

**DOCKET NO. 587069**

IN RE JOANN GUAPO	§	BEFORE THE
D/B/A DEAD HEAD SALOON	§	
PERMIT NO. BG-426124	§	
	§	TEXAS ALCOHOLIC
	§	
FORT BEND COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-0305)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 30th day of June, 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 6, 2000 and adjourned April 6, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 8<sup>th</sup>, 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.

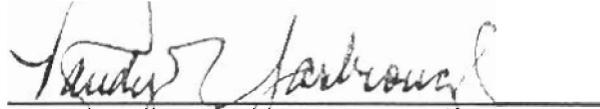
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on July 21, 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 30th day of June, 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

JoAnn Guapo  
**RESPONDENT**  
d/b/a Dead Head Saloon  
P. O. Box 84  
Beasley, Texas 77417  
VIA CERTIFIED MAIL RRR Z 473 041 955

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Victoria District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

JUN 14 2000  
12:13 PM

June 12, 2000

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

**CERTIFIED MAIL NO. P 332 127 591**  
**RETURN RECEIPT REQUESTED**

**RE: Docket No. 458-00-0305; TABC vs. JoAnn Guapo d/b/a Dead Head Saloon,  
Permit No BG-426124 (TABC Case No. 587069)**

Dear Mr. Bailey:

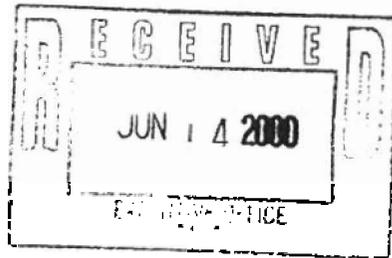
Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal For Decision are being sent to Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission and JoAnn Guapo, d/b/a Dead Head Saloon. For 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,

A handwritten signature in cursive script that reads "Veronica B. Dorsey".

Veronica B. Dorsey  
Administrative Law Judge



VD/rfm  
Enclosure

CC: Gayle Gordon, TABC, 5806 Mesa Drive, Suite 160, Austin, TX 78731 - **REGULAR MAIL**  
JoAnn Guapo, P. O. Box 84, Beasley, TX 77417 -  
**VIA CERTIFIED MAIL NO. P 332 127 592, 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. 458-00-0305

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner

§  
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§

BEFORE THE STATE OFFICE

VS.

OF

JO ANN GUAPO,  
d/b/a DEAD HEAD SALOON,  
Respondent  
PERMIT NO. BG-426124

ADMINISTRATIVE HEARING

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Jo Ann Guapo, d/b/a DEAD HEAD Saloon (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. A Violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(13) or 104.01 occurred on or about August 28, 1999. A Violation of TEX. ALCO. BEV. CODE ANN §§11.61(b)(13) or 104.01 occurred on or about October 1, 1999. A violation of TEX. ALCO. BEV. CODE §§11.61(b)(13) or 104.01 occurred on or about August 8, 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. Jo Ann Guapo, Permittee, appeared and represented herself. 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. As described in the Findings of Fact, the Permittee violated Texas Alcoholic Beverage Commission Rules, 16 TAC §33.24 by committing three violations of the Alcoholic Beverage Code since September 1, 1995.

The TABC's attorney introduced the following three exhibits into evidence:

Commission's 1 is the green card showing receipt of the Notice of Hearing.

Commission's 2 is the file of Permittee, including two "Agreements and Waivers of Hearing.

Permittee offered a personal letter into evidence. The letter contained a description of Permittee's contact with the police. Permittee did not offer additional evidence.

## 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 BE-425754 to Jo Ann Guapo (Permittee), d/b/a Dead Head Saloon.
2. TABC sent Permittee notice that she had violated three or more provisions of Texas Alcoholic Beverage Code or Rules since September 1, 1995, and that she had a right to a hearing to contest the forfeiture of his conduct surety bond.
3. Permittee requested a hearing to determine if her bond should be forfeited.
4. The hearing proceeded and the factual allegations were deemed admitted as follows:

A Violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(13) or 104.01 occurred on or about August 28, 1999.

A Violation of TEX. ALCO. BEV. CODE ANN. §§11.61(b)(13) or 104.01 occurred on or about October 1, 1999.

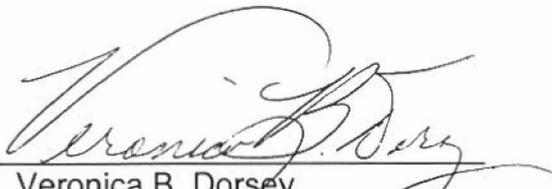
A violation of TEX. ALCO. BEV. CODE §§11.61(b)(13) or 104.01 occurred on or about August 8, 1998.

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 8<sup>th</sup> day of June 2000.

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

Jo Ann Guapo