

**DOCKET NO. 458-99-0134**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE
	§	
V.S.	§	
	§	OFFICE OF
PAMELA JOY MITCHELL	§	
D/B/A DESPERADO'S	§	
LICENSE NO. MB-438249	§	
JEFFERSON COUNTY, TEXAS	§	
(TABC CASE NO. 581933)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission initiated this action seeking forfeiture of the conduct surety bond posted by Pamela Joy Mitchell d/b/a Desperado's (the Permittee) because Permittee's permit or license was canceled, or the Permittee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The cancellation or violations have been finally adjudicated. The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that Respondent's conduct surety bond be forfeited.

**I. Procedural History, Notice, and Jurisdiction**

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

**II. Evidence and Applicable Statutory Provisions**

TEX. ALCO. BEV. CODE ANN. §11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code.

The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence, (Exhibit TABC 2) that the Mixed Beverage Permit, MB-438249, Mixed Beverage Late Hours Permit, LB-438250, and Beverage Cartage Permit, PE-438251 were issued to Pamela Joy Mitchell, doing business as Desperado's, 2525 N. 11th Street Suite 1000, Beaumont, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 28th day of August, 1998, and were canceled for cause on the 13th day of October, 1998. The mailing address of the Permittee is 2525 N. 11th Street, Suite 1000, Beaumont, Texas 77703-4603.

The staff attorney introduced the Amended Notice of Hearing to the Permittee, (Exhibit TABC 1) showing that the notice was sent to the Permittee's last known address as shown on the referring agency's record 2525 N. 11th Street, Suite 1000, Beaumont, Texas 77703-4603, with no showing of actual receipt.

### **III. Recommendation**

Because the Permits/Licenses were canceled on or about the 13th day of October 1998, the Permittee has forfeited the full amount of their conduct surety bond.

### **IV. PROPOSED FINDINGS OF FACT**

1. Pamela Joy Mitchell, doing business as Desperado's, 2525 N. 11th Street, Suite 1000, Beaumont, Jefferson County, Texas, was issued a Mixed Beverage Permit, MB-438249, Mixed Beverage Late Hours Permit, LB-438250, and Beverage Cartage Permit, PE-438251 by the Texas Alcoholic Beverage Commission.
2. On February 23, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing on the forfeiture of the conduct surety bond to the Permittee at 2525 N. 11th Street, Suite 1000, Beaumont, Texas 77703-4603, its address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Permittee was shown by proof that the notice was sent to the Permittee's last known address as shown on the referring agency's record with no showing of actual receipt.
4. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
5. There was credible evidence by way of the Amended Notice of Hearing (Exhibit TABC-1) that the notice of hearing was sent by certified mail, return receipt requested, to the Permittee's last known address on the agency's records.
6. The hearing on the merits was held on April 1, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Andrew del Cueto. The Permittee did not appear and was not represented at the hearing.
7. Mixed Beverage Permit, MB-438249, Mixed Beverage Late Hours Permit, LB-438250, and Beverage Cartage Permit, PE-438251 were issued to Pamela Joy Mitchell, doing business as Desperado's, 2525 N. 11th Street Suite 1000, Beaumont, Jefferson County, Texas, by the Texas Alcoholic Beverage Commission, on the 28th day of August, 1998, and were canceled for cause on the 13th day of October, 1998.

## V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§11.11 and 61.13.
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. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. TEX. ALCO. BEV. CODE ANN. Section 11.11 and/or 61.71 provides that the amount of the surety bond shall be paid to the state if the license is revoked.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by Permittee should be forfeited to the State.

SIGNED this 26 th day of April, 1999.



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DON SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS