

DOCKET NO. 594503

IN RE REINERS ENTERPRISES, INC.	§	BEFORE THE
D/B/A THE BRASS STAR	§	
PERMIT NOS. N 418631, PE418632	§	
	§	TEXAS ALCOHOLIC
	§	
SMITH COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3303)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 26th day of August 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on July 11, 2002 and adjourned on July 11, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 31, 2002. This Proposal For Decision (attached hereto as **Exhibit "A"**), 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.

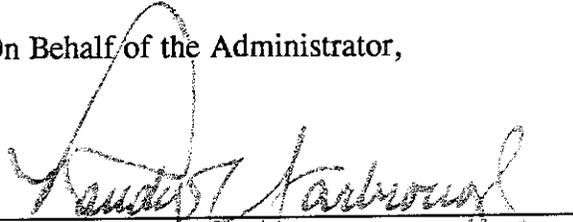
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on September 16, 2002, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this the 26th day of August, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

REINERS ENTERPRISES, INC.
D/B/A THE BRASS STAR
RESPONDENT
PO Box 8811
Tyler, Texas 75711-8811
CERTIFIED MAIL NO. 7001 2510 0000 7277 6333

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Longview District Office

DOCKET NO. 458-02-3303



TEXAS ALCOHOLIC BEVERAGE
COMMISSION, Petitioner

VS.

REINERS ENTERPRISES, INC.
D/B/A THE BRASS STAR, Respondent
(TABC CASE NO. 599503)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this forfeiture action against Reiners Enterprises, Inc., d/b/a The Brass Star (Respondent). Staff seeks forfeiture of Respondent's conduct surety bond, alleging Respondent has been finally adjudicated of committing three violations of the Texas Alcoholic Beverage Code (the Code) or rules promulgated by the TABC (the Rules). This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

I. PROCEDURAL HISTORY

On March 27, 2002, Staff sent Respondent written notice of its intention to seek forfeiture of Respondent's conduct surety bond. Respondent requested a hearing to determine if the bond should be forfeited. This matter was referred to the State Office of Administrative Hearings (SOAH) to conduct the requested hearing. On June 12, 2002, Staff issued a notice of hearing informing all parties of the hearing. On July 11, 2002, ALJ Tanya Cooper convened the hearing in this matter with both parties present at the SOAH offices in Dallas, Dallas County, Texas. Timothy Griffith, Staff's attorney, appeared and represented Staff. Respondent appeared through its representative, Glynetta Reiners.

There were no contested issues of notice, jurisdiction, or venue in the proceeding. Therefore, those matters are set out in the proposed Findings of Facts and Conclusions of Law without further discussion. Following the presentation of evidence, the record closed on July 11, 2002.

II. DISCUSSION

A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5000 surety bond, conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13. The bond may be forfeited if: (1) the licensee has provided the TABC a conduct surety bond; (2) the licensee has been finally adjudicated of three violations of the Code

since September 1, 1995; and (3) the TABC notifies the licensee in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j).

B. Evidence

Staff's evidence consists of three exhibits: the Notice of Hearing issued on June 12, 2002; Staff's Requests for Admissions, Interrogatories and Requests for Production served on Respondent on that same date to which no responses were made by Respondent; and the Affidavit of Brian L. Guenther with its attachments. Mr. Guenther is the Director of the TABC Licensing Department. He is the custodian of all TABC records and files. Mr. Guenther identified the attachments to his Affidavit as true and correct copies of Respondent's permits, violation history, Conduct Surety Bond, and correspondence concerning the bond.

Attached to Mr. Guenther's affidavit are Private Club Registration Permit, N418631, and Beverage Cartage Permit, PE 418632. The holder named on the permits is Respondent. The licensed premises is located at 2616 N. Loop 323 Northwest, Tyler, Texas. TABC Conduct Surety Bond, XTL01217, is attached to Mr. Guenther's affidavit. The Bond is executed by Respondent's representative, Glynetta Reiners, as principal. The Bond is dated August 13, 1997. Also attached to Mr. Guenther's affidavit are three Waiver Orders and Agreements and Waivers of Hearing for enforcement actions by TABC Staff taken against Respondent. Details concerning these enforcement actions are as follows:

1. **TABC Docket No. 590750, styled *In re The Brass Star*.** The Waiver Order is dated August 29, 2000, and was issued by the TABC. The Agreement and Waiver of Hearing is dated August 22, 2000, and was signed by Glynetta Lynn Reiners, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Sale to Minor¹ on July 20, 2000.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

2. **TABC Docket No. 588620, styled *In re The Brass Star*.** The Waiver Order is dated April 19, 2000, and was issued by the TABC. The Agreement and Waiver of Hearing is dated April 12, 2000, and was signed by Glynetta Lynn Reiners, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Violation of a Happy Hour Rule, to-wit: a drinking contest² on March 17, 2000.

¹TEX. ALCO. BEV. CODE ANN. § 106.03.

²16 TEX. ADMIN. CODE § 45.103.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

3. **TABC Docket No. 581232, styled *In re The Brass Star*.** The Waiver Order is dated November 5, 1998, and was issued by the TABC. The Agreement and Waiver of Hearing is dated October 27, 1998, and was signed by Glynetta Lynn Reiners, an officer for Respondent at the time. The Waiver Order states that Respondent was found to have committed the following violation:

Operating an Open Saloon violation³ on October 9, 1998.

This violation was admitted in the Agreement and Waiver of Hearing. This document further advises that "signing of this waiver may result in the forfeiture of any related conduct surety bond."

Finally, Mr. Guenther's affidavit includes a copy of Staff's letter dated March 27, 2002, addressed to Respondent at its mailing address, which reads:

[W]e are notifying you of our intention to seek forfeiture of the full amount of your surety bond.

Respondent requested a hearing to determine if its bond should be forfeited by signing the March 27, 2002 letter and returning it to TABC's Staff. At the hearing, Glynetta Reiners testified on behalf of Respondent. Ms. Reiners produced Respondent's Renewal Application for its permits, which was admitted into evidence. From the evidence presented by both parties, Respondent's permits expire on August 27 each year. The renewal application executed on August 21, 2000, for the upcoming year reflects that Respondent was, at that time, considered by TABC as bond exempt. Ms. Reiners opined in her testimony that because Respondent had been placed in bond exempt status by the TABC, its surety bond, which was still posted, should not be forfeited.

C. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted in favor of TABC by license and permit holders to encourage compliance with provisions of the Code and Rules. Respondent, by its own admissions, committed three violations of the Code and Rules since 1995.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Respondent failed to make any response to Staff discovery requests as required by 1 TEX. ADMIN. CODE § 155.31. Therefore, the elements required to be established by TABC in this case should be deemed as admitted by Respondent.

Further, Staff's additional evidence shows that Respondent posted a conduct surety bond in

³ TEX. ALCO. BEV. CODE ANN. § 32.17(a)(1).

favor of the TABC, as was required prior to Respondent's 2000 application renewal. This bond has continued to be posted by Respondent and, to date, is still in effect in favor of TABC. Respondent was finally adjudicated of three or more violations of the Code or Rules between November 5, 1998 and August 29, 2000, by its execution of Agreements and Waivers of Hearing on those violations. All violations, the subject of these enforcement actions, occurred prior to Respondent's 2000 permit renewal. Staff notified the Respondent in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j). Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

III. PROPOSED FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued Respondent, Reiners Enterprises, Inc. d/b/a The Brass Star, a Private Club Registration Permit, N418631, and a Beverage Cartage Permit, PE 418632.
2. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond, XTL01217. Respondent executed the bond as Principal.
3. Respondent, acting through its representative, admitted that three violations of the Texas Alcoholic Beverage Code (the Code) occurred on the licensed premises by executing Agreements and Waivers of Hearing with the TABC Staff on August 22, 2000, April 12, 2000, and October 27, 1998.
4. On August 29, 2000, the TABC issued its Waiver Order in TABC Docket No. 590750, styled *In re The Brass Star*. The Waiver Order found that Respondent was responsible for a violation of selling an alcoholic beverage to a minor on July 20, 2000.
5. On April 19, 2000, the TABC issued its Waiver Order in TABC Docket No. 588620, styled *In re The Brass Star*. The Waiver Order found that Respondent was responsible for the violation of a Happy Hour Rule by permitting a drinking contest on the licensed premises on March 17, 2000.
6. On November 5, 1998, the TABC issued its Waiver Order in TABC Docket No. 581232, styled *In re The Brass Star*. The Waiver Order found that Respondent was responsible for the violation of operating a open saloon on the licensed premises on October 9, 1998.
7. Respondent has committed three or more violations of the Code or Rules since September 1, 1995.
8. On March 27, 2002, the Staff of TABC (Staff) sent Respondent written notice of its intent to seek forfeiture of the bond. Respondent requested a hearing on this matter.
9. On June 12, 2002, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement

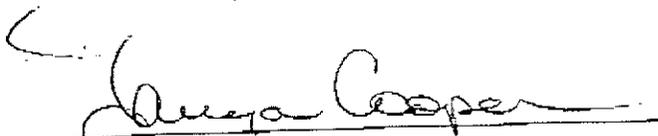
of the matters asserted.

10. On July 11, 2002, the hearing was convened by Tanya Cooper, Administrative Law Judge, at the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Both parties appeared and presented evidence. The record closed on July 11, 2002.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.11, 11.61, 61.13, and 61.71 and 16 TEX. ADMIN. CODE § 33.24.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.021.
3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE §§ 155.25 and 155.27.
4. Based on the foregoing findings and conclusions, Texas Alcoholic Beverage Commission Conduct Surety Bond, XTL01217, should be forfeited. TEX. ALCO. BEV. CODE ANN. §§ 11.11 and 61.13 and 16 TEX. ADMIN. CODE § 33.24(j).

SIGNED July 31, 2002.


TANYA COOPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS