

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
CHRISTINA TURRUBEATES MALDONADO D/B/A TEXAS BRIAR PATCH PERMIT/LICENSE NO(s). MB653193, LB	§	ALCOHOLIC
	§	
	§	
LUBBOCK COUNTY, TEXAS (SOAH DOCKET NO. 458-10-0411)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this the 31st day of December, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B.L. Phillips. The hearing convened on the 19th day of October, 2009 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 20th day of November, 2009. 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.

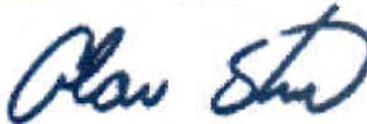
The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings 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 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 your letter of credit is hereby forfeited.

This Order will become **final** and **enforceable** on the 25th day of January, 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 this the 31st day of December, 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

JLK/cb

Administrative Law Judge
Honorable Judge B. L. Phillips
State Office of Administrative Hearings
Lubbock, Texas

VIA FACSIMILE: (806) 792-0149

Christina Turrubeates Maldonado

RESPONDENT

d/b/a Texas Briar Patch

110 E 86th Street

Lubbock, TX 79424

VIA REGULAR MAIL

Judith L. Kennison

ATTORNEY FOR PETITIONER

TABC Legal Section

Licensing Division

Lubbock, District Office

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 10, 2009

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

VIA REGULAR MAIL

RE: Docket No. 458-10-0411, Re: Christina Turrubeates Maldonado d/b/a Texas Briar Patch

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,

B. L. Phillips
Administrative Law Judge

BJ.P/vu

Enclosure

xc ✓ Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with exhibits Nos. 1 & 2 and 1 hearing CDs)
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA MAIL REGULAR MAIL
Christina Turrubeates Maldonado, 110 E. 86th Street, Lubbock, TX 79424 - VIA REGULAR MAIL

Megaron Building
8212 Ithaca, Suite W3 ♦ Lubbock, Texas 79423
(806) 792-0007 Fax (806) 792-0149
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-10-0411

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
CHRISTINA MALDONADO D/B/A TEXAS BRIAR PATCH Respondent	§	
	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission's Staff (Petitioner) brought this disciplinary action against Christina Turrubeates Maldonado dba Texas Briar Patch (Respondent), alleging that Respondent or her agent, servant, or employee had three or more adjudicated violations of the Texas Alcoholic Beverage Code (the Code), for which Respondent must forfeit her 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 Respondent's 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 October 19, 2009, a hearing convened before ALJ B. L. Phillips at the State Office of Administrative Hearings (SOAH), 8212 Ithaca, Suite W3, Lubbock, Texas. Petitioner appeared at the hearing by telephone and was represented by Judith Kennison, attorney. Respondent appeared at the hearing *pro se*. After presentation of evidence and argument, the hearing concluded and the record was closed.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may revoke, 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. It 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, in a letter of credit held for conduct surety purposes, the holder must agree: (1) not to violate a state law relating to alcoholic beverage; and (2) 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 March 2, 2007, the Commission issued a Mixed Beverage Permit, MB-653193, which included a Mixed Beverage Late Hours Permit, to Respondent. Respondents posted a conduct surety bond for \$5,000 as required by §§ 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 notice of hearing sent to Respondent on September 22, 2009. Exhibit number 2 is the certified record pertaining to Respondent's permit. The records show that Plains Capital Bank established irrevocable Letter of Credit No. 3119 for conduct surety purposes, in the amount of \$5,000 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 13, 2009, the Commission found the Respondent violated the Code by being indebted to the State for a tax, fee, or penalty, and Respondent signed a Settlement Agreement and Waiver for this violation accepting a one-day suspension or payment of a \$300 fine. By Order dated January 13, 2009, the Commission found the Respondent violated the Code by committing a place or manner violation for gambling on December 20, 2008, and Respondent signed a Settlement Agreement and Waiver for this violation accepting an eight-day suspension or payment of a \$ 2,400 fine. By Order dated October 14, 2008, the Commission found the Respondent violated the Code by committing a place or manner violation for gambling on September 19, 2008, and Respondent signed a Settlement Agreement and Waiver for this violation accepting an eight-day suspension or payment of a \$ 2,400 fine. Petitioner notified Respondent by letter dated May 11, 2009, that the Commission intended to seek forfeiture of the full amount of the letter of credit, and Respondent requested a hearing on the forfeiture of the conduct surety bond.

C. Respondent's Evidence and Contentions

Respondent testified that she did not receive notice of the tax delinquency which was the subject of the April 13, 2009 Commission order; however, she did not deny that she signed a Settlement Agreement and Waiver for this alleged violation. Regarding the two alleged gambling violations, Respondent testified that they were not conducting gambling operations on the licensed premises. Again, she did not deny signing Settlement Agreements and Waivers for both alleged violations.

D. Analysis

After considering the evidence, the ALJ concludes that Petitioner proved that Respondent violated Code provisions relating to alcoholic beverages as set forth above. As a result, Respondent's 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 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 of Texas.

V. FINDINGS OF FACT

1. On March 2, 2007, the Texas Alcoholic Beverage Commission (Commission or TABC) issued a Mixed Beverage Permit, MB-653193, which included a Mixed Beverage Late Hours Permit, to Respondent.
2. Respondents posted a conduct surety bond for \$5,000.00 as required by § 11.11 of the Texas Alcoholic Beverage Code (Code).
3. Respondent received proper and timely notice of the hearing from TABC in a notice of hearing dated September 22, 2009.
4. The hearing on the merits convened October 19, 2009, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Texas. The TABC's staff was represented by attorney Judith Kennison. Respondent appeared *pro se*. The record closed on the same day.
5. By order dated April 13, 2009, the Commission found that Respondent violated the Code being indebted to the State for a tax, fee, or penalty, and Respondent signed a Settlement Agreement and Waiver for this violation accepting a one-day suspension or payment of a \$ 300 fine.

6. By orders dated January 13, 2009, and October 14, 2008, the Commission found that Respondent violated the Code by committing a place or manner violation for gambling, and Respondent signed Settlement Agreements and Waivers for these two violations accepting separate eight-day suspensions or payment of a \$ 2,400 fine.
7. Petitioner notified Respondents by letter dated May 11, 2009, that the Commission intended to seek forfeiture of the full amount of the conduct surety bond.
8. Respondent 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 Respondent's conduct surety bond is warranted.

SIGNED: NOVEMBER 10th, 2009.



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