

DOCKET NO. 589727

IN RE ELECTRIC COWBOY

PERMIT NO. N-422976

ANGELINA COUNTY, TEXAS
(SOAH DOCKET NO. 458-00-2044)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of July 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Richard Farrow. The hearing convened on August 15, 2000 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 28, 2001. 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.

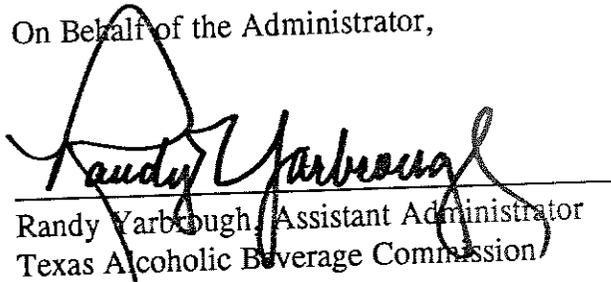
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on August 16, 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 26th day of July, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Richard Farrow
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (903) 534-7076

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

Electric Cowboy
RESPONDENT
732 S. Timberland Drive
Lufkin, Texas 75902
VIA CERTIFIED MAIL NO. 7000 1530 0002 0413 2912

Dewey A. Brackin
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Longview District Office

into evidence was a copy of the return receipt card, the "green card", showing date of delivery of the notice as July 31, 2000.

The affidavit of Brian L. Guenther, Licensing Department Director for the Texas Alcoholic Beverage Commission, was admitted setting out the licensing and violation history of the Respondent.

Findings of Fact

1. On November 14, 1997, Respondent was issued Permits Nos. N-422976, and PE-422997 by the Texas Alcoholic Beverage Commission.
2. On October 16, 1997, Respondent established an irrevocable letter of credit for conduct surety purposes payable to the State of Texas in the amount of \$5,000.00 should Respondent violate a law of the State of Texas concerning alcoholic beverages or a rule of the commission.
3. On September 28, 1999, Respondent entered into an agreement waiving the right to a hearing concerning allegations that Respondent had violated TEX. ALCO. BEV. CODE § 109.53 and agreeing that the license would be canceled.
4. On October 8, 1999, the Texas Alcoholic Beverage Commission entered an order finding that Respondent had violated TEX. ALCO. BEV. CODE § 109.53 and that Respondent's license was canceled effective November 12, 1999.
5. Notice of hearing was sent to Respondent on July 28, 2000, and was received by Respondent on July 31, 2000..
6. The notice of hearing contained a short statement of the factual allegations and included, in 10-point bold-face type, a statement that if a party failed to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and that the relief sought in the notice of hearing may be granted by default.
7. The notice of hearing stated that the hearing would be held at the Tyler office of the State Office of Administrative Hearings on August 15, 2000, at 2:00 p.m.
8. Respondent failed to appear at the hearing on August 15, 2000.

Conclusions of Law

1. Service of proper and timely notice of hearing was effected on the Respondent pursuant to TEX. GOV'T. CODE ANN. § 2001.
2. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX.

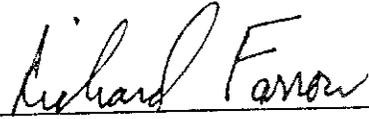
ALCO. BEV. CODE ANN. §§ 32.01, 6.01, and 11.61 (Vernon 2000).

3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. ALCO. BEV. CODE § 5.43 and TEX. GOV'T. CODE ANN. §§ 2003, 2001 (Vernons 2000).

4. Based on Findings 5-8, Respondent defaulted and the allegations contained in the notice of hearing are deemed true pursuant to § 155.55 of the State Office of Administrative Hearings Rules, TEX. ADMIN. CODE § 155.55 (WEST 2000).

5. Based on Conclusion 4 and Findings 1-4, Respondent's conduct surety bond in the form of letter of credit for conduct surety purposes should be forfeited.

Signed this 28th day of June, 2001.



Richard Farrow
Administrative Law Judge Presiding