

DOCKET NO. 582877

IN RE GIGANTE I LIMITED	§	BEFORE THE
D/B/A CEDAR STREET	§	
PERMIT NOS. MB-267682, LB-267683,	§	
CB-267684 & PE-267685	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1567)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of December, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened on October 5, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 5, 1999. 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.

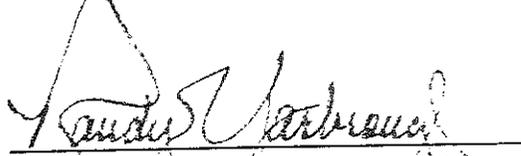
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's conduct surety bond is hereby **FORFEITED**.

This Order will become final and enforceable on December 28, 1999, 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 7th day of December, 1999.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/pah

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 626-7448

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

Gigante I Limited
d/b/a Cedar Street
RESPONDENT
3026 Mockingbird Lane, Ste. 290
Dallas, Texas 75205
CERTIFIED MAIL/RRR NO. Z 473 039 158

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Z 473 039 158

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	<i>Gigante Ltd</i>
Street & Number	<i>Dallas</i>
Post Office, State, & ZIP Code	<i>DW 75205 752877</i>
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	<i>12/7/99</i>

PS Form 3800, April 1995

FOR

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

November 5, 1999

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

VIA CERTIFIED MAIL Z 283 051 848
Return Receipt Requested

RE: Docket No. 458-98-1567; Texas Alcoholic Beverage Commission vs. Gigante I Limited, d/b/a Cedar Street (TABC Case No. 582877)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Gigante I Limited, Respondent, d/b/a Cedar Street. For reasons discussed in the proposal, I recommend Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL00280, dated May, 28, 1997, in the amount of \$5,000.00 should be forfeited. Tex. Alco. Bev. Code § 11.11(b)(2).

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Jones, Jr.", written over a printed name and title.

Robert F. Jones, Jr.
Administrative Law Judge

RJ:ds

Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**
Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; Gigante I Limited, d/b/a Cedar Street, 2708 Routh Street, Dallas, Texas 75201-1929 - **CERTIFIED MAIL NO. Z 283 051 849, RETURN RECEIPT REQUESTED**

The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448

NOV 10 1999
LEGAL DIVISION

DOCKET NO. 458-99-1567

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
GIGANTE I LIMITED D/B/A	§	
CEDAR STREET	§	
PERMIT NO. MB-267682, LB-267683	§	
CB-267685, & PE-267684	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 582877)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this forfeiture action against Gigante I Limited d/b/a Cedar Street (Respondent). Staff sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permits had been canceled for cause. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the full amount of the bond.

PROCEDURAL HISTORY

On October 5, 1999, a public hearing was convened before Robert F. Jones Jr., Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Commission's Legal Division. Respondent failed to appear and was not represented by an attorney. Staff moved for judgment, and the motion was granted.

REASONS FOR DECISION

Because Respondent failed to appear at the hearing, and Staff proved that Respondent had received appropriate notice of the hearing, jurisdiction, notice, the violation and recommended punishment are addressed in the Findings of Fact and Conclusions of Law without discussion.

LEGAL STANDARDS AND APPLICABLE LAW

The Texas Alcoholic Beverage Commission (TABC) is authorized under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999)(the Code), to forfeit the amount of a conduct surety bond if Respondent's permit was revoked or on a final adjudication that the permittee had violated a provision of the Code. Under TABC's rule,

(1) When a license or permit is canceled, . . . , the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13, and this rule have been satisfied. The hearing shall be conducted in accordance with the Administrative Procedure Act.

16 TEX. ADMIN. CODE § 33.24

FINDINGS OF FACT

1. Gigante I Limited d/b/a Cedar Street (Respondent) was issued Mixed Beverage Permit MB-267682, Mixed Beverage Permit Late Hours Permit LB-267683, Beverage Cartage Permit CB-267685, and Caterer's Permit PE-267684, on July 30, 1996.
2. Respondent's licensed premises were located at 2001 South Harwood, Dallas, Dallas County, Texas.
3. Respondent has Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTL00280, dated May 28, 1997. The bond was executed by Gigante I Limited d/b/a Cedar Street, as Principal, and First Indemnity of America, 8150 Brookriver Drive, Suite S303, Dallas, Texas, as Surety. The bond is in the amount of \$ 5,000.00, and is payable to the State of Texas.
4. A Default Order in TABC Docket Number 580238, styled *Texas Alcoholic Beverage Commission versus Gigante I Limited d/b/a Cedar Street*, executed by Randy Yarbrough, Assistant Administrator, Texas Alcoholic Beverage Commission, on November 3, 1998, ordered Respondent's Mixed Beverage Permit MB-267682, Mixed Beverage Permit Late Hours Permit LB-267683, Beverage Cartage Permit CB-267685, and Caterer's Permit PE-267684, canceled for cause on November 24, 1999.
5. Respondent's Mixed Beverage Permit MB-267682, Mixed Beverage Permit Late Hours Permit LB-267683, Beverage Cartage Permit CB-267685, and Caterer's Permit PE-267684 were canceled for cause on November 24, 1998.
6. The Staff of the Texas Alcoholic Beverage Commission (Staff) sent Respondent written notice of Staff's intent to forfeit the bond by a letter

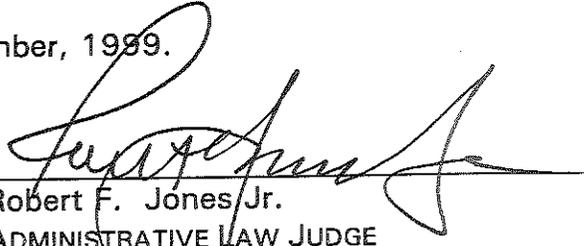
dated January 6, 1999, addressed to Gigante I Limited d/b/a Cedar Street at 2708 Routh Street, Dallas, Dallas County, Texas. Respondent's receipt of the letter was evidenced by Respondent's president's signature on page two of the letter.

7. On August 17, 1999, Staff issued its Notice of Hearing. The notice was directed to Gigante I Limited d/b/a Cedar Street at her licensed premises located at 2708 Routh Street, Dallas, Dallas County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. The certified mail return receipt was signed on August 20, 1999.
8. On October 5, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear.

CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. § 11.11(b)(2) (Vernon 1999).
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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN §2003.021 (Vernon 1999).
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE. § 2001.051, and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1 - 6, Texas Alcoholic Beverage Commission Conduct Surety Bond Number XTLO028G, dated May 28, 1997, in the amount of \$ 5,000.00, should be forfeited. TEX. ALCO. BEV. CODE § 11.11(b)(2).

SIGNED this 5th day of November, 1999.


Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS