

DOCKET NO. 584137

IN RE SAN JUANA VALDEZ ARRONA	§	BEFORE THE
D/B/A LA COQUETA CLUB	§	
PERMIT NO. BG-414036, BL-414037	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1544)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of April 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ruth Casarez. The hearing convened on October 18, 1999 and adjourned October 18, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 3, 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.

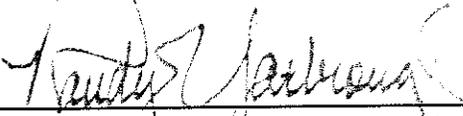
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on April 18, 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 3rd day of April, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Ruth Casarez
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (210) 308-6854

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

Mr. Ferdinand F. Fischer III
ATTORNEY FOR RESPONDENT
307 S. Santa Rosa, Ste. 100
San Antonio, Texas 78207
VIA FACSIMILE (210) 227-7637

Gayle Gordon
ATTORNEY FOR PETITIONER
TABAC Legal Section

Licensing Division
San Antonio District Office



INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION

March 29, 2000

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-1544
TABC Case No. 584137
San Juana Valdez Arrona d/b/a/ La Coqueta Club
Wine and Beer Retailers Permit (BG-414036) Retail Dealers Late Hours License
(BL-414037)
Bexar County, Texas

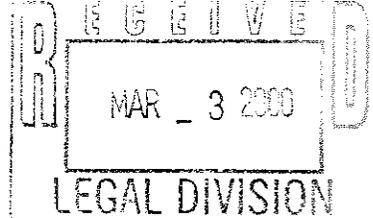
I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the Conduct Surety Bond issued for this location should be forfeited. Please prepare an **ORDER** adopting the Proposal for Decision recommendation that the Conduct Surety Bond should be **FORFEITED**.

Please make a copy of this decision and submit it along with the order to the respective parties.

A handwritten signature in cursive script, appearing to read "Randy Yarbrough", written over a horizontal line.

RY



TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

V.

OF

SAN JUANA VALDEZ ARRONA
D/B/A LA COQUETA CLUB
PERMIT NO. BG-414036
LICENSE NO. BL-414037
BEXAR COUNTY, TEXAS
(TABC CASE NO. 584137)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action seeking forfeiture of the conduct surety bond posted by San Juana Valdez Arrona (Respondent), d/b/a La Coqueta Club. Respondent renewed a conduct surety bond¹ on June 18, 1998, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). Staff recommended the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent appeared through counsel at the hearing. The undersigned Administrative Law Judge (ALJ) who reviewed the tape recording of proceedings and the evidence presented agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing convened on October 18, 1999, before ALJ James Kuvet. at the offices of the State Office of Administrative Hearings, 1015 Jackson Keller, Suite 102B in San Antonio, Texas. Staff was represented by Gayle Gordon, Assistant Attorney General. Mr. Ferdinand Fisher represented Respondent at the hearing. Mr. Fisher conceded the allegations presented by Staff required forfeiture of the conduct surety bond, but argued Respondent was never informed of the significance of waiving the hearings on the violations that form the basis of the current action. No challenge to the Commission's or the State Office of Administrative Hearings' (SOAH) jurisdiction in this matter or question related to the notice of the hearing was raised. Consequently, these matters will be addressed only in the Findings of Fact and Conclusions of Law below.

II. Conduct Surety Bond

On June 18, 1997, the Commission issued *Wine and Beer Permit No. BG-414036 and license number BL-414037*, to Respondent for the premises known as La Coqueta Club, 323 N. Zarzamora,

¹Respondent provided a conduct surety bond, Bond Number XTL 00975, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewal of the permit or license have expired." See Exhibit 3.

San Antonio, Bexar County, Texas. On May 13, 1997, Respondent, as applicant for a beer and wine permit, posted a conduct surety bond for La Coqueta Club for \$5,000 as required by Sections 11.11 and 61.13 of the Code. The bond has continued in effect as required by the Code.

III. Events Leading to the Request to Forfeit Respondent's Conduct Surety Bond

On August 6, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on June 5, 1998, Respondent violated a provision of the cash law, governed by TEX. ALCO BEV. CODE ANN. § 102.31. The agreement contained the following language:

My name is San Juana Valdez Arzona. I am the 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/cancelled 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 questions. The signing of this waiver may result in the forfeiture of any related conduct surety bond. (emphasis added)

As a result of this waiver agreement, the Commission Administrator entered an Order on August 11, 1998. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. It further provided that Respondent's permit would be suspended for five (5) days unless Respondent paid \$750.00 as a civil penalty.

On August 26, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. The waiver agreement stated that on August 15, 1998, Respondent violated a provision of the Code by purchasing alcoholic beverages from an unauthorized source pursuant to TEX. ALCO BEV. CODE ANN. §§ 61.71(a)(19) and (20), and 69.09. The agreement contained the same language as indicated in the waiver agreement described above, with the only difference being the penalty amount, which was \$450.00 in the second agreement.

As a result of this waiver agreement, the Commission Administrator entered an Order on September 2, 1998. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. It also provided that Respondent's permit would be suspended for three (3) days unless Respondent paid \$450.00 as a civil penalty.

On March 16, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code. The waiver agreement stated that (1) on January 16, 1999, Respondent possessed distilled spirits on the premises, (possession of distilled spirits is prohibited by her Beer & Wine Permit), (2) that she conducted her business in a place or manner which warrant cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people, and (3) she sold alcoholic beverage to an intoxicated person, the latter two are violations of TEX. ALCO BEV. CODE ANN. §§ 61.71(a) (17) and (a)(6) respectively. The agreement contained the same language as indicated in the first two waiver agreements above, with the only difference being the penalty amount, which was \$1,500.00 in the latest agreement.

As a result of this waiver agreement, the Commission Administrator entered an Order on April 1, 1999. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permit would be suspended for ten (10) days unless Respondent paid \$1,500.00 as a civil penalty.

IV. Forfeiture of Conduct Surety Bond

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. Tex. ALCO. BEV. CODE ANN. §§ 6.01 and 61.71. Commission rule found at 16 TEX. ADMIN. CODE § 33.24(j), governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree to "conform with the Texas Alcoholic Beverage Code and rules of the Commission." In signing the bond, the Permittee is also put on notice that if he "violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the bond shall be paid to the state, subject to certain conditions...."

In addition, when a person obtains a permit from a state regulatory agency, such as the Texas Alcoholic Beverage Commission, the person is deemed to know the law and rules that govern her conduct when she proceeds to benefit from the permit. Despite Respondent's statement that she was not aware of the impact of her earlier waiver agreements on her conduct surety bond, the fact remains that she, in effect, agreed in writing in 1998 and in early 1999, that she had committed the violations listed in the notice of intent to seek forfeiture of the bond which was mailed to her on April 28, 1999. Respondent's testimony did not constitute sufficient credible evidence that the violations which she acknowledged in writing did not occur. As a permittee of the Commission, Respondent is responsible for knowing or informing herself of the consequences of her own and her employees' actions as they relate to her permit to sell beer and wine. Likewise, she is charged with understanding the significance of violations of law to which she admits.

V. PROPOSED FINDINGS OF FACT

1. On June 18, 1998, the Texas Alcoholic Beverage Commission (the Commission) renewed *Beer and Wine Permit BG 414036*, issued to San Juana Valdez Arrona (Respondent) for the premises known as La Coqueta Club at 323 N. Zarzamora, San Antonio, 78207-2548, Bexar, County, Texas. On May 13, 1997, Respondent posted a conduct surety bond for La Coqueta Club for \$5,000, which bond has been continuously in effect.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing, dated August 20, 1999. The notice was properly sent to Respondent at her address of record.
3. 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

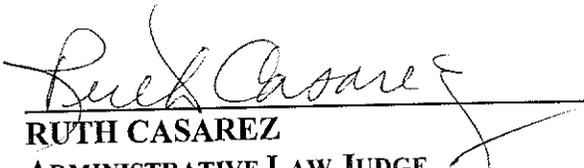
statement of the matters asserted.

4. The hearing was convened on October 18, 1999, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. Respondent appeared and was represented by Mr. Ferdinand Fisher at the hearing. Gayle Gordon, Assistant Attorney General, represented the Staff.
5. On August 26, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. By signing the waiver agreement, Respondent declared that on August 15, 1998, Respondent purchased alcoholic beverages from an unauthorized source. Respondent acknowledged this violation of the Code had occurred and agreed that her permit would be suspended or canceled by the Commission unless she paid a civil penalty
6. On September 2, 1998, the Commission Administrator entered an order finding Respondent had committed a violation of the Code consistent with Respondent's admission found in Findings of Fact No. 5.
7. On August 6, 1998, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. By signing the waiver agreement, Respondent declared that on June 5, 1998, Respondent violated a provision of the Code's cash law. Respondent acknowledged this violation had occurred and agreed that her permit would be suspended or canceled unless she paid a civil penalty
8. On August 11, 1998, the Commission Administrator entered an order finding Respondent had committed a violation of the Code consistent with Respondent's admission found in Findings of Fact No. 7.
9. On March 16, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding three violations of the Code. By signing the waiver agreement, Respondent declared that on January 16, 1999, Respondent violated three provisions of the Code, (1) Respondent possessed distilled spirits on the premises, (possession of distilled spirits is prohibited by her Beer & Wine Permit), (2) that she conducted her business in a place or manner which warrant cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people, and (3) she sold alcoholic beverage to an intoxicated person. Respondent acknowledged these violations had occurred and agreed that her permit would be suspended or canceled by the Commission unless she paid a civil penalty.
10. On April 1, 1999, the Commission Administrator entered an order finding Respondent had committed violations of the Code consistent with Respondent's admission found in Findings of Fact No. 9.
11. Respondent has committed at least three violations of the Code and had at least three final adjudications regarding these violations since September 1, 1995.

VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.35, 25.04, 61.71, and 11.11 (Vernon 1995 & Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 1995 & Supp. 1999) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 1999).
3. Proper and timely notice of the hearing was effected on Permittee pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 1999).
4. Respondent holds permit number BG-414037 and license number BL-414037, and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE § 33.24 and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 1999).
5. Respondent violated at least three provisions of the Texas Alcoholic Beverage Code: one violation of the Commission's cash law governed by TEX. ALCO BEV. CODE ANN. § 102.31 (Vernon Supp. 1999); and one violation of TEX. ALCO BEV. CODE ANN. §§ 61.71(a)(19) and (20), and 69.09, purchase of alcoholic beverages from an unauthorized source. (Vernon 1995 & Supp. 1999), and two violations of TEX. ALCO BEV. CODE ANN. § 61.71(a) (6) and (a)(17) (Vernon 1995 & Supp. 1999).
6. Respondent violated 16 TEX. ADMIN. CODE § 33.24 (1999) and TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 (Vernon 1995 & Supp. 1999), by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding *Beer and Wine Permit No. BG-414036 and license number BL-414037*, issued by the Commission, and Respondent's conduct surety bond should be forfeited to the State.

SIGNED and entered this 3rd day of March 2000.


RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS