

DOCKET NO. 583051

IN RE RENE I. HERNANDEZ	§	BEFORE THE
D/B/A EL COPA CABANA	§	
PERMIT NO. BG-309113	§	
LICENSE NO. BL309114	§	
	§	TEXAS ALCOHOLIC
	§	
McLENNAN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0164)	§	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 Suzan Moon Shinder. The hearing convened on May 5, 2000 and adjourned on May 5, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 14, 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.

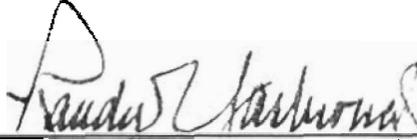
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on July 31, 2000, unless a Motion for 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 10th day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB\bc

The Honorable Suzan M. Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

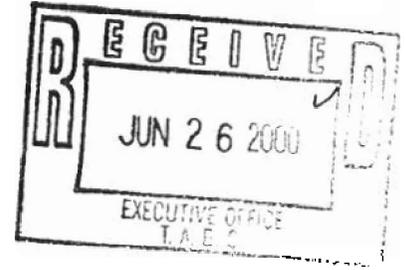
Holly Wise, Docket Clerk
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Rene I. Hernandez
d/b/a El Copa Cabana
RESPONDENT
2427 Flint
Waco, Texas 76706
Certified Mail No. Z 473 042 822

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

State Office of Administrative Hearings



JUN 26 -

Shelia Bailey Taylor
Chief Administrative Law Judge

June 14, 2000

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

CERTIFIED MAIL DELIVERY NO. 7419438132

**RE: Docket No. 458-00-0164; Texas Alcoholic Beverage Commission vs. Rene I. Hernandez, d/b/a El
Copa Cabana, Permit No. BG-309113, License No. BL-309114, McLennan County, Texas
(TABC Case No. 583051)**

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 Christopher Burnett, attorney for Texas Alcoholic Beverage Commission, and to Respondent, Rene I. Hernandez, d/b/a El Copa Cabana. For reasons discussed in the proposal, I recommend Respondent's conduct surety bond 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,

Suzan Moon Shinder
Administrative Law Judge

Enclosure

xc: Holly Wise, Docket Clerk, State Office of Administrative Hearing -**REGULAR MAIL**
Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Ste. 160, Austin,
Texas 78731 -**CERTIFIED MAIL DELIVERY NO. Z207823587 RETURN RECEIPT REQUESTED**
Rene I. Hernandez, d/b/a El Copa Cabana, 2427 Flint, Waco, Texas 76706 - **CERTIFIED MAIL NO. Z207823590**
RETURN RECEIPT REQUESTED

DOCKET NO. 458-00-0164

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
RENE I. HERNANDEZ D/B/A EL COPA CABANA PERMIT NO. BG-309113 LICENSE NO. BL-309114 MCLENNAN COUNTY, TEXAS (TABC CASE NO. 583051)	§	ADMINISTRATIVE HEARINGS
	§	

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Rene I. Hernandez d/b/a El Copa Cabana (Respondent). The Commission recommended that the bond be forfeited because Respondent had committed at least three violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. The Administrative Law Judge agrees with the Commission's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing on the merits convened on May 5, 2000, before Administrative Law Judge Suzan Shinder, in the offices of the State Office of Administrative Hearings (SOAH) in Waco, McLennan County, Texas. Petitioner appeared by and through its staff attorney, Christopher Burnett. Respondent appeared pro se. The hearing was concluded the same day, and the record was closed the same day.

The Commission and SOAH have jurisdiction of this matter as reflected in the Conclusions Of Law. The notice of intent to institute the enforcement action and of the hearing met the notice requirements imposed by statute and rule as set forth in the Findings Of Fact and Conclusions Of Law.

II. Conduct Surety Bond

A Wine and Beer Retailer's Permit, BG-309113, and a Retail Dealer's On-Premise Late Hours License, BL-309114, were issued to Rene I. Hernandez, d/b/a El Copa Cabana, 2911 Primrose, Waco, McLennan County, Texas, by the Texas Alcoholic beverage Commission, on the 26th day of October, 1995, and had been continuously renewed since that date, as of February 25, 1999. As required of all applicants and holders of such permits, by Sections 11.11 (permit) and 61.13 (license) of the Code, the Respondent executed the related Conduct Surety Bond, No. 4224-37641, in the amount of \$5000.00. The license and permit both reflect that Respondent's mailing address is 2427 Flint, Waco, Texas, 76706.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On April 16, 1997, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 573295, regarding three violations of the Code. The waiver agreement stated that on March 27, 1997, Respondent issued three checks, in unspecified amounts, with insufficient funds, in violation of the Code [See Code §61.73(b) allowing suspension of a license if a licensee gives a check for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment]. In this agreement Respondent admitted that the violations occurred, and waived his right to a hearing in the matter, accepting the penalty assessed. At that time, Respondent agreed that the above referenced license or permit would be suspended or canceled unless Respondent paid the civil penalty of \$750.00 in lieu of suspension by May 14, 1997.

As a result of this waiver agreement, the Commission Administrator entered a waiver order on March 4, 1998, stating that the above violations did occur, and assessing a penalty of suspension of Respondent's permit and license for a period of five days, beginning May 28, 1997, unless Respondent paid the civil penalty of \$750.00 on or before May 14, 1997.

On February 27, 1998, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 577878, regarding one violation of the Code. The waiver agreement stated that on February 21, 1998, there occurred the unlawful carrying of a weapon on the licensed premises, in violation of Section 46.02(f) of the Texas Penal Code (place and manner), and Sections 25.04 and 69.13 of the Texas Alcoholic Beverage Code. In this agreement Respondent neither admitted nor denied the violation, and waived his right to a hearing in the matter, accepting the penalty assessed. At that time, Respondent agreed that the above referenced license or permit be suspended or canceled unless Respondent paid the civil penalty of \$2,250.00 in lieu of suspension by April 1, 1998. This agreement also contained the following language: 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 a waiver order on March 4, 1998, stating that the above violation did occur, and assessing a penalty of suspension of Respondent's permit and license for a period of fifteen days, beginning April 15, 1998, unless Respondent paid the civil penalty of \$2,250.00 on or before April 1, 1998.

IV. Forfeiture of Conduct Surety Bond

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked, or, on final adjudication, if the holder violated three provisions of the Code since September 1, 1995. This conduct surety bond, in the amount of \$5000.00, is conditioned on the applicant's or holder's conformance with alcoholic beverage law, in accordance with the requirements set forth in 16 TEX. ADMIN. CODE §33.24 and TEX. ALCO. BEV. CODE §§11.11 (permit) and 61.13 (license). The Commission may revoke or suspend a permit or license, if the holder violates a provision of the Code or a rule of the

Commission pursuant to TEX. ALCO. BEV. CODE §6.01. Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE §33.24(j), and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed at least three violations of the Code since September 1, 1995.

FINDINGS OF FACT

1. A Wine and Beer Retailer's Permit, BG-309113, and a Retail Dealer's On-Premise Late Hours License, BL-309114, were issued to Rene I. Hernandez, d/b/a El Copa Cabana, 2911 Primrose, Waco, McLennan County, Texas, by the Texas Alcoholic Beverage Commission, on the 26th day of October, 1995, and had been continuously renewed since that date, as of February 25, 1999. The license and permit both reflect that Respondent's mailing address is 2427 Flint, Waco, Texas, 76706.
2. The hearing was convened on May 5, 2000 at the Hearings Facility of the State Office of Administrative Hearings, 801 Austin Avenue, Suite 750, Waco, Texas. Respondent appeared pro se. The Commission appeared by and through its Assistant Attorney General, Christopher Burnett. Evidence and argument were heard, and the record was closed the same day.
3. There were no contested issues of notice or jurisdiction in this proceeding, and Respondent received proper and timely notice of the hearing from the Commission in a notice of hearing, dated January 26, 2000. The notice was properly sent to Respondent at the mailing address provided in Finding of Fact No. 1, as evidenced by the notice's Certificate of Service, reflecting service by Certified Mail No. Z 473 040 115, and by Respondent's appearance at the hearing.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. Respondent executed the related Conduct Surety Bond, No. 4224-37641, in the amount of \$5000.00, on October 13, 1995.
6. On April 16, 1997, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 573295, regarding three violations of the Code. The waiver agreement stated that on March 27, 1997, Respondent issued three checks, in unspecified amounts, with insufficient funds, in violation of the Code. [See: Code §61.73(b) allowing suspension of a license if a licensee gives a check for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment]. In this agreement Respondent admitted that the violations occurred, and waived his right to a hearing in the matter, accepting the penalty assessed. At that time, Respondent agreed that the above referenced license or permit would be suspended or canceled unless Respondent paid the civil penalty of \$750.00 in lieu of suspension by May 14, 1997.
7. As a result of this waiver agreement, the Commission Administrator entered a waiver order on March 4, 1998, stating that the above violations did occur, and assessing a penalty of suspension

of Respondent's permit and license for a period of five days, beginning May 28, 1997, unless Respondent paid the civil penalty of \$750.00 on or before May 14, 1997.

8. On February 27, 1998, Respondent signed an "Agreement and Waiver of Hearing," in Docket Number 577878, regarding one violation of the Code. The waiver agreement stated that on February 21, 1998, there occurred the unlawful carrying of a weapon on the licensed premises, in violation of Section 46.02(f) of the Texas Penal Code (place and manner), and Sections 25.04 and 69.13 of the Texas Alcoholic Beverage Code. In this agreement Respondent neither admitted nor denied the violation, and waived his right to a hearing in the matter, accepting the penalty assessed. At that time, Respondent agreed that the above referenced license or permit would be suspended or canceled unless Respondent paid the civil penalty of \$2,250.00 in lieu of suspension by April 1, 1998. This agreement also contained the following language: The signing of this waiver may result in the forfeiture of any related conduct surety bond.

9. As a result of this waiver agreement, the Commission Administrator entered a waiver order on March 4, 1998, stating that the above violations did occur, and assessing a penalty of suspension of Respondent's permit and license for a period of fifteen days, beginning April 15, 1998, unless Respondent paid the civil penalty of \$2,250.00 on or before April 1, 1998.

10. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, of the TEX. ALCO. BEV. CODE (Vernon 1995).

2. The State Office of Administrative Hearings has jurisdiction over the 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(6) (Vernon 2000).

3. As referenced in Findings of Fact Nos. 1,2,3, and 4, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN §§2001.051 and 2001.052 (Vernon 2000).

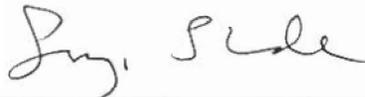
4. Based upon Findings of Fact Nos. 1 and 5, Respondent holds a Wine and Beer Retailer's Permit, BG-309113, and a Retail Dealer's On-Premise Late Hours License, BL-309114, issued to Rene I. Hernandez, d/b/a El Copa Cabana, and posted the related Conduct Surety Bond, No. 4224-37641, in accordance with the requirements set forth in 16 TEX. ADMIN. CODE §33.24 (1999) and TEX. ALCO. BEV. CODE §§11.11 (permit) and 61.13 (license) (Vernon 1995 and Vernon Supp. 2000).

5. Based upon Findings of Fact Nos. 6, 7, 8, and 9, Respondent violated 16 TEX. ADMIN. CODE §33.24 (1999) and TEX. ALCO. BEV. CODE §§11.11 (permit) and 61.13 (license) (Vernon

1995 and Vernon Supp. 2000) by violating a Commission rule and law of the State of Texas relating to alcoholic beverages while holding a Wine and Beer Retailer's Permit, BG-309113, and a Retail Dealer's On-Premise Late Hours License, BL-309114, having at least three violations of the Code since September 1995.

6. Based on Findings of Fact Nos. 6, 7, 8, 9, and 10, and Conclusions of Law Nos. 4 and 5, the conduct surety bond executed by Respondent should be forfeited to the State.

Signed this 14th day of June, 2000.



Suzan Moon Shinder
Administrative Law Judge