

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
JEROMY LYNN VALADEZ RUDY CRUZ OROSCO D/B/A CLUB RICO Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission’s Staff (Petitioner), brought this disciplinary action against Jeromy Lynn Valadez & Rudy Cruz Orosco dba Club Rico (Respondent), alleging that Respondents’ permit was canceled for cause and therefore violated the Texas Alcoholic Beverage Code (the Code), for which they must forfeit their conduct surety bond, certificate of deposit, or letter of credit. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner proved the allegations by a preponderance of the evidence and recommends that Respondents’ letter of credit be forfeited.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

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

On August 18, 2009, a hearing convened before ALJ B. L. Phillips at the State Office of Administrative Hearings (SOAH), 8212 Itasca, Suite W3, Lubbock, Texas. Petitioner appeared at the hearing by telephone and were represented by Martin Wilson, attorney. Respondents appeared at the hearing *pro se* and were represented by Jeromy Valadcz. After presentation of evidence and argument, the hearing concluded and the record was closed.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may revoke a license or permit, or deny renewal of a license or permit, if the holder violates a provision of the Code or rule of the Commission pursuant to Code §§ 6.01 and 61.71. The Commission's rule found at 16 Texas Administrative Code (TAC) § 33.24(j) governs forfeiture of a conduct surety bond, and provides that the Commission may seek forfeiture when a license or permit has been canceled, or where there has been a final adjudication that a licensee or permittee has committed three violations of the Code since September 1, 1995.

Pursuant to 16 TAC § 33.25(d), an "MB" license from TABC is a Mixed Beverage permit issued under the Code chapter 28. Code § 11.11 applies to conduct surety instruments required for holders of permits issued under chapter 28. Pursuant to § 11.11, a letter of credit held for conduct surety purposes must provide: (1) the holder of a permit must agree not to violate a state law relating to alcoholic beverage; and (2) the holder must also agree that the amount of the conduct surety instrument shall be paid to the state if the permit is revoked.

III. DISCUSSION AND ANALYSIS

A. Background

On September 7, 2007, the Commission issued a Mixed Beverage Permit, MB-670846, which included a Mixed Beverage Late Hours Permit, to Respondents. Respondents posted a conduct surety bond for \$5,000 as required by sections 11.11 and 61.13 of the Code.

B. Petitioner's and Protestant's Evidence and Contentions

Petitioner presented three exhibits as evidence in the case. Exhibit number 1 is the certified records pertaining to Respondents' permit. The records show that Plains Capital Bank established an irrevocable Letter of Credit No. 3204, for conduct surety purposes, in the amount of \$5,000.00 and in favor of the State of Texas, for Respondents' account. The Letter of Credit

provides: "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the letter of credit shall be paid to the state," and "The condition of the obligation of this letter of credit is such that the permittee or licensee shall faithfully conform to the Texas Alcoholic Beverage Code and Rules of the commission." By Order dated April 9, 2008, the Commission found the Respondents violated the Code §§ 28.06 and 11.68 by knowingly possessing an alcoholic beverage not covered by an invoice and by selling an alcoholic beverage while under suspension, and cancelled Respondent's permit effective April 2, 2008. Petitioner notified Respondents by letter dated October 31, 2008, that the commission intended to seek forfeiture of the full amount of the letter of credit, and Respondents requested a hearing on the forfeiture of the conduct surety bond.

C. Respondent's Evidence and Contentions

Respondents did not present any witnesses or evidence at the hearing.

D. Analysis

After considering the evidence, the ALJ concludes that Petitioner proved that Respondents violated Code provisions relating to alcoholic beverages and that permit number MB-670846 was cancelled for cause. As a result, Respondents' conduct surety bond provides for a forfeiture of the full amount of the letter of credit.

IV. RECOMMENDATION

Having reviewed all the evidence, the ALJ finds that the evidence proved that: (1) Respondents' permit was cancelled for cause; and (2) the criteria for forfeiture of the conduct surety have been satisfied. The ALJ recommends that the conduct surety bond be forfeited and that the full amount of the surety should be remitted to the State.

V. FINDINGS OF FACT

1. On September 7, 2007, the Commission issued a Mixed Beverage Permit, MB-670846, which included a Mixed Beverage Late Hours Permit, to Respondents.
2. Respondents posted a conduct surety bond for \$5,000.00 as required by § 11.11 of the Code.
3. Respondent received proper and timely notice of the hearing from TABC in a notice of hearing dated June 12, 2009.
4. The hearing on the merits convened August 18, 2009, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Texas. The TABC was represented by attorney Martin Wilson. Respondents were represented by Jeromy Valadez. The record closed on the same day.
5. By order dated April 9, 2008, the Commission found that Respondents violated the Code §§ 28.06 and 11.68 by knowingly possessing an alcoholic beverage not covered by an invoice and by selling an alcoholic beverage while under suspension.
6. By that same order, the commission cancelled Respondents' permit effective April 2, 2008.
7. Petitioner notified Respondents by letter dated October 31, 2008, that the commission intended to seek forfeiture of the full amount of the conduct surety bond.
8. Respondents timely requested a hearing on the forfeiture of the conduct surety bond.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) §§ 5.35, 25.04, and 61.71.
2. SOAH has jurisdiction to conduct the hearing in this matter and issue a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2008).
3. Notice of the hearing was provided as required by the TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2008).
4. Based on the Findings of Fact, the Staff proved that the criteria for forfeiture of the conduct surety bond have been satisfied.

5. Based on the foregoing, forfeiture of Respondents' conduct surety bond is warranted.

SIGNED: AUGUST 25th, 2009.

Handwritten signature of B. L. Phillips in blue ink.

B. L. Phillips
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 25, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-09-4247, Re: Rudy Cruz Rosco & Jeromy Lynn Valadez d/b/a Club Rico

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 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in blue ink that reads "B.L. Phillips".

B.L. Phillips
Administrative Law Judge

BLP/vu

Enclosure

xc Martin Wilson, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA MAIL REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL. (with exhibits Nos. 1,2,3 and 1 hearing CDs)
Rudy Cruz Rosco & Jeromy Lynn Valadez, 6108 Avenue P, Lubbock, TX 79412-3608 - VIA REGULAR MAIL

AUG 28 2009