

DOCKET NO. 607347

IN RE ROEL GARCIA JR. ET AL	§	BEFORE THE
D/B/A EXCALIBUR SPORTS BAR	§	
& GRILL	§	
PERMIT NOS.MB473461, LB473462	§	
	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-04-1900)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 7th day of May, 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 March 30, 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.

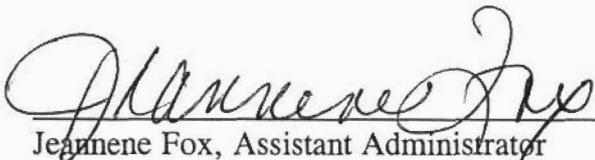
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on MAY 28, 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 7th day of May, 2004.

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

Roel Garcia, Jr. et al
d/b/a Excalibur Sports Bar & Grill
RESPONDENT
RR 11, Box 1124
Palmview, Tx. 78572
CERTIFIED MAIL RRR #7000 1530 0003 1902 5253

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
McAllen District Office

DOCKET NO. 458-04-1900

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

ROEL GARCIA, JR.
d/b/a EXCALIBUR SPORTS BAR & GRILL
PERMIT NOS. MB473461, LB473462
HIDALGO COUNTY, TEXAS
(TABC CASE NO. 607347)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Roel Garcia d/b/a Excalibur Sports Bar & Grill (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 himself.

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 MB473461 and Mixed Beverage Late Hours Permit LB473462 issued by Staff for the premises known as Excalibur Sports Bar & Grill, located at 203 Palmview Drive, in Palmview, Hidalgo County, Texas, and whose mailing address is same.

Staff alleges Respondent has committed four violations of the Code since September 1, 1995. Respondent concedes to a cash law violation on September 26, 2002, to the violation of permitting minors to possess and consume alcohol on November 23, 2002, and to the violation of possession of un invoiced alcoholic beverages April 12, 2003. Staff argues that each of these violations have been finally adjudicated and count toward the three violations required for bond forfeiture by 16 TAC § 33.24.

B. EVIDENCE

On November 6, 2003, Mr. Garcia signed a Waiver neither admitting nor denying the September 26, 2002, cash law violation and waiving his right to a hearing on the matter. The last sentence of the Waiver form, directly above Mr. Garcia's signature, states, "The signing of this waiver may result in the forfeiture of any related conduct surety bond."

On November 19, 2002, Staff issued an order finding Respondent had waived hearing on the September 26, 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 September 26, 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, Mr. Garcia signed a Waiver on December 10, 2002, for the November 23, 2002, allegation of permitting minors to possess/consume alcohol. Staff issued an order dated December 18, 2002 and 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, Mr. Garcia signed a Waiver on May 27, 2003, for the April 12, 2003, allegation of possession of uninvoiced alcoholic beverages. Staff issued an order dated June 3, 2003, imposing a 10-day suspension or \$1,500 fine. The same language is contained in the Waiver and the Order as in the previous violations.

Mr. Garcia recalled each incident but did not recall the specifics of each, such as the suspensions or the fines.

IV. ANALYSIS

Respondent concedes that the three violations have occurred, and 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

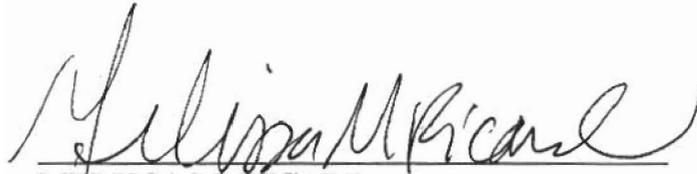
1. Roel Garcia d/b/a Excalibur Sports Bar and Grill is the holder of Mixed Beverage Permit MB473461 and Mixed Beverage Late Hours Permit LB473462 issued by Staff for the premises located at 203 Palmview Drive, in Palmview, Hidalgo County, Texas.
2. Respondent has posted Staff Conduct Surety Bond Number XTM02936, dated April 4, 2000, 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.
4. Petitioner sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond by letter dated July 17, 2003.
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 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 himself and appeared 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. The State Office of Administrative Hearings 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, Staff Conduct Surety Bond Number XTL03173, dated April 4 2000, in the amount of \$5,000, should be forfeited. †

SIGNED on this the 30TH day of March 2004.



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