

Continuance, or the order scheduling the hearing for September 27, 2002. The ALJ concluded that Respondent was not in default on September 27, 2002, and the ALJ's oral finding of default was in error. On October 8, 2002, the ALJ ordered that the default against Respondent withdrawn, the record reopened, and the Staff issue a new notice of hearing to Respondent setting a hearing in this matter.

The First Supplemental Notice of Hearing (SNOH) was mailed to Respondent at its mailing address according to the records of the TABC, 3130 South Clack, Abilene, Texas, on October 9, 2002. The SNOH was returned with the notation, "moved left no address, unable to forward," to the Staff on October 18, 2002. The SNOH informed the Respondent a hearing would be held on November 7, 2002, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas.

On November 7, 2002, a hearing was convened before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent appeared through one of its officers, Justin Riggan, and through counsel. The record was closed on November 7, 2002.

II. DISCUSSION

A. Applicable Law

A permit holder can be required to post a conduct surety bond. TEX. ALCO. BEV. CODE (Vernon 2002) (the Code), § 11.11(a). The TABC is authorized to seek the forfeiture of a conduct surety bond if the permit is revoked. § 11.11(b)(2) of the Code. TABC must notify the permittee, in writing, of its intent to seek forfeiture of the bond. The permittee may request a hearing on whether the criteria for forfeiture of the bond have been satisfied. The hearing is to be conducted in accordance with the Administrative Procedure Act. 16 TEX. ADMIN. CODE § 33.24(j)(1).

A permit issued under the Code is a "purely personal privilege"; it "is not property." §§ 6.01(b); 11.03. It cannot be bought or sold. *Id.* The holder of a permit must meet certain qualifications. In the case of a corporation, "at least 51 percent of the stock of the corporation [must be] owned at all times by citizens who have resided within the state for a period of one year and who possess the qualifications required of other applicants for permits. . . ." § 109.53 of the Code. The Commission may require criminal history background checks of the corporation's shareholders, and deny a permit on the basis of the information the check discloses. § 109.532(b) of the Code. The TABC may require "an officer of a corporation holding a permit to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders." § 11.42 of the Code. "No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued." §§ 11.05; 109.53 of the Code. "Subterfuge ownership of or unlawful use of a permit or the premises covered by such permit" is illegal. The Legislature has determined that subterfuge ownership is to be prevented, "and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty

of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices. . . . " § 109.53 of the Code.

B. Evidence

The TABC issued mixed-beverage-permit MB470907 to Respondent. Respondent's licensed premise was located at 3130 South Clack, Abilene, Texas. Respondent posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond Number RSB200054. William E. Clark executed the bond as Principal. RLI Surety Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.

Originally, William E. Clark was the sole shareholder of Respondent. On August 1, 2001, William E. Clark sold all of the assets of Respondent to Edward Curt Coltharp. Mr. Clark sold his 100 percent shareholding in Respondent to Edward Curt Coltharp, Jason Petty, and Justin Riggan. The parties to the sale of the stock contemplated that a new mixed-beverage-permit would be obtained. In the meantime, the business continued to operate, ostensibly under permit MB470907.

The following facts are not disputed:

- Edward Curt Coltharp, Jason Petty, and Justin Riggan, as the new shareholders of Sportz Net, never applied for and did not obtain a new permit for the business.
- Edward Curt Coltharp, Jason Petty, and Justin Riggan, as the new shareholders of Sportz Net, ran a liquor business at the licensed premises from at least August 1, 2001, until January 23, 2002.
- William E. Clark did not surrender permit MB470907 to the TABC until January 23, 2002.
- William E. Clark did not seek to have RLI Surety Company limit his and its liability as allowed by § 11.71 of the Code.
- Various representatives of the Commission were made aware of the transaction between William Clark and Edward Curt Coltharp, Jason Petty, and Justin Riggan.
- William E. Clark did not have authority over the permit or the permitted premises after August 1, 2001.
- William E. Clark was contacted by Harold Simon of TABC in January 2002.
- Mr. Simon required William E. Clark to sign an agreement and waiver of hearing on behalf of the Respondent, agreeing to the cancellation of permit MB470907 because of subterfuge as defined in § 109.53 of the Code, and waiving a hearing on the claim.
- Mr. Simon required William E. Clark to sign an agreement and waiver of hearing as

President of Respondent.

- Mr. Simon required William E. Clark to obtain permit MB470907 from Respondent's premises and surrender it to the TABC.
- As a result of the agreement and waiver of hearing, Respondent's permit MB470907 was administratively canceled on February 8, 2002, effective March 1, 2002.
- On March 27, 2002, the TABC gave William E. Clark, as principal, written notice of its intent to forfeit Conduct Surety Bond Number RSB200054.

The Staff now seeks forfeiture of Conduct Surety Bond Number RSB200054, based upon the cancellation of permit MB470907.

C. Argument of Parties

Respondent argues that because of the sale, Mr. Clark was not authorized to bind Sportz Net, and the agreement and waiver of hearing are not binding on it. Respondent also argues that since TABC agents were aware of the transaction between Mr. Clark and Mr. Coltharp, Mr. Petty, and Mr. Riggan, the transaction was not a subterfuge, and the TABC in effect participated in a fraud on Respondent.

The Staff argues that the transaction between Mr. Clark and the three buyers was void with respect to the permit.

D. Analysis and Conclusion

The transaction between Mr. Clark and the three buyers had no legal effect with respect to permit MB470907. Mr. Coltharp, Mr. Petty, and Mr. Riggan did not have the right to act for Respondent with respect to the permit. The only individual who did have authority to act for Respondent, and bind it, with respect to permit MB470907 was Mr. Clark. Mr. Clark may have abdicated his responsibilities to the Commission to Mr. Coltharp, Mr. Petty, and Mr. Riggan, but that action was not binding on the Commission. Mr. Clark's signature on the agreement and waiver of hearing was effective.

The agreement and waiver of hearing effected a cancellation of permit MB470907 for cause. The matter before the Commission in this proceeding is the forfeiture of Conduct Surety Bond Number RSB200054, and not the propriety of the Commission's action in canceling the permit. The ALJ recommends Respondent's conduct surety bond be forfeited.

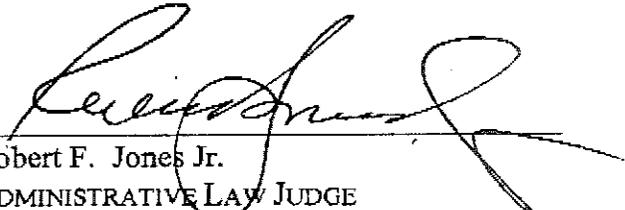
III. PROPOSED FINDINGS OF FACT

1. Respondent's licensed premise is located at 3130 South Clack, Abilene, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) issued mixed-beverage-permit MB470907 to Respondent.
3. Respondent has posted a conduct surety bond. The bond is Texas Alcoholic Beverage Commission Conduct Surety Bond Number RSB200054. William E. Clark executed the bond as Principal. RLI Surety Company is the Surety. The bond is in the amount of \$5,000.00 and is payable to the State of Texas.
4. On October 9, 2002, the Staff of the TABC (Staff) served its First Supplemental Notice of Hearing (the SNOH) on Respondent by certified mail, return receipt requested, to Respondent's mailing address, 3130 South Clack, Abilene, Texas.
5. The SNOH alleged Respondent's permit had been canceled for cause. It warned that the Staff would seek forfeiture of Respondent's conduct surety bond. It informed the Respondent a hearing would be held on November 7, 2002, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. The SNOH made reference to 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.
6. On November 7, 2002, the hearing was convened before Administrative Law Judge (ALJ) Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent appeared through one of its officers, Justin Riggan, and through counsel. The record was closed on November 7, 2002.
7. On January 23, 2002, William E. Clark executed an agreement and waiver of hearing on behalf of the Respondent, agreeing to the cancellation of permit MB470907 because of subterfuge as defined in § 109.53 of the Code, and waiving a hearing on the claim.
8. Respondent's mixed-beverage-permit MB470907 has been canceled for cause.
9. On March 27, 2002, the TABC gave William E. Clark, as principal, written notice of its intent to forfeit Conduct Surety Bond Number RSB200054.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of 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. ch. 2003 (Vernon 2001).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2001), and § 11.63 of the Code.
4. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. §§ 11.11 and 61.13 of the Code; 16 TEX. ADMIN. CODE § 33.24.

SIGNED December 11, 2002.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 599388

IN RE SPORTZ NET, INC.	§	BEFORE THE
D/B/A SPORTZ NET	§	
PERMIT NO. MB470907	§	
	§	TEXAS ALCOHOLIC
	§	
TAYLOR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-3114)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 7th day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr.. The hearing convened on September 27, 2002, and adjourned on September 27, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 11, 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.

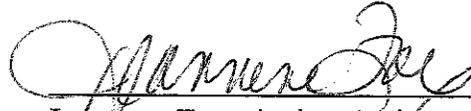
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

This Order will become final and enforceable on January 28, 2003, 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 7th day of January, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

Thomas Wheeler
ATTORNEY FOR RESPONDENT
VIA FAX (915) 677-4195

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Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division
Abilene District Office