

**DOCKET NO. 585447**

IN RE MI YONG STEPHENS	§	BEFORE THE
D/B/A THE DOLL HOUSE	§	
PERMIT NO. BG402932	§	
LICENSE NO. BL402933	§	TEXAS ALCOHOLIC
	§	
EL PASO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2359)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 9th day of January, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Louis Lopez. The hearing convened and adjourned on November 22, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 14, 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.

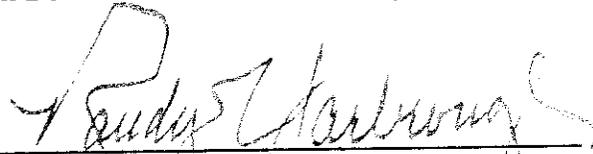
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

**This Order will become final and enforceable on January 30, 2001**, 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 9th day of January, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Louis Lopez  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (915) 834-5657**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
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G. Daniel Mena  
**ATTORNEY FOR RESPONDENT**  
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Mi Yong Stephens  
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**RESPONDENT**  
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**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
El Paso District Office

DOCKET NO. 458-00-2359

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

MY YONG STEPHENS  
D/B/A THE DOLL HOUSE  
BG-402932, BL-402933  
EL PASO COUNTY, TEXAS  
DW 585447

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (the Staff) brought this action against My Yong Stephens d/b/a the Doll House (Respondent) seeking forfeiture of Respondent's conduct surety bond. The Staff alleged that Respondent committed three violations of the Texas Alcoholic Beverage Code (the Code) since September 1, 1995. This proposal finds that the criteria for forfeiture of Respondent's conduct surety bond have been satisfied.

The hearing on the merits was held on November 22, 2000, at the State Office of Administrative Hearings, 401 East Franklin Avenue, Suite 580, El Paso, Texas. The Staff appeared by telephone through attorney Christopher Burnett. Respondent appeared in person and was represented by attorney G. Daniel Mena. Administrative Law Judge Louis Lopez presided.

Since there were no contested issues related to jurisdiction or notice, those matters are set out below in the Findings of Fact and Conclusions of Law.

I. EVIDENCE

The only exhibit introduced into evidence was a set of documents presented by the Staff related to Respondent's permits. The exhibit was admitted without objection. Respondent was the only witness called to testify.

The evidence found in the exhibit was undisputed. It showed that Respondent had signed a Texas Alcoholic Beverage Commission (TABC) form called an Agreement and Waiver of Hearing on two separate occasions, one in 1998 and a second one in 1999. The first one related to one violation of the Code that occurred in 1998, and the second one involved two separate violations committed in 1999. The same form was used on both occasions. In the paragraph directly above Respondent's signature, it was stated that Respondent was waiving her right to a hearing. The last line of the paragraph read, "The signing of this waiver may result in the forfeiture of any related conduct surety bond." As a result of each agreement, TABC issued two separate orders signed by Randy Yarbrough, Assistant Administrator of TABC. The orders contained essentially the same

wording. They each confirmed that Respondent had waived the right to a hearing. The first order assessed a seven-day suspension or a civil penalty of \$1,050.00. The second order assessed a 30-day suspension or a civil penalty of \$3,000.00. The orders contained the following warning to Respondent:

This order will become final and enforceable 21 days from the date this order was signed, unless you file a motion for rehearing with the commission.

It was not disputed that (1) Respondent never filed such a motion, (2) she timely satisfied each of the civil penalties assessed, and (3) her business is still in operation.

Respondent's main source of contention was that the forfeiture of her conduct surety bond would constitute double jeopardy. Respondent duly paid the two civil penalties, and consequently, her constitutional protection against double jeopardy would be violated by the forfeiting of her bond. Respondent further pointed out that criminal charges had been filed against her for the three violations involved in this case. She had to spend time and effort preparing a defense against the criminal charges, even though all three charges were eventually dismissed.

A secondary basis for Respondent's opposition to the bond forfeiture was her contention that she only had a limited knowledge of the English language. She answered questions from her lawyer intended to show that, because of her limited command of English, she had been at a disadvantage when she signed the agreements. Respondent further stated that she had been at a disadvantage because she did not have legal representation when she signed the agreements.

## II. ANALYSIS

The TABC rule applicable in this case, found at 16 TEX. ADMIN. CODE (TAC) §33.24(j), provides:

(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, 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 . . . request a 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 applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. §11.11(b)(2) and §61.13 state:

(b) [T]he holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code. . . .

Respondent's reliance on the defense of double jeopardy is not applicable. The defense applies in criminal prosecutions in which a defendant is found guilty or is acquitted of a charge. The law prevents the defendant from then being charged in a subsequent prosecution for the same offense. It does not apply in cases in which the charge is dismissed. Respondent presented no evidence on the reasons behind the dismissal in her three criminal cases. Furthermore, the double jeopardy protection does not bar civil proceedings against a person who has been adjudged guilty or has been acquitted in a criminal case based on the same acts performed by the person.

Nor does the doctrine apply in two separate civil proceedings. Specifically, the doctrine does not bar a separate civil proceeding, based on the same incident, on which another civil case has previously been brought and adjudicated. The actions taken by the Staff in connection with Respondent's three violations are all administrative, and therefore civil, in nature.

The forfeiture of a conduct surety bond in the instant case is not part of the assessment of any civil penalty for any of the previous, separate violations. The cases on the violations were closed long ago. The seeking of the forfeiture is a separate, cumulative consequence of all three of the prior violations committed by Respondent, and it is supported by a different provision in the Code.

In passing the laws on which bond forfeiture is based, apparently the Texas Legislature determined that a permittee should post a bond to ensure the permittee's good conduct. The Legislature judged that, in addition to any fines or civil penalties suffered as a consequence of a violation, a permittee should be subject to losing a bond. There are similar provisions in other areas of the law. As an example, a driver is first assessed fines if found guilty of moving traffic violations in criminal cases. In addition, in a number of states including Texas, the motorist is subject to having his or her driver's license suspended if the driver is convicted of more than a prescribed number of violations in a twelve-month or 24-month period.

It is unfortunate that Respondent felt that she was at a disadvantage in speaking English, but that cannot be a defense in this administrative action. She could have obtained the aid of a person fluent in English before signing the relevant agreements, or even better, could have sought legal advice. In her answers to her lawyer's questions at the hearing, it did not appear that her fluency in English was significantly limited.

Based on (1) the two agreements she signed, (2) the related orders issued by TABC, and (3) her satisfaction of the related civil penalties assessed against her, Respondent committed one violation in 1998 and two separate violations in 1999.

### III. CONCLUSION

Based on a preponderance of the evidence, Respondent committed three violations of the Code since September 1, 1995, in violation of 16 TAC §33.24(j). As a consequence, the criteria for forfeiture of Respondent's conduct surety bond have been satisfied.

### FINDINGS OF FACT

1. My Yong Stephens d\l\b\ the Doll House (Respondent) is the holder of Wine and Beer Retailer's Permit No. BG-402932 and Retail Dealer's On Premise Late Hours License No. 402933, issued by the Texas Alcoholic Beverage Commission (TABC) on October 25, 1996. The licenses have been continuously renewed
2. On September 24, 1996, Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On July 22, 1999, the staff of TABC (the Staff) sent a notice by certified mail to Respondent asserting that TABC was seeking to forfeit Respondent's surety bond and that she had the right to request a hearing on the matter.
4. On August 10, 1999, Respondent, through her attorney G. Daniel Mena, submitted a letter to TABC requesting a hearing.
5. On September 15, 2000, the Staff sent a notice of hearing by certified mail, return receipt requested, to Respondent. The hearing notice specified the time, place, and nature of the hearing; the legal authority for the hearing; and the matter to be determined. The State Office of Administrative Hearings notified Respondent of the hearing in an Order Setting Prehearing Conference on September 14, 2000.
6. On April 30, 1998, Respondent signed an Agreement and Waiver of Hearing regarding a violation of the Texas Alcoholic Beverage Code (the Code), to-wit: employee intoxicated on licensed premises.
7. The violation occurred on April 11, 1998.
8. Based on Respondent's Agreement and Waiver of Hearing, TABC entered an order finding Respondent committed the violation and imposed a seven-day suspension or a civil penalty of \$1,050.00.
9. On June 17, 1999, Respondent signed a second Agreement and Waiver of Hearing regarding two violations of the Code, to wit: (1) soliciting an alcoholic beverage by an employee (three different employees) and (2) place or manner of operation: prostitution.
10. Those two violations occurred on March 25, 1999.

- 11. Based on Respondent's second Agreement and Waiver of Hearing, TABC entered an order finding Respondent committed the violation and imposed a 20-day suspension or a civil penalty of \$3,000.00.
- 12. Respondent did not file, after either agreement, any motion for rehearing with TABC, and the related TABC orders became final.
- 13. Respondent paid the civil penalties assessed against her.
- 14. Respondent committed three violations of the Code since September 1, 1995.

CONCLUSIONS OF LAW

- 1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. [CODE] §§5.31--5.44 (Vernon 2000).
- 2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to CODE §5.43(a) and TEX. GOV'T. CODE ANN. §§2003.021 and 2003.042 (Vernon 2000).
- 3. Service of proper notice of the hearing was made on Respondent pursuant to CODE §11.63 and the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§2001.051 and 2001.052 (Vernon 2000).
- 4. TABC is permitted by CODE §§11.11 and 61.31 and by 16 TEX. ADMIN. CODE §33.24(j) (2000) to forfeit the conduct surety bond of a permittee who commits three or more violations of the Code since September 1, 1995.
- 5. Respondent violated the rules of TABC found at 16 TEX. ADMIN. CODE §33.24(j) by committing three violations of the Code since September 1, 1995.
- 6. Based on the foregoing Findings of Fact and Conclusions of Law, the criteria for forfeiture of the conduct surety bond have been satisfied.

SIGNED this 14th day of December, 2000.

  
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 LOUIS LOPEZ  
 ADMINISTRATIVE LAW JUDGE  
 STATE OFFICE OF ADMINISTRATIVE HEARINGS