eligible to be restrained under § 106.14 of the Code.

Commission's Exhibit No. 1 further shows that on June 13, 2005, the Respondent, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on April 15, 2005, the Respondent had committed another two violations of the Code: "Intoxicated Permittee/Licensee/Employee on premises" and "Possession of Drugs by Employee." The agreement also stated that the Respondent had committed the violation of "Subterfuge" from January 7, 2004 through April 30, 2005. In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered an order on June 24, 2005, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing," and cancelled the permits for cause.

Respondent did not provide any evidence.

There was no evidence that the Respondent appealed the Commission's orders. Therefore, based on the foregoing, the Respondent's conduct surety bond should be forfeited.

IV. FINDINGS OF FACT

1. The Respondent is the holder of Mixed Beverage Permit MB-530250 and Mixed Beverage Late Hours License LB-530251 issued to Ericka Angela Morin d/b/a O'Malley's, 4706 Corona Street, Corpus Christi, Nueces County, Texas, issued by the Commission, on February 6, 2003. The permits have been continuously renewed.

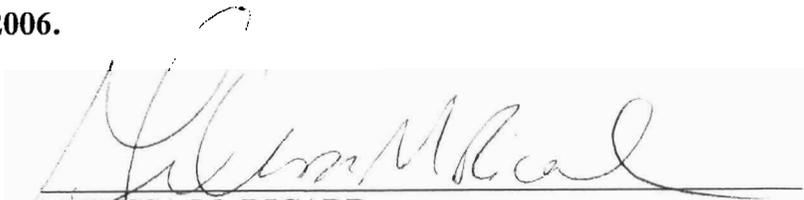
2. On January 23, 2003, the Respondent executed a conduct surety bond for Ericka Angela Morin d/b/a O'Malley's, 4706 in the amount of \$5000.00.
3. On June 4, 2004, the Respondent, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on June 9, 2003 and on August 17, 2003, the Respondent, or her servant, agent or employee was intoxicated on the licensed premises in violation of Code § 11.61(b)(13). In this waiver the Respondent also 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 Commission Administrator on June 9, 2004, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing."
4. On January 31, 2005, the Respondent, signed another "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on December 4, 2004, the Respondent had committed two violations of the Code: "Sale/Serve/Deliver to Intoxicated Person" and "Permit Minor to possess/consume." In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered an order on February 8, 2005, finding that the Respondent's violation was eligible to be restrained under § 106.14 of the Code.
5. On June 13, 2005, the Respondent, signed an "Agreement and Waiver of Hearing." In this agreement, the Respondent waived its right to a hearing to contest the Commission's assertion that on April 15, 2005, the Respondent had committed another two violations of the Code: "Intoxicated Permittee/Licensee/Employee on premises" and "Possession of Drugs by Employee." The agreement also stated that the Respondent had committed the violation of "Subterfuge" from January 7, 2004 through April 30, 2005. In this waiver the Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered an order on June 24, 2005, finding that the Respondent violated the section of the Code as stated in the "Agreement and Waiver of Hearing," and cancelled the permit for cause.
6. The Respondent has committed three violations of the Code since September 1, 1995, and the permits were cancelled for cause.
7. The Respondent did not appeal the Commission's orders of June 9, 2004, February 8, 2005, and June 24, 2005.

8. The Respondent received proper and timely notice by the Commission's Notice of Hearing, sent to the Respondent on July 13, 2006.
9. This Notice of Hearing informed the 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 on October 17, 2006, a public hearing was held before Melissa M. Ricard, ALJ, by telephone, at the offices of the State Office of Administrative Hearings (SOAH) at 5155 Flynn Parkway, Suite 200, Corpus Christi, Texas. The Commission appeared through its attorney, Christopher G. Gee. Respondent, Ericka Angela Morin appeared and represented herself.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed 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 under the Administrative Procedures Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Based on the foregoing findings and conclusions, the Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.11, and 16 TEX. ADMIN. CODE § 33.24.
5. Based on the foregoing findings and conclusions, the Respondent's conduct surety bond should be forfeited.

SIGNED December 18, 2006.



MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS