

**DOCKET NO. 607345**

IN RE MARIA RITA VARGAS	§	BEFORE THE
D/B/A BUCHANAN'S SHAMROCK	§	
GRILL & SPORTS PUB	§	
PERMIT NOS. MB512788, LB512789	§	
	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-1901)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of June, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa Ricard. The hearing convened on March 4, 2004 and adjourned on March 4, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 3, 2004. 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.

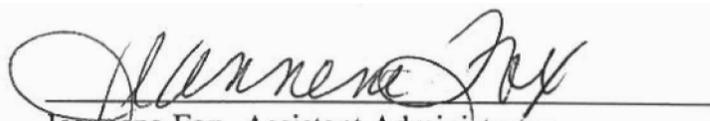
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

**This Order will become final and enforceable on JULY 19, 2004**, 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.

**SIGNED** this the 29<sup>th</sup> day of June, 2004 at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

/vr

The Honorable Melissa Ricard  
Administrative Law Judge  
State Office of Administrative Hearings  
Corpus Christi, Texas  
**VIA FACSIMILE (361) 884-5427**

Maria Rita Vargas  
d/b/a Buchanan's Shamrock Grill & Sports Bar  
**RESPONDENT**  
1415 Austin  
McAllen, Tx 78501-5154  
**CERTIFIED MAIL RRR #7000 1530 0003 1902 0760**

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

Licensing Division  
McAllen District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 5, 2004



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

**RE: Docket No. 458-04-1901; TABC vs. Maria R. Vargasd/b/a Buchanan's Shamrock Grill & Sports**

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script, appearing to read "Melissa M. Ricard".

Melissa M. Ricard  
Administrative Law Judge

MMR/mar  
Enclosure

xc: **Holly Mommaerts, Docket Clerk, State Office of Administrative Hearings - Via Regular Mail**  
**Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - Via Regular Mail**  
**Maria Rita Vargas, 1415 Austin, McAllen, Tx 78504-5154 - VIA REGULAR MAIL**

A handwritten signature in cursive script, appearing to read "Holly Mommaerts".

DOCKET NO. 458-04-1901

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	OF
	§	
MARIA RITA VARGAS	§	
d/b/a BUCHANAN'S SHAMROCK	§	
PERMIT NOS. MB512788, LB512789	§	
HIDALGO COUNTY, TEXAS	§	
(TABC CASE NO. 607345)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Maria Rita Vargas d/b/a Buchanan's Shamrock (Respondent). Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent has had three or more adjudicated violations of the Texas Alcoholic Beverage Code (Code) since September 1, 1995. For reasons discussed in this proposal for decision, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Staff has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §11.11(b)(2), and 16 TEX. ADMIN. CODE (TAC) § 33.24. The State Office of Administrative Hearings

(SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of notice or jurisdiction in this proceeding.

On January 13, 2004, Staff issued its Notice of Hearing to Respondent, setting a hearing for March 4, 2004. The Staff filed a motion to appear by video conference on January 29, 2004. The motion was granted on February 3, 2004, wherein the Staff was instructed to appear at its offices in Austin and the Respondent was instructed to appear at the Staff office in McAllen, Texas.

ALJ Melissa Ricard convened the video hearing on March 4, 2004. The ALJ appeared by video through the State Office of Administrative Hearings office in Corpus Christi. Staff was represented at the hearing by its staff attorney Gayle Gordon, who appeared by video in the Staff office in Austin. Respondent appeared in the Staff office in McAllen, and represented by her Attorney Rene Segundo.

## II. LEGAL STANDARDS AND APPLICABLE LAW

Staff is authorized under § 11.11(b)(2) of the Code to require the permittee to forfeit the amount of a conduct surety bond on final adjudication that the permittee violated a provision of the Code. Pursuant to 16 TAC § 33.24, the permittee must have been "finally adjudicated" to have committed three violations of the Code since September 1, 1995, for a forfeiture to occur. Staff must notify the

permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing is to be conducted in accordance with the Administrative Procedure Act.

### III. EVIDENCE AND ARGUMENT

#### A. Background

Respondent is the holder of Mixed Beverage Permit MB512788 and Mixed Beverage Late Hours Permit LB512789 issued the commission for the premises known as Buchanan's Shamrock, located at 1415 Austin, in McAllen, Hidalgo County, Texas, and whose mailing address is same.

#### B. Evidence

In one exhibit, the Staff showed one violation in 2002 and two in 2003 by the Respondent. On June 25, 2002, Ms. Vargas signed a Waiver neither admitting nor denying the violation of misbranding of draft beer on June 7, 2002 and waiving her right to a hearing on the matter. The last sentence of the Waiver form, directly above Ms. Vargas's signature, states, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."

On July 9, 2002, Staff issued an order finding Respondent had waived hearing on the June 7, 2002 violation and that Respondent had violated those sections of the Code as stated in the Waiver. The violation set out in the Waiver was a cash law violation on June 7, 2002. Staff imposed a penalty of either a three-day suspension of Respondent's permits or a \$450 fine. A note below the signature

on the order states the order will become final and enforceable 21 days from the date the order is signed, unless a motion for rehearing is filed with Staff.

Similarly, Ms. Vargas signed a Waiver on April 29, 2003, for the allegation of permitting minors to possess/consume alcohol on April 12, 2003. Staff issued an order dated May 8, 2003 that imposed a seven-day suspension or \$1050.00 fine. The same language is contained in the Waiver and the Order as in the previous violation.

Again, Ms. Vargas signed a Waiver on June 3, 2003, for the allegation of possession of uninvoiced alcoholic beverages on May 9, 2003. Staff issued an order dated June 9, 2003, imposing a 20-day suspension or \$3,000 fine. The same language is contained in the Waiver and the Order as in the previous violations.

Initially, Ms. Vargas was concerned that a matter that was dismissed by the Commission was now being considered as one of the three finally adjudicated matters. During the course of the hearing, Ms. Vargas agreed that the matter which had been dismissed was not one of the three above charges. Ms. Vargas did not provide any evidence.

#### IV. ANALYSIS

The Staff has shown that they have been finally adjudicated since September 1, 1995. The conditions of 16 TAC § 33.24 have been met, and Respondent's bond should be forfeited.

**FINDINGS OF FACT**

1. Maria Rita Vargas d/b/a Buchanan's Shamrock is the holder of Mixed Beverage Permit MB512788 and Mixed Beverage Late Hours Permit LB512789 issued by Staff for the premises located at 1415 Austin, in McAllen, Hidalgo County, Texas.
2. Respondent has posted Staff Conduct Surety Bond Number 8102263, dated March 27, 2002, in the amount of \$5,000, payable to the State of Texas.
3. Respondent has been finally adjudicated of at least three violations of the Code since September 1, 1995. The Defendant committed a violation of TEX. ALCO. BEV. CODE ANN § 104.04 (misbranding of draft beer) on June, 2002. The Defendant committed a violation of permitting a minor to possess and consume alcohol on April 12, 2003. Further, the Defendant had committed another violation of permitting a minor to possess and consume alcohol on May 9, 2003.
4. By letter dated July 17, 2003, Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
5. Respondent requested a hearing to determine whether the conduct surety bond should be forfeited.
6. On January 13, 2004, Petitioner issued its Notice of Hearing, directed to Respondent at Respondent's address of record, setting the hearing on the merits for March 4, 2004. The Staff filed a motion to appear by video conference on January 29, 2004. The motion was granted on February 3, 2004. The Staff was instructed to appear at its offices in Austin, Texas, and the Respondent was instructed to appear at the Staff office in McAllen, Texas.
7. 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.
8. On March 4, 2004, a video conference hearing convened before ALJ Melissa M. Ricard at the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas. Petitioner was represented at the hearing by Staff Attorney Gayle Gordon, who appeared in Austin, Texas by video. Respondent represented by Rene Segundo and appeared in person and through her attorney by video in the Staff offices in McAllen, Texas.

**CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission (Staff) has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.11, 11.61 and 61.13, and 16 TEX. ADMIN. CODE (TAC) § 33.24.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon the Findings of Fact and TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) and 16 TAC § 33.24, Surety Bond Number 8102263, dated March 27, 2002 in the amount of \$5,000, should be forfeited.

**SIGNED on this the 3<sup>rd</sup> day of May, 2004.**



**MELISSA M. RICARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# MESSAGE CONFIRMATION

07/01/2004 14:19  
ID=TABC LEGAL

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
07/01	01:30	3618845427	CALLING	10	OK 0000

07/01/2004 14:17 TABC LEGAL → 913618845427

NO. 144



Alan Steen  
Administrator

John T. Steen, Jr.  
Chairman-San Antonio  
Gail Madden  
Member-Dallas

## FACSIMILE COVER SHEET

*July 1, 2004*  
Date: ~~June 29, 2004~~

To:	Fax No:	No. Of Pages (including fax cover)
Hon. Melissa Ricard Administrative Law Judge SOAH -Corpus Christi	(361) 884-5427	10

From: Gayle Gordon, Legal Division

Comments: See attached Order re: SOAH DOCKET NO. 458-04-1901:  
TABC vs. Maria Rita Vargas d/b/a Buchanan's Shamrock Grill & Sports



Alan Steen  
Administrator

John T. Steen, Jr  
Chairman-San Antonio  
Gail Madden  
Member-Dallas

## FACSIMILE COVER SHEET

Date: ~~June 29, 2004~~  
July 1, 2004

To:	Fax No:	No. Of Pages (including fax cover)
Hon. Melissa Ricard Administrative Law Judge SOAH -Corpus Christi	(361) 884-5427	10

From: Gayle Gordon, Legal Division

Comments: See attached Order re: SOAH DOCKET NO. 458-04-1901:  
TABC vs. Maria Rita Vargas d/b/a Buchanan's Shamrock Grill & Sports  
Pub.

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### CONFIDENTIALITY NOTICE:

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