

DOCKET NO. 581808

IN RE MANUEL L. MORIN	§	BEFORE THE
D/B/A THE MAILBOX	§	
PERMIT NOS. BG-402705, LB-443408	§	
& LICENSE NO. MB-443407 & BL-402706	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0128)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of July, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Veronica B. Dorsey. The hearing convened on April 6th, 2000, and adjourned April 6th, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 8th, 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.

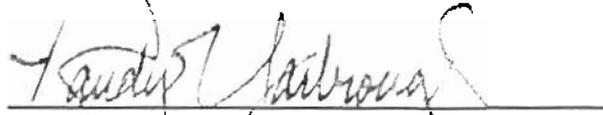
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on July 31, 2000, unless a Motion for Reharing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 10th day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

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

Mr. Jim DeFoyd
ATTORNEY FOR RESPONDENT
1612 Richmond Avenue
Houston, Texas 77006
VIA FACSIMILE (713) 528-5583

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 12, 2000

Mr. Doyme Bailey, Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

CERTIFIED MAIL NO. P 332 127 593
RETURN RECEIPT REQUESTED

**RE: Docket No. 458-99-0128; TABC vs. Manuel L. Morin d/b/a The Mailbox,
Permit No. BG-402705 and License No. 402706 (TABC Case No. 581808)**

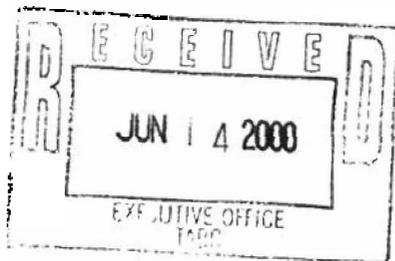
Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and Jim De Foyd, representing Manuel Morin, Permittee. For reasons discussed in the Proposal for Decision, I have recommended forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited, to certificates of deposit and letters of credit), is warranted.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon Supp. 1996), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or replies must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,


Veronica B. Dorsey
Administrative Law Judge



VD/rfm
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - REGULAR MAIL
Jim De Foyd, 1612 Richmond Ave., Houston, TX 77006 -
VIA CERTIFIED MAIL NO. P 332 127 594, RETURN RECEIPT REQUESTED
Holly Wise, Docket Clerk, State Office of Administrative Hearings - VIA REGULAR MAIL

North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001

SOAH DOCKET NO. 458-99-0128

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

VS.

MANUEL L. MORIN,
d/b/a The Mailbox, Respondent
PERMIT NO. BG-402705
LICENSE NO. BL-402706

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Manuel L. Morin, d/b/a The Mailbox (Permittee) for forfeiture of the full amount of its conduct surety bond in conjunction with TEX. ALCO. BEV. CODE ANN. §61.13 (b)(2) and Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24. TABC alleged that Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules §33.24. Two violations of TEX. ALCO. BEV. CODE ANN. §105.01, et seq, occurred on or about August 2, 1998. A violation of TEX. ALCO. BEV. CODE ANN. §61.71(a)(18) also occurred on or about August 2, 1998.

This Proposal for Decision finds the allegations by the TABC to be proven and adopts the recommendation of TABC that the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on April 6, 2000, at State Office of Administrative Hearings (SOAH), 2020 North Loop South, Suite #111, Houston, Texas. Gayle Gordon represented Petitioner. Jim De Foyd appeared and represented Manuel Morin, Permittee. Veronica B. Dorsey, Administrative Law Judge (ALJ), presided.

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

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

Texas Alcoholic Beverage Commission Rules 16 TAC §33.24(j) authorizes TABC to notify a permittee or licensee of its intent to seek forfeiture of the bond when a licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995. TABC argued Respondent has had three violations of the Alcoholic Beverage Code since September 1, 1995. Therefore, Respondent should forfeit the full amount of its conduct surety bond. TABC's attorney introduced the following three exhibits into evidence: State's 1 is the Notice of Hearing and State's 2 is the file of Permittee, including an "Agreement and Waiver of Hearing." TABC did not call witnesses or offer additional evidence in support of their position.

In the presentation of his case, Mr. DeFoyd called Manuel Morin (Permittee) to testify. During his testimony, Mr. Morin explained the events that took place on August 2, 1998. On this day, Respondent received a citation. Respondent testified that he was unaware the citation that he signed on August 2, 1998, would result in an Agreement and Waiver of Hearing which contained three violations. Mr. Morin verified his signature on the Agreement and Waiver of Hearing of September 24, 1998. Mr. Morin did not call additional witnesses or offer additional evidence in support of his position.

III. RECOMMENDATION

Because the Permittee committed three violations of the Alcoholic Beverage Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

IV. FINDINGS OF FACT

1. Texas Alcoholic Beverage Commission (TABC) issued Permit No.-BG-402705, and license No. BL-402706 to Manuel Morin, d/b/a The Mailbox (Permittee).
2. On November 17, 1998, TABC sent Permittee notice that he had violated three or more provisions of Texas Alcoholic Beverage Code or Rules since September 1, 1995, and that he had a right to a hearing to contest the forfeiture of his conduct surety bond.
3. Permittee requested a hearing to determine if his bond should be forfeited.
4. The hearing proceeded and the factual allegations were deemed admitted as follows:

Two violations of TEX. ALCO. BEV. CODE ANN §105.01, et seq, occurred on or about August 2, 1998.

Manuel L. Morin

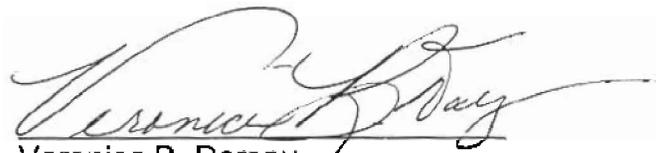
A violation of TEX. ALCO. BEV. CODE ANN §61.71(a)(18) also occurred on or about August 2, 1998.

5. The above listed violations of the Texas Alcoholic Beverage Code or Rules also have been finally adjudicated.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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. Notice of the Hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24, by committing three violations of the Alcoholic Beverage Code Since September 1, 1995.
5. Based on the foregoing Findings of Fact and Conclusions of Law, forfeiture of the full amount of Permittee's conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to, certificates of deposit and letters of credit), is warranted.

SIGNED this 8th day of June 2000.


Veronica B. Dorsey
Administrative Law Judge
State Office of Administrative Hearings