

DOCKET NO. 592471

IN RE ICE	§	BEFORE THE
	§	
PERMIT NO. N-436140, PE436141	§	
	§	TEXAS ALCOHOLIC
	§	
SMITH COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1519)	§	BEVERAGE COMMISSION

O R D E R

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 March 23, 2001 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.

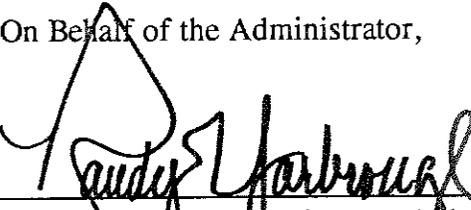
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

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
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Licensing Division
Longview District Office

SOAH DOCKET NO. 458-01-1519

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	OF
ICE	§	
PERMIT NOS. N-436140, PE-436141	§	
SMITH COUNTY, TEXAS	§	
(TABC CASE NO. 592471)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) sought forfeiture of the conduct surety bond posted by Ice, Respondent, because the Respondent committed three or more violations of the Texas Alcoholic Beverage Code since September 1, 1995. This proposal for decision recommends forfeiture of the bond.

I. Jurisdiction, Notice, and Procedural History

There are no contested issues of jurisdiction or notice in the proceeding and therefore those matters are set out in the findings of fact and conclusions of law without further discussion here.

On March 23, 2001, hearing was held at the Tyler office of the State Office of Administrative Hearings before Richard Farrow, Administrative Law Judge. Christopher Burnett, attorney for the Texas Alcoholic Beverage Commission, appeared by telephone representing the Staff. Shannah Cole, President of Ice, appeared in person for Respondent. After the testimony and exhibits were received, along with argument, the hearing was adjourned and the record was closed March 23, 2001.

II. Discussion of the Evidence

On August 14, 1998, the Respondent was issued a Private Club Registration Permit, N-436140, and a Beverage Cartage Permit, PE-436141. The Respondent provided a conduct surety bond, issued by First Indemnity of America Insurance Company as surety, made payable to the State of Texas in the amount of Five Thousand (\$5,000.00) Dollars effective from date of issuance of license or permits by the Texas Alcoholic Beverage Commission and payable in the event that Respondent should violate a law of the state relating to alcoholic beverages or a rule of the Commission.

Thereafter, on July 26, 1999, the Texas Alcoholic Beverage Commission entered an order, based on an agreement and waiver of hearing signed by the TABC and the Respondent, finding that on June 24, 1999, the Respondent had violated TEX ALCO. BEV. CODE §32.17 (a)(1) in that

Respondent had operated or operated as an open saloon in violation of its permit. On October 16, 2000, the Texas Alcoholic Beverage Commission, again based on agreement and waiver of hearing, entered an order finding that the Respondent had violated the Texas Alcoholic Beverage Commission Rule, 1 TAC 41.52(C)(1)(e) in that Respondent had not kept membership records on the licensed premises and TEXALCO. BEV. CODE §32.06 (a) in that it had failed to operate under a liquor pool or percent beverage replacement system in violation of its permit.

The Respondent did not dispute that the agreements were entered into and the findings were made. The Respondent attempted to explain one of the violations she thought was incorrect and offered evidence contradicting the finding of the TABC. Objection was made that the offered defense was irrelevant to the issues presented because the finding and order had become final. The objection was sustained.

III. Analysis

The Code and Commission rule §33.24 require the filing of a conduct surety bond of either \$5000 or \$10,000 as specified in Code §11.11 unless the holder of the permit meets a specified exception. Respondent did not qualify for any exception and properly filed the appropriate conduct surety bond in the required amount of \$5,000. Code §11.11 specifies that the bond state on its face that the amount of the bond will be paid to the state in the event the permit holder violates any provision of the Code. Rule 33.24 requires the Commission to notify the holder of a permit or license of its intent to seek forfeiture of the bond after final adjudication that it has committed three violations of the Code since September 1, 1995. The Respondent entered into waiver agreements and agreed orders that it had violated the Code or the Rules as regards alcoholic beverages three times as set out above and final orders were entered for each of those violations. On December 7, 2000, the Texas Alcoholic Beverage Commission sent to Respondent notice that it intended to seek forfeiture of the entire amount of the conduct surety bond. A hearing was requested and scheduled to be heard by an Administrative Law Judge of the State Office of Administrative Hearings in accordance with the Administrative Procedures Act.

IV. Findings of Fact

1. Respondent, Ice, was issued a Private Club Registration Permit, N-436140 and a Beverage Cartage Permit, PE-436141, on August 14, 1998.
2. On June 23, 2000, First Indemnity of America Insurance Company, as surety for Respondent, issued a \$5,000.00 conduct surety bond payable to the State of Texas.
3. On July 20, 1999, Respondent signed a waiver agreement accepting penalty for violations of the Texas Alcoholic Beverage Code, §§132.17 (a) (1).
4. A final order was entered by the Texas Alcoholic Beverage Commission on July 26, 1999 imposing the sanctions that had been agreed to by Respondent.
5. The Respondent did not file a motion for rehearing and did not appeal the order imposing the agreed penalties.

6. The order became final 21 days after it was entered.
7. On October 12, 2000, Respondent signed a waiver agreement accepting penalty for violations of Texas Alcoholic Beverage Commission Rule § 32.06 (a) and 1 TAC §41.52(C)(1)(E).
8. A final order was entered on May 20, 1998, imposing the sanctions and penalties to which the Respondent had agreed for the violations.
9. The Respondent did not file a motion for rehearing and did not file an appeal of the order imposing the agreed penalty.
10. The order became final 21 days after it was entered.
11. On December 7, 2000, Staff notified Respondent of its intent to seek forfeiture of the full amount of the conduct surety bond and Respondent timely requested a hearing.
12. Notice of hearing was sent to Respondent on January 16, 2001..
13. On March 23, 2001, hearing was held in Tyler, Texas, before an Administrative Law Judge of the State Office of Administrative Hearings.

VI. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Subchapter B of Chapter 5 and §§ 11.61 and 61.71.
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. §§2003.021(b) and 2003.042 (5).
3. The parties received proper and timely notice of hearing pursuant to TEX. GOV'T CODE ANN. §2001.051.
4. Based on the foregoing Findings and Conclusions, and in compliance with the TEX. ALCO. BEV. CODE ANN. §11.11, the Respondent's conduct surety bond should be forfeited.

SIGNED this 28th day of June, 2001..



Richard Farrow
Administrative Law Judge Presiding