

DOCKET NO. 588546

IN RE PATRICK LYNN THOMAS	§	BEFORE THE
D/B/A Q CLUB	§	
PERMIT NOS. MB421537, LB421538,	§	
PE421539	§	TEXAS ALCOHOLIC
	§	
BELL COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1546)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 6th day of December, 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 and adjourned on November 3, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 10, 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.

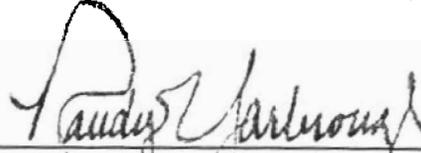
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on December 27, 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 6th day of December, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

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

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

Patrick Lynn Thomas
d/b/a Q Club
RESPONDENT
127 West Veterans Memorial Blvd.
Harker Heights, Texas 76548
VIA CERTIFIED MAIL/RRR NO. Z 473 039 360

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

DOCKET NO. 458-00-1546

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	OF
	§	
PATRICK LYNN THOMAS D/B/A Q CLUB PERMIT NOS. MB421537, LB421538, AND PE421539 BELL COUNTY, TEXAS (TABC CASE NO. 588546)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Commission) requested forfeiture of the conduct surety bond posted by Patrick Lynn Thomas d/b/a Q Club (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 argued that his violations were minor, and he had already been punished for them. The Administrative Law Judge recommends Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY, NOTICE, JURISDICTION, AND EVIDENCE

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 November 3, 2000, before Administrative Law Judge (ALJ), Suzan Shinder, in the hearings facility of the State Office of Administrative Hearings, in Waco, Texas. The record was closed at the conclusion of the hearing that day. The Commission was represented by Christopher Burnett, Assistant Attorney General, who appeared in person. Respondent represented himself, and appeared by speaker-phone, by the agreement of both parties, with the consent of the ALJ. Copies of: Respondent's Mixed Beverage Permit, Mixed Beverage Late Hours Permit, Beverage Cartage Permit; Inquiry By CLP History; Commission's Orders in Docket Nos. 586831, 583372, 583711; Agreement and Waiver of Hearing in Docket Nos. 586831, 583372, 583711; Respondent's Conduct Surety Bond; and Commission's letter to Respondent notifying Respondent of their intent to seek forfeiture of Respondent's conduct surety bond and his right to a hearing, were admitted as Commission's Exhibit No. 1. Respondent testified briefly in his own behalf.

II. CONDUCT SURETY BOND

A Mixed Beverage Permit, MB-421537, a Mixed Beverage Late Hours Permit, LB-421538, and a Beverage Cartage Permit, PE-421539, were issued to Patrick Lynn Thomas, d/b/a Q-Club, 127 West Veterans' Memorial Boulevard, Harker Heights, Bell County, Texas, by the Texas Alcoholic Beverage Commission, on October, 28, 1997, and were 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 permits 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 September 12, 1997, Respondent executed a conduct surety bond for Patrick Lynn Thomas d/b/a Q-Club 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 permit, which was October 28, 1997.

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.

On November 17, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 586831, regarding violations of the Code. The waiver agreement stated that on October 18, 1999, consumption during prohibited hours was permitted, in violation of §§11.61(b)(7) and 105.06 of the Code. It also stated that on October 18, 1999, Respondent possessed distilled spirits with the bottle LP stamp not mutilated, in violation of Code §28.09 and 16 TEX. ADMIN. CODE §41.72. The agreement contained the following language:

My name is Patrick Lynn Thomas, I am 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 \$2,400 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 November 22, 1999. The Order stated that in Docket No. 586831: 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 sixteen days, unless the permittee paid a civil penalty in the amount of \$2,400.00 on or before February 3, 2000.

On March 30, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583372, regarding a violation of the Code. The waiver agreement stated that on March 5, 1999, Respondent permitted removal of alcoholic beverages from the licensed premise, in violation of §§11.61(b)(2) and 28.10(A) of the Code. The agreement contained the following language:

My name is Patrick Lynn Thomas, I am permit holder. 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 \$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.

As a result of this waiver agreement, the Commission Administrator entered an Order on April 1, 1999. The Order stated that in Docket No. 583372: 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 May 12, 1999.

On April 27, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583711, regarding a violation of the Code. The waiver agreement stated that on February 5, 1999, Respondent issued bad checks, in violation of the Code. The agreement contained the following language:

My name is Patrick Lynn Thomas, I am owner. 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 \$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.

As a result of this waiver agreement, the Commission Administrator entered an Order on June 9, 1999. The Order stated that in Docket No. 583711: 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 July 14, 1999.

IV. FINDINGS OF FACT

1. A Mixed Beverage Permit, MB-421537, a Mixed Beverage Late Hours Permit, LB-421538, and a Beverage Cartage Permit, PE-421539, were issued to Patrick Lynn Thomas, d/b/a Q-Club, 127 West Veterans' Memorial Boulevard, Harker Heights, Bell County, Texas, by the Texas Alcoholic Beverage Commission, on October, 28, 1997, and were 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 June 27, 2000, and in an Amended Notice of Hearing dated July 28, 2000.
3. The hearing was convened on November 3, 2000. The Commission appeared in person and Respondent appeared by speaker-phone. Both parties participated in the hearing, and 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 October 28, 1997.
5. On November 17, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 586831, regarding violations of the Code. The waiver agreement stated that on October 18, 1999, consumption during prohibited hours was permitted in violation of §§11.61(b)(7) and 105.06 of the Code. It also stated that on October 18, 1999, Respondent possessed distilled spirits with the bottle LP stamp not mutilated, in violation of Code §28.09 and 16 TEX. ADMIN. CODE §41.72.
6. By signing the waiver agreement described in Finding of Fact No. 5, Respondent accepted the terms stated in the agreement, that all rights and privileges granted under the permits were suspended for a period of sixteen days, unless the permittee paid a civil penalty in the amount of \$2,400.00 on or before February 3, 2000.
7. As a result of this waiver agreement, the Commission Administrator entered an Order on November 22, 1999. The Order stated that in Docket No. 586831: 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 sixteen days, unless the permittee paid a civil penalty in the amount of \$2,400.00 on or before February 3, 2000.
8. Respondent did not appeal the Commission's order described in Finding of Fact No. 7.
9. On March 30, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583372, regarding a violation of the Code. The waiver agreement stated that on March 5, 1999, Respondent permitted removal of alcoholic beverages from the licensed premise, in violation of §§11.61(b)(2) and 28.10(A) of the Code.

10. By signing the waiver agreement described in Finding of Fact No. 9, 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 May 12, 1999.
11. As a result of this waiver agreement, the Commission Administrator entered an Order on April 1, 1999. The Order stated that in Docket No. 583372: 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 May 12, 1999.
12. Respondent did not appeal the Commission's order described in Finding of Fact No. 11.
13. On April 27, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 583711, regarding a violation of the Code. The waiver agreement stated that on February 5, 1999, Respondent issued bad checks, in violation of the Code.
14. By signing the waiver agreement described in Finding of Fact No. 13, 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 July 14, 1999.
15. As a result of this waiver agreement, the Commission Administrator entered an Order on June 9, 1999. The Order stated that in Docket No. 583711: 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 July 14, 1999.
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 permit 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 10th day of November, 2000.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS