

DOCKET NO. 583116

IN RE JOSE ANGEL ROMERO	§	BEFORE THE
D/B/A DESVELADOS RODEO CLUB	§	
PERMIT NO. BG-410453 & BL-410454	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1559)	§	BEVERAGE COMMISSION

O R D E R

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

After proper notice was given, this case was heard by Administrative Law Judge Jonathan A. Kaplan. The hearing convened on June 27, 2000 and adjourned June 27, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 3, 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 August 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 August, 2000.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", is written over a light gray rectangular background. The signature is fluid and cursive.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Jonathan Kaplan
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

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300 West 15th Street, Suite 504
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Jose Angel Romero
d/b/a Desvelados Rodeo Club
RESPONDENT
5419 Cervantes
San Antonio, Texas 78228
CERTIFIED MAIL NO. Z 473 042 510

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
San Antonio District Office

DOCKET NO. 458-99-1559

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

vs.

JOSE ANGEL ROMERO
D/B/A DESVELADOS RODEO CLUB
PERMIT NO. BG-410453
LICENSE NO. BL-410454
BEXAR COUNTY, TEXAS
(TABC CASE NO. 583116)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff and Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Jose Angel Romero (Respondent) d/b/a Desvelados Rodeo Club. Respondent renewed a conduct surety bond¹ on September 19, 1996, in compliance with the TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 and Supp. 2000). The Staff recommended that the bond be forfeited because the Respondent had committed three violations of the Commission's rules and regulations since September 1, 1995. The Respondent attended the hearing. The undersigned Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing in this matter convened on June 27, 2000, before State Office of Administrative Hearings (SOAH) ALJ Jonathan Kaplan, at the SOAH's offices in San Antonio, Bexar County, Texas. The Staff was represented by Staff Attorney, Dewey Brackin, who appeared by telephone. The Respondent attended the hearing, and represented himself. The ALJ closed the record that same day.

The Commission and SOAH have jurisdiction over this matter as reflected in the Conclusions of Law. The notice of intention to institute enforcement action and the notice 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.

¹ Respondent provided a conduct surety bond, Bond Number XTL02338, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewals of the permit or license have expired." Exhibit 1.

II. Background

On April 14, 1997, the Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit No. BG-410453 and a Retail Dealer's On-Premise Late Hours License No. BL-410454, to Respondent for the premises known as Desvelados Rodeo Club at 3662 Culebra, San Antonio, Bexar County, Texas. On August 25, 1998, Respondent, as applicant for a wine and beer retailer's permit, posted a conduct surety bond for Desvelados Rodeo Club for \$5,000.00 as required by the TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

The Respondent committed three violations of the Commission's rules and regulations since September 1, 1995. The violations occurred on November 14, 1998, July 22, 1998 and November 14, 1997. The Respondent signed an "Agreement and Waiver of Hearing" regarding these violations on December 11, 1998, August 20, 1998, and January 12, 1998, respectively. The December 11, 1998 agreement contained the following language:

My name is Jose A. Romero. I am the permittee. I neither admit or 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/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$450.00 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.*

(emphasis added in italics).

The August 20, 1998 agreement contained the following language:

My name is Jose Angel Romero. I am the permittee. I neither admit or 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/cancelled 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. *The signing of this waiver may result in the forfeiture of any related conduct surety bond.*

(emphasis added in italics).

The January 12, 1998 agreement contained the following language:

My name is Jose A. Romero. I am the permittee. I neither admit or 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/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1050.00 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.*

(emphasis added in italics).

In lieu of the cash civil penalties noted above, the Respondent was offered three days suspension for the violation which occurred on November, 14, 1998, five days suspension for the violation which occurred on July 22, 1998 and seven days suspension for the violations which occurred on November 14, 1997.

As a result of these waiver agreements, the Commission Administrator entered Orders on December 21, 1998, August 21, 1998, and January 16, 1998, respectively. The Orders adjudicated that the violations acknowledged by Respondent in the waiver agreements had occurred. The Orders further provided that Respondent's permit(s) would be suspended unless Respondent paid a civil penalty in the amount indicated above for each occurrence.

III. Applicable Law

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the rules or regulations of the Commission, in accordance with TEX. ALCO. BEV. CODE ANN. §§ 6.01 (Vernon 1995) and 61.71 (Vernon 1995 and Supp. 2000). Additionally, the Commission may seek forfeiture of a conduct surety bond when a license or permit has been cancelled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the TEX. ALCO. BEV. CODE ANN. since September 1, 1995, in accordance with 16 TEX. ADMIN. CODE § 33.24(j) (1999).

When posting a conduct surety bond, the bond specifies on its face that the permit or license holder must agree to "conform with the Texas Alcoholic Beverage Code and rules of the Commission." In signing the bond, the permittee is also put on notice that if he "violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state," subject to certain conditions. See TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13.

IV. Proposed Findings of Fact

1. On August 21, 1998, Jose A. Romero (Respondent) posted a conduct surety bond for Desvelados Rodeo Club located at 3662 Culebra, San Antonio, Bexar County, Texas, for

\$5,000.00. The Texas Alcoholic Beverage Commission (the Commission) issued a Wine and Beer Retailer's Permit No. BG-410453 and a Retail Dealer's On-Premise Late Hours License No. BL-410454 to Respondent on April 14, 1997.

2. On April 14, 1999, the Commission renewed both of the Respondent's permits.
3. On May 19, 2000, the staff for the Commission (Staff) mailed notice of hearing to the Respondent via certified mail, return receipt requested, to Respondent's mailing address at 5419 Cervantes, San Antonio, Texas 78228. A green receipt was not included with Petitioner's exhibits, but the envelope apparently was not returned.
4. The notice of hearing contained a statement of the date, 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. The hearing was convened on June 27, 2000, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. The Respondent attended the hearing. Dewey Brackin, Attorney for the Petitioner, represented the Staff by telephone. The ALJ closed the record that same day.
6. On December 11, 1998, August 20, 1998 and January 12, 1998, the Respondent signed an "Agreements and Waivers of Hearings" regarding the above referenced violations of the TEX. ALCO. BEV. CODE ANN. By signing each waiver agreement, Respondent declared and acknowledged that certain violations had been committed on November 14, 1998, July 22, 1998 and November 14, 1997, respectively, and that his permit would be suspended or cancelled by the Commission unless he paid a specified civil penalty for each occurrence.
7. The Commission Administrator entered three separate orders on December 21, 1998, August 21, 1998, and January 16, 1998, finding Respondent had committed three violations of the Commission's rules and regulations.
8. Respondent committed three violations of the Commission's rules and regulations which resulted in three final adjudications of these violations since September 1, 1995.

V. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, 11.11, and 61.71 (Vernon 1995 and Supp. 2000) and 16 TEX. ADMIN. CODE (TAC) § 33.24 (1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a Proposal for Decision containing Findings of Fact and Conclusions of Law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 1995 and Supp. 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).

3. Proper and timely notice of the hearing was effected on Permittee pursuant to Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TAC ch. 155 (1999).
4. Respondent holds Permit No. BG-410453 and License No. BL-410454, and posted a conduct surety bond in accordance with the requirements set forth in 16 TAC § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 2000).
5. Respondent committed three violations of the Commission's rules and regulations, in accordance with 16 TAC § 33.24(j).
6. Respondent violated 16 TAC § 33.24 (1999) and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13, by violating a Commission rule and a law of the State of Texas relating to alcoholic beverages while holding Wine and Beer Retailer's Permit No. BG-410453 and Retail Dealer's On-Premise Late Hours License No. BL-410454, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED and entered this 3 day of July, 2000.



JONATHAN KAPLAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS