

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
MICHAEL EDWARD SANCHEZ	§	
D/B/A KUNOS	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BG711046	§	
WILLIAMSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-3328)	§	BEVERAGE COMMISSION

**ORDER ADOPTING THE PROPOSAL FOR DECISION**

The above-styled and numbered cause is before the Assistant Administrator, Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

After proper notice was given, this case was heard by Administrative Law Judge Travis Vickery. The hearing convened on the 10<sup>th</sup> day of June, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 17<sup>th</sup> day of June, 2010. The Proposal For Decision 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.

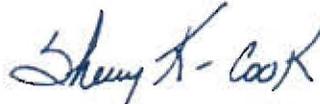
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law made by the Administrative Law Judge as those of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED**, under §11.11 of the Texas Alcoholic Beverage Code and 16 TAC §§33.24, of the Commission Rules, that the conduct surety bond securing the Respondent's compliance with the Code is hereby FORFEITED to the State of Texas.

This Order will become final and enforceable on the 20th day of August, 2010, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** on July 27th, 2010, at Austin, Texas.



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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

**CERTIFICATE OF SERVICE**

I certify that each party or person with an interest in the above matter has been notified of the agency order in the manner indicated below on July 27th, 2010.



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Joan C. Bates  
Texas Alcoholic Beverage Commission  
Legal Division

Honorable Judge Travis Vickery  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
Austin, Texas  
**VIA FACSIMILE: (512) 475-4994**

Michael Edward Sanchez  
**RESPONDENT**  
d/b/a Kunos  
16211 Hillside Dr.  
Austin, TX 78728  
**VIA REGULAR MAIL**

First Indemnity of America Insurance, Co.  
**BANK, SURETY OR BOND PROVIDER**  
119 Littleton Rd.  
Parsippany, NJ 07054  
**VIA REGULAR MAIL**

Judith L. Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Austin District Office

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§ § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>MICHAEL EDWARD SANCHEZ D/B/A KUNOS, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff (Staff) of the Texas Alcoholic Beverage Commission (Petitioner) brought this forfeiture action against Michael Edward Sanchez d/b/a Kunos (Respondent). Petitioner seeks forfeiture of Respondent's conduct surety bond, alleging that Respondent was found to have committed three violations of the Texas Alcoholic Beverage Code (Code) or Commission's rules (Rules) since September 1, 1995. Petitioner also alleged that the violations have been finally adjudicated. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends forfeiture of Respondent's conduct surety bond.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law.

On June 10, 2010, a hearing convened before State Office of Administrative Hearings (SOAH) ALJ Travis Vickery. Staff was represented at the hearing by Judith Kennison, Commission Staff Attorney. Respondent, Michael Edward Sanchez, appeared and represented himself. Evidence and argument were presented. The record closed on June 10, 2010.

## II. DISCUSSION

### A. Applicable Law

Petitioner alleged that (1) Respondent had been issued a permit; (2) Respondent was found to have committed at least three violations of the Code or the Commission's Rules; (3) the violations have been finally adjudicated; and (4) Respondent forfeited the full amount of the conduct surety bond.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law or the Rules relating to alcoholic beverages. The holder must also agree that the amount of the bond shall be paid to the state if the permit is revoked or after final adjudication that determines the holder violated a provision of the Code.

Forfeiture of a conduct surety bond is governed by 16 TEX. ADMIN. CODE (TAC) § 33.24(j), which provides that the Commission may seek forfeiture when a license or permit has been canceled, or when there has been a final adjudication that the licensee or permittee has committed three violations of the Code since September 1, 1995.

### B. Petitioner's Evidence

Petitioner's two exhibits were admitted at the hearing without objection. Exhibit No. 2 included a copy of the permit, violation history, the conduct surety bond, and correspondence. Petitioner issued Wine and Beer Retailer's On Premise Permit BG-711046 to Respondent on December 22, 2008, for the premises located at 109 North Sheppard, Round Rock, Williamson County, Texas. The permit has been continuously renewed.

Respondent posted Commission Conduct Surety Bond Number XTL08533. Respondent executed the bond as principal; First Indemnity of America Insurance Company is the surety. The bond is in the amount of \$5,000 and is payable to the State of Texas.

On August 18, 2009, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claims that, on June 13, 2009, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of the Code, and Respondent permitted a minor to possess or consume alcohol in violation of the Code. Respondent also acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated September 8, 2009, in Docket No. 587727, finding that Respondent violated the sections of the Code as stated and imposing the penalty reflected in the Order.

On February 23, 2009, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claim that, on February 8, 2009, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of the Code. Respondent also acknowledged that the signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable by Commission Order, dated February 26, 2009, in Docket No. 583695, finding that Respondent violated the section of the Code as stated and imposing the penalty reflected in the Order.

### **C. Respondent's Evidence**

Mr. Sanchez testified on behalf of Respondent. Mr. Sanchez acknowledged that the violations occurred. He stated that he tried to follow the Rules, that he was unaware that the minor was underage, and that on one of the occasions the beer being drunk on premises was not a brand that Respondent sold. Mr. Sanchez testified that he is no longer in the business and seeks to avoid further penalty.

### III. ANALYSIS

As the holder of an alcoholic beverage permit, Respondent was required to provide a conduct surety bond, in the amount of \$5,000, payable to Petitioner.<sup>1</sup> Respondent also agreed not to violate the Code or the Rules. Petitioner may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995.<sup>2</sup>

Petitioner provided evidence that Respondent has violated the Code three times. Respondent entered into a Settlement Agreement and Waiver on two occasions regarding the three violations of the Code, all of which occurred after September 1, 1995. Final orders regarding these violations were issued by the Commission.

Mr. Sanchez admitted at the hearing that the violations occurred. He also signed one of the agreements, which included the following language, "This agreement may result in the forfeiture of any conduct surety bond I have on file." This statement put Respondent on notice that there was a possibility that Petitioner would seek forfeiture of the conduct surety bond.

The evidence in the record is sufficient to establish that Respondent has been finally adjudicated of three violations of the Code since September 1, 1995. According to §33.24 (j) of the Rules, forfeiture of the conduct surety bond is the penalty for this violation. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited.

### IV. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (Commission) issued Wine and Beer Retailer's On Premise Permit BG-711046 to Michael Edward Sanchez d/b/a Kunos (Respondent) on December 22, 2008. The permit has been continuously renewed.

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<sup>1</sup> Code § 11.11.

<sup>2</sup> 16 TAC § 33.24(j).

2. Respondent's premise is located at 109 North Sheppard, Round Rock, Williamson County, Texas.
3. Respondent posted Commission Conduct Surety Bond Number XTL08533 (bond). Respondent executed the bond as principal; First Indemnity of America Insurance Company is the surety. The bond is in the amount of \$5,000 and is payable to the State of Texas.
4. On August 18, 2009, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Texas Alcoholic Beverage Code (Code). Respondent agreed to waive its right to a hearing to contest Petitioner's claims that, on June 13, 2009, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of the Code, and Respondent permitted a minor to possess or consume alcohol in violation of the Code.
5. The Settlement Agreement and Waiver included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
6. The violations were adjudicated against Respondent by Commission Order, dated September 8, 2009, in Docket No. 587727, finding that Respondent violated the sections of the Code as stated and imposing the penalty reflected in the Commission Order.
7. On February 23, 2009, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. Respondent agreed to waive its right to a hearing to contest Petitioner's claim that, on February 8, 2009, Respondent permitted consumption of an alcoholic beverage during prohibited hours in violation of the Code.
8. The Settlement Agreement and Waiver included the statement, "This agreement may result in the forfeiture of any conduct surety bond I have on file."
9. The violations were adjudicated against Respondent by Commission Order, dated February 26, 2009, in Docket No. 583695, finding that Respondent violated the section of the Code as stated and imposing the penalty reflected in the Order.
10. Respondent committed three violations of the Code or the Commission's Rules since September 1, 1995.
11. On September 11, 2009, the Commission's Staff (Staff) notified Respondent that it intended to seek forfeiture of Respondent's bond based on the Commission's final adjudication of Respondent's violations of the Code.
12. Respondent requested a hearing to determine whether the bond should be forfeited.
13. On May 18, 2010, the Commission issued its amended notice of hearing to Respondent.

14. 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.
15. The hearing was convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge, Travis Vickery, on June 10, 2010. The Commission was represented by Judith Kennison, Commission Staff Attorney. Respondent appeared and participated in the hearing. The record closed the same day.

### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11, as well as 16 TEX. ADMIN. CODE (TAC) § 33.24.
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings and conclusions, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on the foregoing findings and conclusions, Respondent's conduct surety bond should be forfeited. Code § 11.11 and 16 TAC § 33.24 (j).

**SIGNED June 17, 2010.**

  
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**TRAVIS VICKERY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**