

DOCKET NO. 597677

IN RE VICTOR LEONARDO TINOCO	§	BEFORE THE
D/B/A LA MICHOACANA BAR	§	
PERMIT NO. BG486379	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2718)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 8th day of July 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened and adjourned on May 17, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 4, 2002. 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.

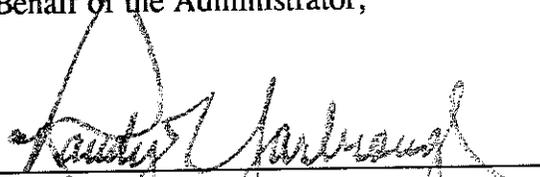
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on July 29, 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 and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 8th day of July, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

LT/bc

The Honorable Carrie L. McLarty
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Victor Leonardo Tinoco
d/b/a La Michoacana Bar
RESPONDENT
7606 Erath
Houston, TX 77020
CERTIFIED MAIL NO. 7001 2510 0000 7278 8084

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

DOCKET NO. 458-02-2718

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
VICTOR LEONARDO TINOCO D/B/A LA MICHOACANA BAR	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Victor Leonardo Tinoco (Respondent) d/b/a La Michoacana Bar. The Administrative Law Judge (ALJ) finds Petitioner proved, by a preponderance of the evidence, that all requirements for forfeiture of the bond have been met. Consequently, the ALJ recommends Petitioner's proposed action be sustained and Respondent's conduct surety bond be forfeited.

Jurisdiction and Notice

Notice and jurisdiction were not contested issues and are addressed in the findings of fact and conclusions of law without further discussion here.

Procedural History

The hearing convened and the record closed on May 17, 2002. Petitioner was represented by Lindy To, staff attorney. Respondent appeared and represented himself. ALJ Carrie McLarty presided over the hearing and issues this Proposal for Decision.

Discussion

1. Background

On October 9, 2001, Petitioner issued an order canceling Respondent's Wine and Beer Retailer's Permit No. BG486379. The Order constituted a final adjudication that Respondent committed three violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent waived his right to a hearing. All violations occurred after September 1, 1995.

By letter dated December 5, 2001, Petitioner notified Respondent of its intention to seek forfeiture of Respondent's conduct security bond based on its final adjudication of Respondent's Code violations. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

2. Legal Standards

Upon final adjudication that a licensee or permittee has committed three Code violations since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.

The applicable statutory provision at TEX. ALCO. BEV. CODE § 11.11(b)(2) states ". . . the holder of the permit agrees 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 this code"

Petitioner's rule at 16 TEX. ADMIN. CODE §33.24(j) is more lenient, and provides, "(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the license or permittee, in writing, of its intent to seek forfeiture of the bond."

3. Evidence

Petitioner presented its case through documents, including Respondent's permit, compliance history, and the order adjudicating Respondent's code violations and canceling Respondent's permit.

Respondent testified he was not in town when one of the violations made the basis of the permit cancellation occurred.

4. Analysis

By order dated October 9, 2001, Petitioner made a final adjudication that Respondent committed three Code violations since September 1, 1995. Consequently, Petitioner established all requirements for forfeiture of Respondent's conduct surety bond.

5. Recommendation

Because Petitioner proved by a preponderance of the evidence that all requirements for forfeiture of Respondent's conduct bond have been met, the ALJ recommends that Respondent's conduct bond be forfeited.

PROPOSED FINDINGS OF FACT

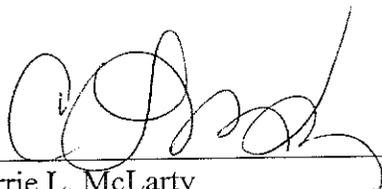
1. On October 9, 2001, the Texas Alcoholic Beverage Commission (Petitioner) issued a final order canceling Wine and Beer Retailer's Permit No. BG486379, held by Victor Leonardo Tinoco (Respondent), d/b/a La Michoacana, for the violation of three provisions of the Texas Alcoholic Beverage Code. Each violation occurred after September 1, 1995.

2. On December 5, 2001, Petitioner notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on Petitioner's final adjudication of Respondent's violations of the Alcoholic Beverage Code.
3. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of his conduct surety bond, resulting in the May 17, 2002, hearing in this case.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE §§6.01 and 61.13.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE §§2001.051 and 2001.052.
4. Based on Finding of Fact No. 1, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met and Respondent's conduct surety bond should be forfeited, as authorized by TEX. ALCO. BEV. CODE §§6.01 and 61.13 and 16 TEX. ADMIN. CODE §33.24(j).
5. Based on Conclusion of Law number 4, Respondent's conduct surety bond should be forfeited.

SIGNED this 4th day of June, 2002.



Carrie L. McLarty
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS