

**DOCKET NO. 592875**

IN RE FRONTIER BAR & GRILL INC.	§	BEFORE THE
D/B/A CODY'S BAR & GRILL	§	
PERMIT NOS. MB446599, LB446600	§	
	§	TEXAS ALCOHOLIC
	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-1970)	§	BEVERAGE COMMISSION

**ORDER**

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

After proper notice was given, this case was heard by Administrative Law Judge Lean Davis Bates. The hearing convened and adjourned on April 3, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 7, 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.

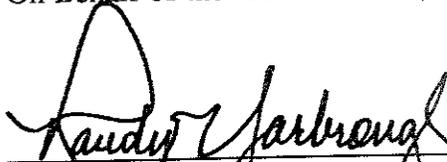
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

**This Order will become final and enforceable on July 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 July, 2001.

On Behalf of the Administrator,

  
\_\_\_\_\_  
Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/bc

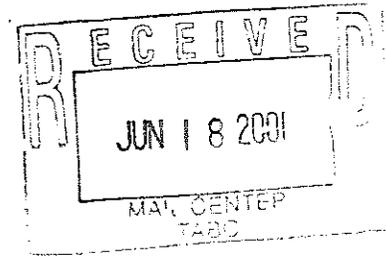
The Honorable Leah Davis Bates  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (210) 308-6854

Frontier Bar & Grill Inc.  
d/b/a Cody's Bar & Grill  
**RESPONDENT**  
6223 Hwy 87E #10  
San Antonio, Texas 78222-1822  
**CERTIFIED MAIL NO. 7000 1530 0002 0152 7247**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
San Antonio District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 14, 2001

18201 ✓

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

RE: Docket No. 458-01-1970; Texas Alcoholic Beverage Commission vs.  
Frontier Bar & Grill Inc., d/b/a Cody's Bar & Grill,  
TABC Case No. 592875

Dear Administrator:

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 Christopher Burnett, attorney for Texas Alcoholic Beverage Commission, and to Frontier Bar & Grill, Inc., d/b/a Cody's Bar & Grill. For reasons discussed in the proposal, I recommend that the Respondent's conduct 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,

Leah Davis Bates  
Administrative Law Judge

LDB:msw  
Enclosure

xc: Christopher Burnett, Staff Attorney, Texas Alcoholic Beverage Commission -  
FACSIMILE, 512-206-3498  
Frontier Bar & Grill, Inc, Respondent, USPS 6223 Hwy 87E #10, San Antonio, Tx  
78222-1822.

**DOCKET 458-01-1970**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION** § **BEFORE THE STATE OFFICE**  
§  
§  
**VS.** § **OF**  
§  
**FRONTIER BAR & GRILL INC.** § **ADMINISTRATIVE HEARINGS**  
**D/B/A CODY'S BAR & GRILL** §  
**PERMIT NOS. MB446599, LB446600** §  
**BEXAR COUNTY, TEXAS**

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Commission) initiated this action seeking forfeiture of the conduct surety bond posted by Frontier Bar & Grill Inc. (Respondent) d/b/a Cody's Bar & Grill. Respondent posted a conduct surety bond<sup>1</sup> on March 10, 2000, in compliance with Sections 11.11 and 61.13 of the Texas Alcoholic Beverage Code (the Code). The Commission's Staff (the Staff) recommended that the bond be forfeited because Respondent's permit had been cancelled. This proposal for decision agrees with the Staff's recommendation that Respondent's conduct surety bond be forfeited.

**I.**

**Jurisdiction, Notice, and Procedural History**

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

On April 3, 2001, Leah Davis Bates, Administrative Law Judge for the State Office of Administrative Hearings (SOAH), convened a public hearing at the Hearing Facility of the State Office of Administrative Hearings, 1015 Jackson-Keller, Suite 102b, San Antonio, Texas. Respondent, although duly notified of the hearing, did not appear. Christopher Burnett, appeared to represent the Staff. Evidence and argument were heard. The record closed on April 3, 2001.

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<sup>1</sup>Respondent provided a conduct surety bond, Bond Number XTL03825, from First Indemnity of America Insurance Company. The Bond provided that it becomes effective on the date of the issuance of the "above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until cancelled, and thereafter provided, or until such permit or license and succeeding renewal of the permit or license have expired." Exhibit 1.

**II.**  
**Conduct Surety Bond**

On March 12, 2000, the Commission issued renewal permits, *Mixed Beverage Permit, MB-446599* and a *Mixed Beverage Late Hours Permit, LB-446600*, to Respondent for the premises known as Cody's Bar & Grill 7393 Hwy. 87 East, China Grove, Bexar County, Texas. On March 10, 2000, Respondent, as holder of the permits, executed a conduct surety bond for Cody's Bar & Grill for \$5,000 as required by Sections 11.11 and 61.13 of the Code.

**III.**  
**Events Leading to the Request to Forfeit  
Respondent's Conduct Surety Bond**

On September 25, 2000, Respondent signed an "Agreement and Waiver of Hearing" regarding a violation of the Code. The waiver agreement stated that on September 16, 1999, Respondent sold an alcoholic beverage to an intoxicated person in violation of Sections 101.63, and 11.61(14) of the Code. The agreement contained the following language:

My name is Cody Brian Byrom. I am an officer of the corp. 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/cancelled unless the licensee or permittee elects to pay a civil penalty in lieu of a suspension. A civil penalty in the amount of \$ \_\_\_\_\_ must be received by the final due date stated on the administrative order. I am aware that this agreement may be rejected by the Administrator of the Texas Alcoholic Beverage Commission at which time the licensee or permittee will be granted a hearing on the matters in questions. The signing of this waiver may result in the forfeiture of any related conduct surety bond.

As a result of this waiver agreement, the Commission Administrator entered an Order on October 2, 2000. The Order stated Respondent violated the Code as stated in the agreement and waiver of hearing. The Order further provided that Respondent's permits were cancelled.

**IV.**  
**Forfeiture of Conduct Surety Bond**

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE Sections 6.01 and 61.71. Section 33.24(j) of the Code governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been cancelled, or where there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree 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 the Code. Rule 33.24 also applies and requires forfeiture upon cancellation of permits, or upon final adjudication determining a holder has committed three violations of the Code since September 1, 1995.

### Proposed Findings of Fact

1. On March 12, 2000, the Commission issued renewal permits, *Mixed Beverage Permit, MB-446599* and a *Mixed Beverage Late Hours Permit, LB-446600*, to Respondent for the premises known as Cody's Bar & Grill, 7393 Hwy. 87 East, China Grove, Bexar County, Texas.
2. Respondent received proper and timely notice of the hearing from the Staff for the Commission (the Staff) in a notice of hearing, dated February 12, 2001, and an Order Resetting Hearing Date. Both notices were properly sent to Respondent's address at 7393 Hwy. 87 East, China Grove, Bexar County, Texas. The Order Resetting was also faxed to 210-648-3625.
3. The hearing was convened on April 3, 2001, at the Hearings Facility of the State Office of Administrative Hearings, in San Antonio, Texas. Although duly notified of the hearing, Respondent failed to appear. Christopher Burnett appeared to represent the Staff. Evidence and argument were heard, and the record was closed that same day.
4. On March 10, 2000, Respondent, as a prospective holder of two permits, executed a conduct surety bond for Cody's Bar & Grill in the amount of \$5,000 as required by Sections 11.11 and 61.13 of the Code.
5. On September 25, 2000, Respondent signed an "Agreement and Waiver of Hearing" regarding violations of the Code. By signing the waiver agreement, Respondent acknowledged a violations of the Code had occurred and that his primary permit and related license would be cancelled by the Commission.
6. On October 2, 2000, the Commission Administrator entered an order finding Respondent had committed a violation of the Code consistent with Respondent's admissions.
7. Respondent permits have been cancelled.

### Proposed Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code.
2. The State Office of Administrative Hearings has jurisdiction over the 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., Sections 2003.021(b) and 2003.042(5).
3. As referenced in the above Findings of Fact, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN Sections 2001.051. and 2001.052.
4. Based upon the Findings of Fact above, Respondent holds permits numbers *MB-446599* and *LB-446600* and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE Section 33.24 and TEX. ALCO. BEV. CODE Sections 11.11 and 61.13.
5. Based upon the above Findings of Facts, Respondent violated 16 TEX. ADMIN. CODE Section 33.24 and TEX. ALCO. BEV. CODE Sections 11.11 and 61.13, by violating a commission rule and a law of the State of Texas relating to alcoholic beverages while holding a *Mixed Beverage Permit, MB-446599* and a *Mixed Beverage Late Hours Permit, LB-446600* issued by the Commission.
6. Based on the above Finding of Fact, the conduct surety bond executed by Respondent should be forfeited to the State.

SIGNED and entered this 7<sup>th</sup> day of June, 2001

  
Leah Davis Bates  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS