

DOCKET NO. 581153

IN RE MARY JANE HAWKINS PEREZ	§	BEFORE THE
D/B/A A & A DRIVE INN	§	
LICENSE NO. BE320449	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0112)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 12th day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John H. Beeler. The hearing convened and adjourned on September 19, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 15, 2000. 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.

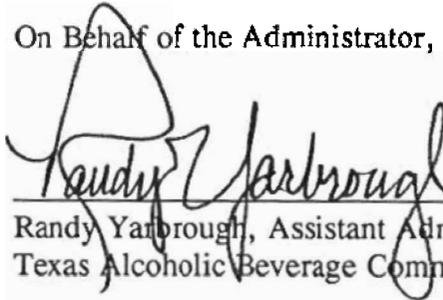
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on January 1, 2001, 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 12th day of December, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable John H. Beeler
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas
VIA FACSIMILE (512) 475-4994

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Mary Jane Hawkins Perez
RESPONDENT
d/b/a A & A Drive Inn
4103 W. Commerce
San Antonio, Texas 78207
CERTIFIED MAIL/RRR NO. Z 280 626 776

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

DOCKET NO. 458-99-0112

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
	§	OF
MARY JANE HAWKINS PEREZ D/B/A A & A DRIVE INN LICENSE NO. BE-320449 BEXAR COUNTY, TEXAS (TABC CASE NO. 581153)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Commission) requested forfeiture of the conduct surety bond posted by Mary Jane Hawkins Perez d/b/a A & A Drive Inn (Respondent). The Commission alleged that Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995. These violations had been finally adjudicated, justifying the forfeiture of Respondent's conduct surety bond pursuant to §11.11 of the TEX. ALCO. BEV. CODE ANN. (the Code) and 16 TEX. ADMIN. CODE §33.24. Respondent appeared but did not contest the allegations. The Administrative Law Judge recommends Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION.

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing was held on September 19, 2000, before Administrative Law Judge (ALJ), John H. Beeler, in the hearings facility of the State Office of Administrative Hearings in San Antonio, Texas. The record was closed at the conclusion of the hearing that day. The Commission was represented by attorney Christopher Burnett. Respondent appeared and represented herself.

II. CONDUCT SURETY BOND

A Beer Retailer's On Premise License, BE-320449 was issued to Mary Jane Hawkins Perez d/b/a A & A Drive Inn, 4103 W. Commerce, San Antonio, Bexar County, Texas, by the Texas Alcoholic Beverage Commission on September 18, 1996, and was continuously renewed. Section 11.11 of the Code and the Commission's rule at 16 TEX. ADMIN. CODE §33.24 require the holder of such license to file with the Commission a conduct surety bond in the amount of \$5,000 unless the permittee meets certain exceptions not applicable here.

On August 29, 1996, Respondent executed a conduct surety bond for Mary Jane Hawkins Perez d/b/a A & A Drive Inn in the amount of \$5000.00, as required by §11.11 of the Code. By the terms of this bond, it became effective on the date of the issuance of the license.

III. EVENTS LEADING TO THE REQUEST TO FORFEIT RESPONDENT'S CONDUCT SURETY BOND

The basis for the forfeiture of a conduct surety bond is set out in §11.11 of the Code and in the Commission's rule at 16 TEX. ADMIN. CODE §33.24. According to §11.11 of the Code, the permittee must agree on the face of the bond that the amount of the bond will be paid to the state if the permits are revoked or on final adjudication that the holder violated a provision of the Code. Section 33.24 is somewhat more lenient, requiring three violations of the Code after September 1, 1995, or cancellation of a permit, before the Staff seeks to forfeit the conduct surety bond.

Commission's Exhibit No. 1 was admitted without objection and showed the following.

On January 20, 1998, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 577381, regarding a violation of the Code. The waiver agreement stated that on December 19, 1997, Respondent violated §102.31 of the Code. The agreement contained the following language:

My name is Mary Jane Hawkins Perez, I am THE PERMITTEE. I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1,650.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on January 26, 1998. The Order stated that in Docket No. 577381 the Respondent waived a hearing on the matter, the violation of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of eleven days, unless the permittee paid a civil penalty in the amount of \$1,650.00 on or before February 25, 1998.

On May 20, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 573774, regarding a violation of the Code. The waiver agreement stated that on December 19, 1997, Respondent violated §102.31 of the Code. The agreement contained the following language:

My name is MARY JANE H. PEREZ, I am THE PERMITTEE. I hereby declare that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1500.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question.

As a result of this waiver agreement, the Commission Administrator entered an Order on May 22, 1997. The Order stated that in Docket No. 573774 the Respondent waived a hearing on the matter, the violations of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of 10 days, unless the permittee paid a civil penalty in the amount of \$1500.00 on or before June 18, 1997.

On February 6, 1997, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 572039, regarding a violation of the Code. The waiver agreement stated that on December 19, 1997, Respondent violated §102.31 of the Code. The agreement contained the following language:

My name is MARYJANE HAWKINS PEREZ, I am THE PERMITTEE. I hereby declare that the violations stated above have occurred and do hereby waive my right to a hearing. I understand that the primary CLP stated above as well as all associated licenses or permits will be suspended/ canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$750.00 must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in question.

As a result of this waiver agreement, the Commission Administrator entered an Order on February 10, 1997. The Order stated that in Docket No. 572039 the Respondent waived a

hearing on the matter, the violations of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of five days, unless the permittee paid a civil penalty in the amount of \$750.00 on or before March 12, 1997.

IV. FINDINGS OF FACT

1. A, Beer Retailer's On Premise License, BE-320449 was issued to Mary Jane Hawkins Perez d/b/a A & A Drive Inn, 4103 W. Commerce, San Antonio, Bexar County, Texas, by the Texas Alcoholic Beverage Commission, on September 18, 1996, and was continuously renewed.
2. Respondent received proper and timely notice of the hearing from the Texas Alcoholic Beverage Commission (the Commission) in a notice of hearing dated January 27, 1999.
3. The hearing was convened on September 19, 2000. The Commission appeared and was represented by attorney Christopher Burnett. Respondent appeared and represented herself. The record closed the same day.
4. Respondent obtained and filed with the Commission a \$5,000 conduct surety bond, under §11.11 of the Code, effective on August 26, 1996.
5. On January 20, 1998, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 577381, regarding a violation of the Code. The waiver agreement stated that on December 19, 1997, Respondent violated §102.31 of the Code.
6. By signing the waiver agreement, Respondent accepted the terms stated in the agreement, that all rights and privileges granted under the permits were suspended for a period of eleven days, unless the permittee paid a civil penalty in the amount of \$1,650.00 on or before February 25, 1998.
7. As a result of this waiver agreement, the Commission Administrator entered an Order on January 26, 1998. The Order stated that in Docket No. 577381 the Respondent waived a hearing on the matter, the violation of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of eleven days, unless the permittee paid a civil penalty in the amount of \$1,650.00 on or before February 25, 1998.
8. Respondent did not appeal the Commission's order described in Finding of Fact No. 7.
9. On May 20, 1997, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 573774, regarding a violation of the Code. The waiver agreement stated that on April 4, 1997, Respondent violated §102.31 of the Code.

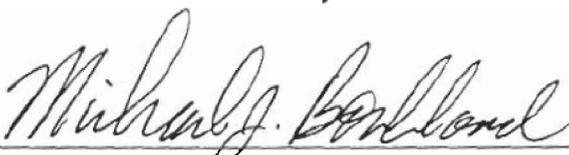
10. By signing the waiver agreement, Respondent accepted the terms stated in the agreement that all rights and privileges granted under the permits were suspended for a period of five days, unless the permittee paid a civil penalty in the amount of \$1500.00 on or before June 18, 1997.
11. As a result of this waiver agreement, the Commission Administrator entered an Order on May 22, 1997. The Order stated that in Docket No. 573774 the Respondent waived a hearing on the matter, the violations of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of five days, unless the permittee paid a civil penalty in the amount of \$1500.00 on or before June 18, 1997.
12. Respondent did not appeal the Commission's order described in Finding of Fact No. 11.
13. On February 6, 1997, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583711, regarding a violation of the Code. The waiver agreement stated that on January 10, 1997, Respondent violated §102.31 of the Code.
14. By signing the waiver agreement, Respondent accepted the terms stated in the agreement that all rights and privileges granted under the permits were suspended for a period of five days, unless the permittee paid a civil penalty in the amount of \$750.00 on or before March 12, 1997.
15. As a result of this waiver agreement, the Commission Administrator entered an Order on February 10, 1997. The Order stated that in Docket No. 572039 the Respondent waived a hearing on the matter, the violations of law did occur, Respondent accepted the penalty assessed, and the penalty imposed was that all rights and privileges granted under the permits were suspended for a period of five days, unless the permittee paid a civil penalty in the amount of \$750.00 on or before March 12, 1997.
16. Respondent did not appeal the Commission's order described in Finding of Fact No. 15.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
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. ch. 2003.
3. Notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

4. Pursuant to 16 TEX. ADMIN. CODE §33.24(j), a conduct surety bond, as permitted by TEX. ALCO. BEV. CODE ANN. §11.11, may be forfeited when a permits is canceled, or a final adjudication that the permittee has committed three violations of the Code, since September 1, 1995.
5. Based upon the Findings of Fact Nos. 4-16, and Conclusion of Law No. 4, TEX. ALCO. BEV. CODE ANN. §11.11 and TEX. ADMIN. CODE §33.24, Respondent's conduct surety bond should be forfeited.

SIGNED and entered this 15th day of November, 2000.

for 

JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS