

DOCKET NO. 586642

IN RE RICK'S PLACE
D/B/A RICK'S PLACE
PERMIT NOS. N-437777, NL437778,
PE437779

DENTON COUNTY, TEXAS
(SOAH DOCKET NO. 458-99-2904)

§
§
§
§
§
§
§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 11th day of April, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on January 13, 2000 and adjourned January 13, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 13, 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.

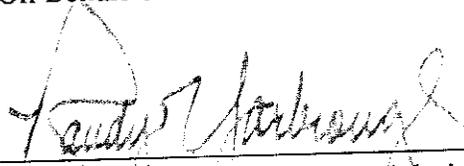
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on May 2, 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 11 th day of April, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

Hon. Jerry Van Hamme, ALJ
State Office of Administrative Hearings
Via Facsimile (214) 956-8611

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

Rick's Place
RESPONDENT
3152 Golfing Green Drive
Farmer's Branch, Texas 75234-3778
Certified Mail/RRR No. Z 473 037 798

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Division

Licensing Division
Dallas District Office



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

April 10, 2000

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-2904 TABC Case No. 586642
Docket No. 458-99-0313 TABC Case No. 580733

Conduct Surety Bonds

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

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

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

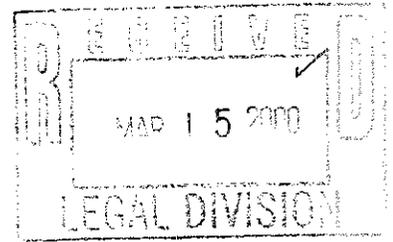
A handwritten signature in cursive script, reading "Randy Yarbrough", written over a horizontal line.

RY

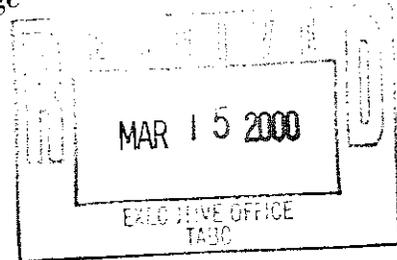
State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



March 13, 2000



VIA CERTIFIED MAIL Z 269 601 857

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

RE: Docket No. 458-99-2904; Texas Alcoholic Beverage Commission vs. Rick's Place,
(TABC Case No. 586642)

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 Tim Griffith, attorney for Texas Alcoholic Beverage Commission, and to Respondent. For reasons discussed in the proposal, I recommend Respondent's surety bond be forfeited.

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 "Jerry Van Hamme".

Jerry Van Hamme
Administrative Law Judge

JVH:fgm

Enclosure

xc: Docket Clerk, State Office of Administrative Hearing
Tim Griffith, Staff Attorney, Texas Alcoholic Beverage Commission
Scott Creech, 3152 Golfing Green Dr., Farmers Branch, TX 75234-3778

Regular Mail
Fax 972/547-5093
Certified Mail Z269-601-856

DOCKET NO. 458-99-2904

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

SCOTT S. CREECH
D/B/A RICK'S PLACE
DENTON COUNTY, TEXAS,
(TABC CASE NO. 586642)

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) initiated this action seeking forfeiture of the conduct surety bond posted by Scott S. Creech (Respondent) d/b/a Rick's Place. Respondent filed a conduct surety bond on July 15, 1998, in compliance with Section 11.11 of the Texas Alcoholic Beverage Code (the Code). The Staff recommended that the bond be forfeited because Respondent had committed three violations of the Code since September 1, 1995. Respondent did not appear and was not represented at the hearing. The Administrative Law Judge (ALJ) agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

I. Jurisdiction, Notice, and Procedural History

The hearing in this matter was convened January 13, 2000, before ALJ Jerry Van Hamme, at the offices of the State Office of Administrative Hearings (SOAH), 6300 Forest Park Road, Ste. B-230, Dallas, Dallas County, Texas. Staff was represented by Timothy Griffith, Attorney. Respondent did not appear and was not represented at the hearing. The hearing proceeded on a default basis, and Staff's factual allegations were deemed admitted as true, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55.¹

¹ TAC § 155.55:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

(c) Any default judgment entered under this section shall be issued only upon adequate proof that proper notice under Texas Government Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was provided to the defaulting party, and such notice includes disclosure, in 10-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

(d) This subsection applies to cases where service of the notice of hearing on a defaulting party is shown only by proof

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and the notice of hearing in the instant matter meet the applicable notice requirements, as set forth in the findings of fact and conclusions of law.

II. Applicable Law

Respondent posted a \$5,000 conduct surety bond pursuant to Section 11.11 of the Code.² The Commission seeks forfeiture of the bond based on final adjudications that the permittee has committed three violations of the Code since September 1, 1995. 16 TAC § 33.24(j).³

III. Proposed Findings of Fact

1. On September 16, 1998, the Commission issued a Private Club Registration Permit, N-437777; a Private Club Late Hours Permit, NL-437778; and a Beverage Cartage Permit, PE-437779 to Respondent for the premises known as Rick's Place at 125 Avenue A, Denton, Denton County, Texas.

that the notice was sent to the party's last known address as shown on the referring agency's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. Under that situation, the default procedures described in subsection (c) of this section may be used only when the following circumstances are shown to exist:

- (1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and
- (2) there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address as shown on the referring agency's records.

²Sec. 11.11 Tex. Alco. Bev. Code, CONDUCT SURETY BOND.

- (a) Except as provided in Subsection (e) of this section, an applicant for a permit or a holder of a permit issued under:
 - (1) Chapter 25, 28, or 32 of this code shall file with the commission a surety bond in the amount of \$5,000 conditioned on the applicant's or holder's conformance with alcoholic beverage law;

³16 TAC § 33.24(j):

- (j) Forfeiture of the Bond.

- (1) When a license or permit is cancelled, 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, 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.

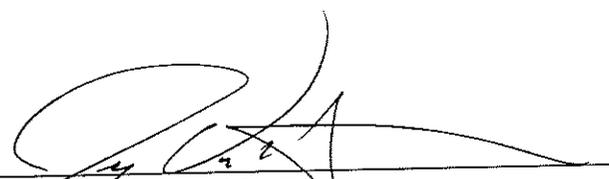
2. On July 15, 1998, Respondent posted a \$5,000 conduct surety bond for Rick's Place.
3. On February 23, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding two violations of the Code. The waiver agreement stated that on January 24, 1999, Respondent made a sale to a minor and had an open saloon in violation of Sections 106.03 and 32.17(a)(1) of the Code. The Agreement stated, in part: "My name is Scott S. Creech. I am President. 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/canceled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$1800.00 must be received by the final due date stated on the administrative order.... The signing of this waiver may result in the forfeiture of any related conduct surety bond."
4. Based on the waiver agreement, the Commission Administrator entered an Order on March 1, 1999, finding that Respondent committed two violations of the Code and providing that Respondent's permits be suspended for 12 (twelve) days or that Respondent pay a civil penalty of \$1800.00.
5. On August 10, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding a third violation of the Code. The waiver agreement stated that on April 9, 1999, Respondent issued checks with nonsufficient funds in violation of Section 61.73 of the Code. The agreement stated, in part: "My name is Scott S. Creech. I am president of the above permit/license. I hereby declare 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 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.... The signing of this waiver may result in the forfeiture of any related conduct surety bond."
6. Based on the waiver agreement, the Commission Administrator entered an Order on August 23, 1999, finding that Respondent violated the Code and providing that Respondent's permits be suspended for five (5) days or that Respondent pay a civil penalty of \$750.00.
7. Staff sent Respondent written notice of its intent to seek forfeiture of the bond by letter dated September 23, 1999, addressed to Rick's Place, 3152 Golfing Green Drive, Farmers Branch, Texas. Respondent's receipt of the letter was evidenced by Respondent's signature on page two of the letter.
8. On November 30, 1999, Staff sent the Notice of Hearing by certified mail to Respondent at 3152 Golfing Green Drive, Farmer's Branch, Texas 75234-3778.

9. The hearing was convened on January 13, 2000, at the offices of the State Office of Administrative Hearings, 6300 Forest Park Road, Ste. B-230, Dallas, Dallas County, Texas. Respondent failed to appear.
10. Respondent committed three violations of the Code and has had three final adjudications regarding these violations since September 1, 1995.

IV. Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.11 (Vernon 1995 & Supp. 2000).
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 Supp. 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act (APA), TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000), and 1 TEX. ADMIN. CODE (TAC) § 155.55(d)(1999), which provides that service of notice of hearing shall be complete and effective if served by registered or certified mail to the defaulting party's most recent address as shown in the records of the referring agency.
4. Based on Findings of Fact Nos. 1-6, the conduct surety bond posted by Respondent should be forfeited.

Signed and entered this 13 day of March, 2000.


JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS