

DOCKET NO. 591993

IN RE JUDY MARIE WISENER	§	BEFORE THE
D/B/A HILLTOP	§	
LICENSE NO. BE441630	§	
	§	TEXAS ALCOHOLIC
	§	
McLENNAN COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1408)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 27th day of March 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. A hearing convened and adjourned on January 12, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 21, 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.

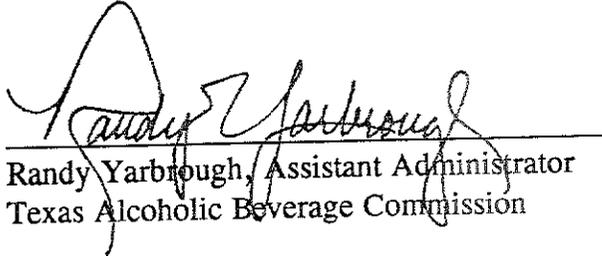
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED immediately**.

This Order will become final and enforceable on April 17, 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 27th day of March, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Suzan Moon Shinder
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (254) 750-9380

Judy Marie Wisener
d/b/a Hilltop
RESPONDENT
P.O. Box 212
Mt. Calm, Texas 76673-0212
VIA CERTIFIED MAIL NO. 7000 0520 0024 8847 2063

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Waco District Office

II. FINDINGS OF FACT

1. Respondent holds a Beer Retailer's On Premise License, No. BE441630, issued by the Commission for the premises known as Hilltop, located at 7679 Highway 31, Axtell, McLennan County, Texas 76624-1111.
2. By order of the Commission, Respondent's license was canceled, or the licensee was found to have committed three violations of the Alcoholic Beverage Code, since September 1, 1995, and the cancellation or violations have been finally adjudicated.
3. Respondent received notice of the hearing from the Commission in the Commission's Notice of Hearing sent to Respondent's last known mailing address, by certified mail.
4. The Commission's 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 allegations and the relief sought by the Commission.
5. The Commission's Notice of Hearing contained the statement in 10-point, bold-face type, that if a party failed to appear at the hearing, the factual allegations in the notice would be deemed admitted as true, and the relief sought in the notice could be granted by default.
6. Respondent failed to appear and was not represented at the January 12, 2001 hearing, and the Commission moved for a default.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052, and 1 TEX. ADMIN. CODE §155.55.
4. The allegations contained in the Commission's Notice of Hearing are deemed admitted to be true pursuant to 1 TEX. ADMIN. CODE §155.55.

5. Pursuant to 16 TEX. ADMIN. CODE §33.24(j), a conduct surety bond, as permitted by TEX. ALCO. BEV. CODE ANN. §61.13, may be forfeited when a license is canceled, or when there is a final adjudication that the licensee has committed three violations of the Code, since September 1, 1995.
6. Based upon the Findings of Fact Nos. 2-6, and Conclusion of Law No. 3-5, TEX. ALCO. BEV. CODE ANN. §61.13 and 16 TEX. ADMIN. CODE §33.24, Respondent's conduct surety bond should be forfeited.

SIGNED and entered this 21st day of February, 2001.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS