

DOCKET NO. 580513

IN RE FAT DADDY'S CLUB	§	BEFORE THE
	§	
PERMIT NOS. N-404372 & PE-404373	§	
	§	TEXAS ALCOHOLIC
	§	
NAVARRO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0297)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 18th day of November, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Richard Farrow. The hearing convened on April 23, 1999 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 October 22, 1999. 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.

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.

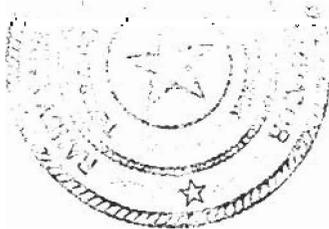
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §33.24(j) of the Commission Rules, that Respondent's Conduct Surety Bond is hereby **FORFEITED**.

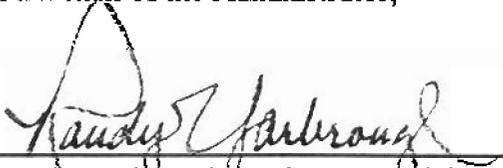
This Order will become final and enforceable on December 9, 1999, unless a Motion for Rehearing is filed **before** that date.

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 18th day of November, 1999.

On Behalf of the Administrator,




Randy Yarborough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/pah

The Honorable Richard Farrow
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (903) 534-7076

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Fat Daddy's Club
RESPONDENT
201 N. Beaton Streets
Corsicana, Texas 75110-4621
CERTIFIED MAIL/RRR NO. Z 473 039 107 and
Regular Mail

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



October 22, 1999

Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

VIA CERTIFIED MAIL Z 186 432 001
RETURNED RECEIPT REQUESTED

RE: **Docket No. 458-99-0297; Texas Alcoholic Beverage Commission vs. Fat Daddy's Club d/b/a Fat Daddy's Club (Permit No. N-404372 & PE-404373) (TABC Case No. 58513)**

580513

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, Attorney for Texas Alcoholic Beverage Commission, and to Fat Daddy's Club d/b/a Fat Daddy's Club. For reasons discussed in the proposal, based on finding that Respondent has committed three violations of the Code since September 1, 1995, Respondent's bond is subject to forfeiture, TEX. ALCO. BEV. CODE §11.11; and based on the foregoing Findings and Conclusions, and in compliance with TEX. ALCO. BEV. CODE ANN. §11.11, and Commission Rule at 16 TAC §33.24(j), the Respondent's conduct surety bond should be forfeited.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

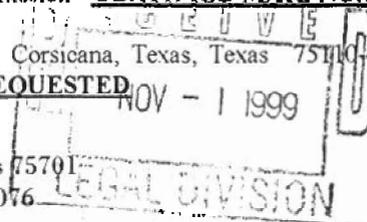
Richard Farrow
Administrative Law Judge

RF:tmn

Enclosure: 1

xc: **Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing - REGULAR MAIL**
Gayle Gordon, Attorney For Petitioner, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. Z 186 432 002, RETURN RECEIPT REQUESTED
Fat Daddy's Club d/b/a Fat Daddy's Club, 201 N. Beaton Street, Corsicana, Texas, Texas 75110-4621 - CERTIFIED MAIL NO. Z 186 432 003, RETURN RECEIPT REQUESTED

Commerce Square
3323 S. SW Loop 323 ♦ Tyler, Texas 75701
(903) 534-7101 Fax (903) 534-7076



SOAH DOCKET NO. 458-99-0297

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
FAT DADDY'S CLUB	§	
PERMIT NO. N-404372	§	
(TABC DOCKET NO. 58513)	§	ADMINISTRATIVE HEARINGS
580513	§	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff sought forfeiture of the conduct surety bond posted by Fat Daddy's Club, Respondent, alleging that Respondent had committed three or more violations of the Texas Alcoholic Beverage Code since September 1, 1995. The Respondent did not appear for thre hearing and this proposal for decision recommends forfeiture of the bond.

I. Jurisdiction, Notice, and Procedural History

On August 18, 1998, the Commission's Director of Licensing notified Respoñdent by certified letter that Respondent's conduct surety bond was subject to forfeiture due to three or more violations of the Texas Alcohol Beverage Code which had occurred on July 18, 1997, and on November 1, 1997. Respondent requested a hearing on the bond forfeiture.

On March 4, 1999, Staff sent Respondent a notice of hearing by certified mail, return receipt requested, to 201 N. Beaton Street, Corsicana, Texas, 75110-4621. The envelope and notice were returned by the United States Postal Service with the notation on the envelope "Moved Left No Address". The unopened envelope was introduced at the hearing as Exhibit No.2 and its contents contained a notice of hearing from Staff. The notice contained, in bold type, the statement that if a party fails to appear at the hearing, the factual allegations contained in the notice of hearing will be deemed as true, and the relief sought in the notice of hearing may be granted by default.

Thereafter, a pre-hearing conference was set by the Administrative Law Judge assigned to conduct the hearing, Richard Farrow. Notice of the pre-hearing conference was sent to Respondent's address by mail and returned with the notation on the envelope "Returned to Sender. Moved Left No Address". Attempts to send notice of the pre-hearing conference to Respondent by facsimile transmission were unsuccessful.

On April 8, 1999, Staff sent a pre-hearing statement to Respondent's address by certified mail, return receipt requested, which was introduced at the hearing as Exhibit No. 1. It was also returned undelivered with the notation "Return to Sender. Moved Left No Address".

On April 23, 1999, a hearing was held at the Tyler office of the State Office of Administrative Hearings at 3323 SSW Loop 323, Tyler, Texas. Gayle Gordon appeared in person on behalf of the Staff of the Texas Alcoholic Beverage Commission. The Respondent failed to appear. The hearing was convened by Richard Farrow, Administrative Law Judge for the State Office of Administrative Hearings. The evidence was heard, exhibits admitted, argument made, and the record was closed on April 23, 1999.

I. Discussion of Evidence

Respondent's Private Club Registration Permit N-404372 and Beverage Cartage Permit PE-404373 were renewed on November 26, 1997. Respondent's address listed on the permits was 201 N. Beaton St., Corsicana, Texas 75110-4621. The Respondent filed a \$5,000.00 conduct surety bond on October 28, 1997, with Respondent as Principal and Gramercy Insurance Company as Surety, made payable to the State of Texas in the event the Respondent violated a law of the state relating to alcoholic beverages or a rule of the Commission.

On December 17, 1997, Respondent agreed to the suspension of his licenses and/or permits, or payment of civil penalty in lieu of suspension, for four violations that had occurred on the licensed premises on November 1, 1997. The violations included sale of alcoholic beverage to minor, operating as an open saloon, sale of alcoholic beverage to a minor, and permit removal from premises. Respondent waived his right to a hearing and agreed to imposition of penalties as set out in the agreement. The Texas Alcoholic Beverage Commission entered an order on January 16, 1998, finding that the alleged violations had occurred and imposing the agreed penalties. The order became final and the Respondent did not file an appeal of the order.

On July 22, 1997, Respondent again entered an agreement and waiver of hearing agreeing to imposition of penalty for violation of the Code for operating as an open saloon on July 18, 1997. The Commission entered an order on July 29, 1997, based on the waiver and agreement finding that the violation alleged had occurred and assessing penalties as agreed. The Respondent did not appeal the order.

II. Analysis

As the Respondent failed to appear at the hearing or contest the allegations and as the Staff introduced evidence that Respondent had committed three or more violations of the Code since September 1, 1995. The conduct surety bond posted should be forfeited by Respondent.

III. Findings of Fact

1. On November 26, 1997, the Respondent was issued a renewal Private Club Registration Permit, N-404372, and a renewal Beverage Cartage Permit PE-404373, for the premises known as Fat Daddy's Club at 201 N. Beaton Street, Corsicana, Texas.
2. On October 28, 1997, Gramercy Insurance Company, as surety, issued the Respondent's \$5,000.00 conduct surety bond, payable to the State in the event the Respondent should violate a law of the state relating to alcoholic beverages or a rule of the Commission.
3. On December 17, 1997, Respondent signed an agreement waiving the right to a hearing and agreeing to imposition of cancellation/ suspension of Respondent's permits or payment of a civil penalty in lieu of suspension, for violations alleged to have occurred November 1, 1997, as follows:
 - a. Sale of alcoholic beverage to a minor;
 - b. Sale of alcoholic beverage to a minor;
 - c. Operating as an open saloon;
 - d. Permitting removal of alcoholic beverage from the premises.
4. On January 16, 1998, The Commission entered an order finding that the above violations were committed by Respondent and imposing the agreed sanctions.
5. The Respondent did not file a motion for rehearing and did not appeal the order, which became final 21 days after it was entered.
6. On July 22, 1998, Respondent entered into an agreement waiving the right to hearing and agreeing to imposition of suspension/cancellation of the permits or payment of a civil penalty in lieu of suspension/cancellation, for operating as an open saloon on July 18, 1998.
7. On July 29, 1998, the Commission entered an order finding that the above violation had occurred and imposing the agreed sanctions.
8. The Respondent did not file a motion for rehearing, did not appeal the order, and the order became final 21 days after it was entered.
9. On August 18, 1998, the Commission's Director of Licensing notified Respondent that its conduct surety bond was subject to forfeiture due to three or more violations of the Texas Alcoholic Beverage Code and that the Commission intended to forfeit the bond.
10. Respondent properly requested a hearing on the bond forfeiture.
11. Notice of Hearing was sent to Respondent by certified mail, return receipt requested, on March 4, 1999.

12. The Notice of Hearing set out in bold face type "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."

13. The Notice of Hearing was returned undelivered with the notation "Moved left no address."

14. On April 23, 1999, hearing was held in Tyler, Texas, before an Administrative Law Judge of the State Office of Administrative Hearings. Gayle Gordon appeared on behalf of the Texas Alcoholic Beverage Commission. Respondent did not appear either in person or by representative.

15. Respondent has committed three violations of the Code has had three or more final adjudications regarding those violations since September 1, 1995.

IV. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and §§ 11.61 and 61.71 of the TEX. ALCO. BE. CODE ANN.

2. The State Office of Administrative Hearings 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. §§2003.021(b) and 2003.042(5).

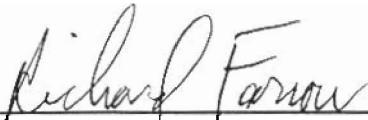
3. Respondent was required to file a conduct surety bond in the amount of \$5,000.00 payable to the State in the event the Respondent violated any law or rule related to alcohol, 16 TAC §33.24.

4. The Commission sought forfeiture for violation and, having been advised that Respondent requested hearing, gave proper and timely notice of hearing pursuant to TEX. GOV'T CODE ANN. §2001.051.

5. Based on finding that Respondent has committed three violations of the Code since September 1, 1995, Respondent's bond is subject to forfeiture, TEX. ALCO. BEV. CODE §11.11.

6. Based on the foregoing Findings and Conclusions, and in compliance with TEX. ALCO. BEV. CODE ANN. §11.11, and Commission Rule at 16 TAC §33.24(j), the Respondent's conduct surety bond should be forfeited.

SIGNED this 25th day of October, 1999


Richard Farrow
Administrative Law Judge
State Office of Administrative Hearings