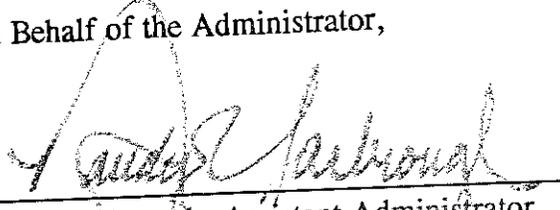




By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

**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

KGG/vr

The Honorable Suzan Moon Shinder  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (254) 750-9380**

Uptown Club  
**RESPONDENT**  
d/b/a Uptown Club  
P. O. Box 535  
Temple, Texas 76501  
**VIA CERTIFIED MAIL 7001 2510 0000 7277 8085**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABAC Legal Section

Licensing Division  
Waco District Office

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	OF
	§	
UPTOWN CLUB	§	
D/B/A UPTOWN CLUB	§	
PERMIT NOS. N491341,NL491342,	§	ADMINISTRATIVE HEARINGS
AND PE 491343	§	
BELL COUNTY, TEXAS	§	
(TABC CASE NO. 598273)	§	

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (the Commission) requested forfeiture of the conduct surety bond posted by Uptown Club d/b/a Uptown Club (the Respondent). The Commission alleged that the Respondent was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995, which have all been finally adjudicated, justifying the forfeiture of Respondent's conduct surety bond pursuant to §11.11 of the TEX. ALCO.BEV.CODE ANN. (the Code) and 16 TEX. ADMIN. CODE (the Rules) §33.24. By the end of the hearing, Respondent no longer disputed the Commission's allegations. The Administrative Law Judge (ALJ) recommends Respondent's conduct surety bond be forfeited.

**I. Procedural History, Notice, and Jurisdiction**

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits was convened on April 30, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before ALJ Suzan Shinder. The Commission appeared by telephone, by its staff attorney, Gayle Gordon. The Respondent appeared in person, by its President, Kurt Bruckbauer, pro se. Evidence and argument were heard and the record closed the same day.

**II. The Statute**

The basis for the forfeiture of a conduct surety bond is set out in §11.11 of the Code and in the Commission's Rule §33.24. According to §11.11 of the Code, the permittee must agree on the face of the bond that the amount of the bond will be paid to the state if the permits are revoked or on final adjudication that the holder violated a provision of the Code. Section 33.24 is somewhat more lenient, requiring three violations of the Code after September 1, 1995, or cancellation of a permit, before the Commission seeks to forfeit the conduct surety bond.

### III. Evidence and Discussion

The Commission's two exhibits<sup>1</sup> were admitted without objection; no witnesses were called to testify; and the Respondent rested without putting on any evidence.

Private Club Registration Permit, N-491341, Private Club Late Hours Permit, NL-491342, and Beverage Cartage Permit, N-491343, were issued to an unincorporated association of persons, doing business as Uptown Club, 12 South 2<sup>nd</sup> Street, Temple, Bell County, Texas, by the Commission, on the 24<sup>th</sup> day of April, 2001, and have been continuously renewed. On March 13, 2001, the Respondent executed a conduct surety bond for the Uptown Club, in the amount of \$5000.00, as required by §11.11 of the Code.<sup>2</sup>

On June 8, 2001, Respondent, by its officer Paul Bruckbauer,<sup>3</sup> signed an "Agreement and Waiver of Hearing" for the Uptown Club, as a holder of the primary "CLP" N-491341. In this agreement, Respondent waived its right to a hearing to contest the Commission's assertion that on May 27, 2001, Respondent had violated Code §32.17(a)(1) (Open Saloon). In this waiver, Respondent accepted a five-day suspension of its permits, to begin on August 1, 2001, unless a civil penalty in the amount of \$750.00 was received by the Commission on or before July 18, 2001. In this waiver, Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered a Waiver Order on June 18, 2001, finding that Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty as stated in the "Agreement and Waiver of Hearing."<sup>4</sup>

On October 24, 2001, Respondent, by its officer Paul Bruckbauer, signed an "Agreement and Waiver of Hearing" for the Uptown Club, as a holder of the primary "CLP" N-491341. In this agreement, Respondent waived its right to a hearing to contest the Commission's assertion that on October 21, 2001, Respondent had two violations of Code §32.17(a)(1) (Open Saloon). In this waiver, Respondent accepted a six-day suspension of its permits, to begin on December 5, 2001, unless a civil penalty in the amount of \$900.00 was received by the Commission on or before November 21, 2001. In this waiver, Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond. As a result of this waiver agreement, the Commission Administrator entered a Waiver Order on November 21, 2001, finding

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<sup>1</sup>Commission's Exhibit No. 1 is the Commission's Notice of Hearing, file marked March 29, 2002; Commission's Exhibit No. 2 are certified copies of the Respondent's permits, violation history, Conduct Surety Bond, and correspondence.

<sup>2</sup>Commission's Exhibit No. 2.

<sup>3</sup>Paul Bruckbauer is Kurt Bruckbauer's brother, and another officer (secretary-treasurer) of the Respondent.

<sup>4</sup>Commission's Exhibit No. 2.

that Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty as stated in the "Agreement and Waiver of Hearing."<sup>5</sup>

The above was not contested by the Respondent, and as a result, Respondent's Conduct Surety Bond should be forfeited.

### **Findings of Fact**

1. Private Club Registration Permit, N-491341, Private Club Late Hours Permit, NL-491342, and Beverage Cartage Permit, N-491343, were issued to an unincorporated association of persons, doing business as Uptown Club, 12 South 2<sup>nd</sup> Street, Temple, Bell County, Texas, by the Texas Alcoholic Beverage Commission (the Commission), on the 24<sup>th</sup> day of April, 2001, and have been continuously renewed.
2. On March 13, 2001, the Respondent executed a conduct surety bond for the Uptown Club, in the amount of \$5000.00.
3. On June 8, 2001, Respondent, by its officer Paul Bruckbauer, signed an "Agreement and Waiver of Hearing" for the Uptown Club, as a holder of the primary "CLP" N-491341. In this agreement, Respondent waived its right to a hearing to contest the Commission's assertion that on May 27, 2001, Respondent had violated Texas Alcoholic Beverage Code (Code) §32.17(a)(1) (Open Saloon).
4. In the June 8, 2001, waiver agreement, Respondent accepted a five-day suspension of its permits, to begin on August 1, 2001, unless a civil penalty in the amount of \$750.00 was received by the Commission on or before July 18, 2001. In this waiver, Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond.
5. As a result of the June 8, 2001, waiver agreement, the Commission Administrator entered a Waiver Order on June 18, 2001, finding that Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty as stated in the "Agreement and Waiver of Hearing."
6. On October 24, 2001, Respondent, by its officer Paul Bruckbauer, signed an "Agreement and Waiver of Hearing" for the Uptown Club, as a holder of the primary "CLP" N-491341. In this agreement, Respondent waived its right to a hearing to contest the Commission's assertion that on October 21, 2001, Respondent had two violations of Code §32.17(a)(1) (Open Saloon).
7. In this October 24, 2001, waiver agreement, Respondent accepted a six-day suspension of its permits, to begin on December 5, 2001, unless a civil penalty in the amount of \$900.00 was received by the Commission on or before November 21, 2001. In this waiver,

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<sup>5</sup>Commission's Exhibit No. 2.

Respondent also acknowledged that the signing of the waiver could result in the forfeiture of any related conduct surety bond.

8. As a result of this waiver agreement, the Commission Administrator entered a Waiver Order on November 21, 2001, finding that Respondent violated the sections of the Code as stated in the "Agreement and Waiver of Hearing," and imposing the penalty as stated in the "Agreement and Waiver of Hearing."
9. The Respondent did not appeal the Commission's orders described in Findings of Fact Nos. 5 and 8.
10. Respondent received proper and timely notice from the Commission's Notice of Hearing on March 29, 2002.
11. The hearing on the merits was convened on April 30, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before ALJ Suzan Shinder. The Commission appeared by telephone, by its staff attorney, Gayle Gordon. The Respondent appeared in person, by its President, Kurt Bruckbauer, pro se. Evidence and argument were heard and the record closed the same day.

#### **Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5.
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. ch. 2003.
3. Notice of the hearing was provided as required under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Pursuant to 16 TEX. ADMIN. CODE (Rules) §33.24(j), a conduct surety bond, as permitted by TEX. ALCO. BEV. CODE ANN. (Code) §11.11, may be forfeited when a permit is canceled, or when there is a final adjudication that the permittee has committed three violations of the Code, since September 1, 1995.
5. Based upon the above Findings of Fact and Conclusion of Law, Code §11.11, and Rules §33.24, Respondent's conduct surety bond should be forfeited.

Signed this 28th day of May, 2002.

  
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SUZAN MOON SHINDER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS