

State Office of Administrative Hearings

COPY

Shelia Bailey Taylor
Chief Administrative Law Judge

September 14, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

RE: Docket No. 458-07-3195 TABC vs Rhonda Butler d/b/a Rhonda's Roadhouse

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

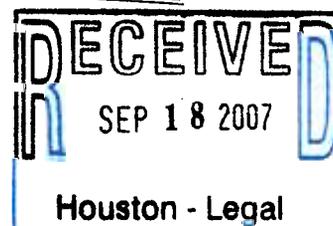
Sincerely,



George Lambright
Administrative Law Judge

GL/ilap
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA MAIL DELIVERY**
✓ Andy B. Hendricks, Texas Alcoholic Beverage Commission, 427 W. 20TH Street, Suite 600, Houston, Tx 77008
VIA MAIL DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA MAIL DELIVERY
Rhonda Butler d/b/a Rhonda's Roadhouse, P O Box 597, Devine, Tx 78016-0597 - **VIA REGULAR MAIL**



10300 Heritage, Suite 250 ♦ San Antonio, Texas 78216
(210) 308-6681 Fax (210) 308-6854
<http://www.soah.state.tx.us>

Regional Office, located at 10300 Heritage Blvd., Suite 250, San Antonio, Texas 78216, on July 27, 2007. Petitioner was represented at the hearing by Lindy B. Hendricks, a TABC Staff Attorney. Respondent appeared *pro se*. During the hearing Petitioner offered and the ALJ admitted into evidence TABC Exhibit No. 1 to support the forfeiture of Respondent's surety bond. Respondent offered no evidence. The hearing concluded and the record closed on that same day.

II. DISCUSSION

A. Background

On March 18, 2005, the Texas Alcoholic Beverage Commission issued Respondent a Wine and Beer Retailer's permit and a Retail Dealer's On-Premise Late Hours license, both under the number BG-575466.²

On June 29, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 4 days, or in lieu of the suspension, a civil penalty in the amount of \$600.00.³

On July 10, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 6 days, or in lieu of the suspension, a civil penalty in the amount of \$900.00.⁴

On February 14, 2007, Petitioner issued a waiver order against Respondent for two violations of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and

² See TABC Exhibit No. 1 at page

³ See TABC Exhibit No. 1 at page 3, Order, docket no. 616065; and at page 6, Agreement and Waiver of Hearing dated June 20, 2006.

⁴ See TABC Exhibit No. 1 at page 8, Order, docket no. 497674; and at page 6, Agreement and Waiver of Hearing dated June 20, 2006.

accepted a suspension for a period of 5 days, or in lieu of the suspension, a civil penalty in the amount of \$750.00.⁵

The aforementioned orders constituted final adjudication of four violations.

B. Legal Standards

Respondent was required to file with the Commission a surety bond in the amount of \$5,000.00.⁶ When a licensee or permittee has committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995, Petitioner may seek forfeiture of the licensee's or permittee's bond.⁷ In this case, four violations were committed, and waiver orders were issued on each violation. The applicable statutory provision states that 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 the Code.⁸

C. 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.

III. FINDINGS OF FACT

⁵See TABC Exhibit No. at page 13, Order, docket no. 557455; and at page 14, Agreement and Waiver of Hearing dated February 4, 2007.

TEX. ALCO. BEV. CODE ANN. § 11.11(a)(1). See TABC Exhibit No. , Respondent's Surety Bond No. 3332123.

¹⁶TEX. ADMIN. CODE ANN. § 33.24(j) [Conduct Surety Bond: Forfeiture of the Bond].

TEX. ALCO. BEV. CODE ANN. § 11(b)(2).

Rhonda Butler d/b/a Rhonda's Roadhouse (Respondent) holds a Wine and Beer Retailer's permit and a Retail Dealer's On-Premise Late Hours license, under number BG-575466, for the premises located at 3854 Hwy 132 North, Lytle, Medina County, Texas.

2. Respondent has posted a Conduct Surety Bond, numbered 3332123, executed on February 25, 2005, in the amount of \$5,000.00.
3. 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. On June 18, 2007, TABC issued a Notice of Hearing to Respondent at her mailing address of record reflected on Respondent's permit and license applications.
5. 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 statement of the matters asserted.
6. On July 27, 2007, a hearing was convened at the SOAH San Antonio Regional Office, located at 10300 Heritage Blvd., Suite 250, San Antonio, Texas 78216.
7. Petitioner was represented at the hearing by Lindy B. Hendricks, TABC Staff Attorney. Respondent appeared *pro se*.
8. On June 29, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 4 days, or in lieu of the suspension, a civil penalty in the amount of \$600.00.
9. On July 10, 2006, Petitioner issued a waiver order against Respondent for one violation of the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 6 days, or in lieu of the suspension, a civil penalty in the amount of \$900.00.
10. On February 14, 2007, Petitioner issued a waiver order against Respondent for two violations fo the Texas Alcoholic Beverage Code, for which Respondent waived her right to a hearing, and accepted a suspension for a period of 5 days, or in lieu of the suspension, a civil penalty in the amount of \$750.00.
10. Respondent has had four final adjudications of the Texas Alcoholic Beverage Code since September 1, 1995.

IV. CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. §§ 5.31 and 5.35.

- 2 The State Office of Administrative Hearings 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and TEX. ALCO. BEV. CODE ANN. § 5.43.
3. Proper and timely notice of hearing was effected on all parties pursuant to TEX. ADMIN. CODE (TAC) §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
- 4 Based on the Findings of Fact, Petitioner established that all requirements for forfeiture of Respondent's conduct surety bond have been met pursuant to TEX. ALCO. BEV. CODE §11.11(b)(2) and TAC §33.24(j).
5. Respondent's conduct surety bond should be forfeited

Signed on this the 13th day of September, 2007.



GEORGE LAMBRIGHT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS