

DOCKET NO. 458-03-1450

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

v.

**JERRY CLAUDE HOLDER
D/B/A HOLD-EM-HIGH
TARRANT COUNTY, TEXAS
(TABC CASE NO. 601953)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

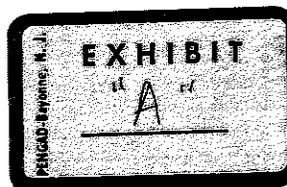
PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this forfeiture action against Jerry Claude Holder d/b/a Hold-Em-High (Respondent). Petitioner sought forfeiture of Respondent's conduct surety bond, alleging Respondent's permits were cancelled for cause. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends forfeiture of the conduct surety bond.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24. The State Office of Administrative Hearings (SOAH) 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, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of jurisdiction in this proceeding.

On December 12, 2002, Petitioner issued its Notice of Hearing to Respondent, Jerry Claude Holder d/b/a Hold-Em-High, at Respondent's address of record, 3913 Wheeler, Fort Worth, Texas 76111-6035 via certified mail, return receipt requested. The notice of hearing was received by Respondent on December 13, 2002, as evidenced by the United States Postal Service Track & Confirm (TABC Exhibit One). On January 10, 2003, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on January 10, 2003.



DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

PROPOSED FINDINGS OF FACT

1. Respondent, Jerry Claude Holder d/b/a Hold-Em-High, holds Mixed Beverage Permit, MB-465391 and Mixed Beverage Late Hours Permit, LB 465392, renewed on January 23, 2002, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permits were issued for the premises located at 3913 Wheeler, Fort Worth, Tarrant County, Texas.
3. Respondent has posted Texas Alcoholic Beverage Commission Surety Bond Number XTM03512, dated January 3, 2000, in the amount of \$5,000.
4. On August 28, 2002, Respondent's permits were cancelled for cause.
5. On September 5, 2002, TABC sent a letter to Respondent providing notice that it was seeking forfeiture of Respondent's conduct surety bond.
6. Within thirty (30) days of receiving that letter, Respondent requested a hearing to determine if its conduct surety bond should be forfeited.
7. On December 12, 2002, Petitioner issued its Notice of Hearing to Respondent for a hearing that was held on January 10, 2003. The notice of hearing was received by Respondent on December 13, 2002.
8. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

10. On January 10, 2003, a hearing convened before ALJ Kelsie McQuieter at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Respondent did not appear and was not represented at the hearing.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24.
2. The State Office of Administrative Hearings (SOAH) 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, under TEX. GOV'T CODE ANN. ch. 2003.
3. Based upon Proposed Findings of Fact Nos. 4 - 6, Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Based upon Proposed Findings of Fact Nos. 4 - 7, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Proposed Finding of Fact No. 8 and TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11(b)(2) and 16 TEX. ADMIN. CODE § 33.24, Respondent's conduct surety bond should be forfeited.

SIGNED this 21st day of January, 2003.



Kelsie L. McQuieter

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 601953

IN RE JERRY CLAUDE HOLDER	§	BEFORE THE
D/B/A HOLD-EM-HIGH	§	
PERMIT NOS. MB465391, LB465392	§	
	§	TEXAS ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-03-1450)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 13th day of February 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge The Honorable Kelsie McQuieter. The hearing convened on January 10, 2003, and adjourned on January 10, 2003. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 21, 2003. 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.

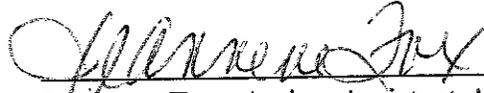
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of \$5,000.00 be **FORFEITED**.

This Order will become final and enforceable on March 7, 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 13th day of February, 2003.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

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

JERRY CLAUDE HOLDER
D/B/A HOLD-EM-HIGH
RESPONDENT
3913 Wheeler
Fort Worth, TX 76111-6035
CERTIFIED MAIL NO. 7001 2510 0003 8688 6278

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Fort Worth District Office