

DOCKET NO. 598272

IN RE JOSE FRANCISCO VALDEZ	§	BEFORE THE
D/B/A EL INFIERNO	§	
LICENSE NOS. BE458808, BL458809	§	
	§	TEXAS ALCOHOLIC
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2716)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 24th day of June 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 May 17, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 31, 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.

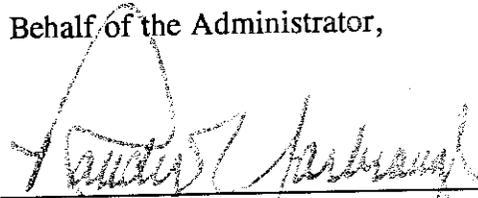
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on July 15, 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 24th day of June, 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

Jose Francisco Valdez
d/b/a El Infierno
RESPONDENT
9631 Jensen Dr.
Houston, TX 77093-6300
CERTIFIED MAIL NO. 7001 2510 0000 7278 7926

Lindy To
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Houston District Office

DOCKET NO. 458-02-2716

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**JOSE FRANCISCO VALDEZ
D/B/A EL INFIERNO**

§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Jose Francisco Valdez (Respondent) d/b/a El Infierno. 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 September 6, 2001, Petitioner issued an order assessing an administrative penalty against Respondent for one violation of the Texas Alcoholic Beverage Code (the Code), for which Respondent waived his right to a hearing. On January 14, 2002, Petitioner issued an order assessing an administrative penalty against Respondent for two additional Code violations, for which Respondent waived his right to a hearing. Each order constituted a final adjudication of the violations. All violations occurred after September 1, 1995.

By letter dated January 29, 2002, 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 Beer Retailer's On Premise License No. BE458808 and Retail Dealer's On Premise Late Hours License No. BL458809, Respondent's compliance history, and the orders adjudicating Respondent's Code violations.

Respondent did not offer any testimony or evidence at the hearing.

4. Analysis

By orders dated September 6, 2001, and January 14, 2002, Petitioner made final adjudications that Respondent committed three Code violations. All violations occurred after 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 surety bond have been met, the ALJ recommends Respondent's conduct surety bond be forfeited.

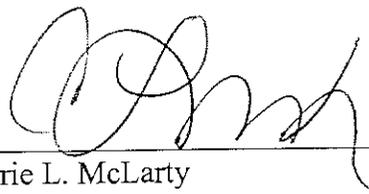
PROPOSED FINDINGS OF FACT

1. On September 6, 2001, and January 14, 2002, the Texas Alcoholic Beverage Commission (Petitioner) issued final orders assessing administrative penalties against Jose Francisco Valdez (Respondent) d/b/a El Infierno, for three violations of the Texas Alcoholic Beverage Code. Each violation occurred after September 1, 1995.
2. Respondent operates pursuant to Beer Retailer's On Premise License No. BE458808 and Retail Dealer's On Premise Late Hours License No. BL458809.
3. On January 29, 2002, 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 Texas Alcoholic Beverage Code
4. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of his conduct surety bond.

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.
5. Based on Conclusion of Law number 4, Respondent's conduct surety bond should be forfeited.

SIGNED this 31st day of May, 2002.



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