

**DOCKET NO. 458-06-2005**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>JANIE MONTOYA HALL D/B/A LA ANCLA POOL HALL GALVESTON COUNTY, TEXAS (TABC CASE NO. 524589)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Petitioner) seeks forfeiture of the conduct surety bond posted by Janie Montoya Hall d/b/a La Ancla Pool Hall (Respondent) because Respondent’s Wine and Beer Retailer’s Permit was canceled for cause for giving false/misleading statements in an original or renewal application. TABC alleges that the violation has been finally adjudicated. The Respondent appeared and contended that the “Agreement and Waiver” signed by Respondent was done so under duress and pressure asserted by TABC. 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 Administrative Law Judge recommends Petitioner’s proposed action be sustained and Respondent’s conduct surety bond be forfeited.

**I. JURISDICTION AND NOTICE**

Notice was a contested issue. Respondent argues that her correct name is Janie Montoya Rayo and not Janie Montoya Hall per the Notice of Hearing. Respondent, however, agrees that she is the same person that held Permit # BG-610022 with the Texas Alcoholic Beverage Commission under the name Janie Montoya Rayo. The ALJ will take notice that Respondent’s correct name is Janie Montoya Rayo. There were no further contested notice and jurisdiction issues in the proceeding. Therefore, those matters are addressed in the findings of fact and conclusions of law without any further discussion here.

## II. PROCEDURAL HISTORY

The hearing convened on June 23, 2006 and the record was closed the same day. Petitioner was represented by Lindy Hendricks, staff attorney. Respondent appeared and was represented by Al Flores, attorney at law. Administrative Law Judge Carrie McLarty presided. After the hearing, the case was reassigned to ALJ Timothy Horan, who reviewed the record in the case, including the tape of the proceedings and the exhibits admitted into evidence, and who issues this Proposal for Decision.

## III. DISCUSSION

### A. Background

On November 16, 2005, Respondent signed a document entitled “Agreement and Waiver of Hearing ” pertaining to giving a false/misleading statement in original or renewal application in violation of the Texas Alcoholic Beverage Code (the Code). The agreement included the following language “ I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing... The signing of the waiver may result in the forfeiture of any related conduct surety bond.” On November 29, 2005, based on the “Agreement and Waiver of Hearing” documents signed by the Respondent, TABC issued an order which cancelled Respondent’s license effective December 28, 2005.

Petitioner notified Respondent of its intention to seek forfeiture of Respondent’s conduct surety bond based upon this agreement. Respondent subsequently requested this hearing to determine whether Petitioner satisfied all requirements for forfeiture of the bond.

### B. Legal Standards

When a license or permit is canceled, 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 . . . .”

### **C. Evidence and Analysis**

The staff had the burden of proof in this hearing. The staff of TABC (Staff) offered documentary evidence from the TABC files. This exhibit includes copies of the Respondent's permit, violation history, correspondence and conduct surety bond. This exhibit also includes an “Agreement and Waiver of Hearing” executed by the parties on November 16, 2005. The issue to be decided is whether the Respondent was the subject of “final adjudication” of the violation of giving false/misleading statements in original or renewal application resulting in cancellation of Respondent's permit.

Janie Montoya Rayo testified that TABC pressured her to give sign the “Agreement and Waiver” dated November 16, 2005. She stated she signed the documents because she was threatened with jail if she did not.

The Staff takes the position that the Order issued on November 29, 2005 amounts to a final adjudication. The undersigned ALJ agrees with the Staff's position that the order issued on November 29, 2005 cancelling Respondent's permit effective December 28, 2005, became a final adjudication that the Respondent had violated the Code. The “Agreement and Waiver of Hearing” signed by Respondent on November 16, 2005, is clear and states that signing the waiver may result in the forfeiture of any conduct surety bond.

### **D. 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 Administrative Law Judge recommends Respondent's conduct bond be forfeited.

#### IV. PROPOSED FINDINGS OF FACT

1. On November 16, 2005, Respondent, Janie Montoya Rayo d/b/a La Ancla Pool Hall, signed an Agreement and Waiver of Hearing. In this agreement, the Respondent waived its right to a hearing pertaining to a violation of the Texas Alcoholic Beverage Code (Code) and agreed to have their permit canceled.
2. Respondent held Wine and Beer Retailer's Permit No. BG-610022.
3. Staff notified Respondent that it intended to seek forfeiture of Respondent's conduct surety bond based on Petitioner's canceled permit of Respondent's violation of the Texas Alcoholic Beverage Code.
4. Respondent initiated an administrative appeal of Petitioner's stated intention to seek forfeiture of the conduct surety bond, resulting in the June 23, 2006, hearing in this case.

#### V. 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 the above Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met.
5. Based on Conclusion of Law No. 4, Respondent's conduct surety bond should be forfeited.

**SIGNED August 14, 2006.**

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**TIMOTHY J. HORAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**