

DOCKET NO. 597685

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
DRINX ENTERTAINMENT INC. D/B/A SHARKY'S MACHINE, Respondent	§	ALCOHOLIC
	§	
PERMITS NO. MB740080, LB	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-11-1880)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this **16th** day of **June**, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Timothy Horan presiding. The hearing convened on March 4, 2011 and the SOAH record closed the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 15, 2011. 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 of the Administrative Law Judge that 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 motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that Conduct Surety Bond No. 1074989 is hereby **FORFEITED**.

This Order will become final and enforceable on the **11th** day of **July**, 2011, unless a Motion for Rehearing is filed **before** that date.

SIGNED this the **16th** day of **June**, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the **16th** day of **June**, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Drinx Entertainment Inc.
d/b/a Sharky's Machine
RESPONDENT
5222 Barker Cypress, Suite 170
Houston, Texas 77084
VIA REGULAR MAIL

Shelia Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division

TABC Licensing Division

Lt. Marc Decatur
TABC Houston District Office

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

APR 18 2011

**TABC HOUSTON
LEGAL**

April 15, 2011

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

VIA REGULAR MAIL

**RE: Docket No. 458-11-1880; Texas Alcoholic Beverage Commission vs. Drinx
Entertainment Inc. d/b/a Sharky's Machine**

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 § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Horan", with a long horizontal flourish extending to the right.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX
77008- **VIA REGULAR MAIL** (with Certified Evidentiary Record and 1 hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX
78731- **VIA REGULAR MAIL**
Drinx Entertainment Inc. d/b/a Sharky's Machine, Shawn Lokhanowala, Respondent, 5222 Barker Cypress, Suite
170, Houston, Texas 77084 -**VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

II. DISCUSSION

A. Applicable Law

The holder of a retail dealer's permit must provide the TABC with a \$5,000 surety bond conditioned on the holder's conformance with alcoholic beverage law. TEX. ALCO. BEV. CODE ANN. § 11.11. The bond may be forfeited if the licensee has been finally adjudicated of three violations of the Code since September 1, 1995, and TABC notifies the licensee in writing of its intent to seek forfeiture of the bond. 16 TEX. ADMIN CODE § 33.24(j).

B. Staff's Evidence

Staff presented a Waiver Order and a Settlement Agreement and Waiver of Hearing for past enforcement actions by TABC against Respondent. By order dated October 5, 2010, TABC found that Respondent violated the Code by:

1. Possessing distilled spirits w/o local Dist. Stamp; and (b) waived hearing on the matter.
2. Having empty spirit bottles w/unmutilated LD stamp; and (b) waived hearing on the matter.
3. Possessing alcoholic beverages unfit for consumption; and (b) waived hearing on the matter.
4. Failing to post required sign; and (b) waived hearing on the matter.

By letter dated November 1, 2010, TABC notified Respondent that it intended to seek forfeiture of the full amount of conduct surety bond No. 1074989. Respondent requested a hearing on the bond forfeiture.

C. Respondent's Evidence

Respondent did not present any evidence at the hearing.

D. Analysis, Conclusion, and Recommendation

Conduct surety bonds are posted by TABC license and permit holders to encourage compliance with provisions of the Code and the TABC Rules. Staff argues that Respondent had committed three violations of the Code and Rules since September 1, 1995 and that as a matter of law the conduct surety bond is now subject to forfeiture. Respondent argues that he was not aware of his options when he signed the settlement agreement and waiver because he could not afford an attorney.

Respondent chose to waive the right to a contested hearing on, and admitted to, the four violations. The language of the settlement agreement and waiver state that Respondent understood that the violations would become part of the violation history and a forfeiture of any conduct surety bond may result.

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. The evidence shows that Respondent posted a conduct surety bond in favor of the TABC, as was required. Respondent was finally adjudicated of three or more violations of the Code or Rules on October 5, 2010, by the execution of a Settlement Agreement and Waiver of Hearing on those violations. Staff notified Respondent in writing of the intent to seek forfeiture of the bond as authorized by 16 TEX. ADMIN. CODE § 33.24(j). Therefore, Respondent's conduct surety bond should be forfeited.

III. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued a Mixed Beverage Permit, which includes the Mixed Beverage Late Hours Permit, to Drinx Entertainment Inc. d/b/a Sharky's Machine on January 8, 2010. The permit number is MB-740080.

2. Capital One NA issued the conduct surety bond to Respondent in the amount of \$5,000.00.
3. The conduct surety bond 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 certificate of deposit shall be paid to the state."
4. On October 5, 2010, a Waiver Order was issued by TABC that Respondent violated the Code by;
 - a. Possessing distilled spirits w/o local Dist. Stamp,
 - b. Having empty spirit bottles w/unmutilated LD stamp,
 - c. Possessing alcoholic beverages unfit for consumption, and,
 - d. Failing to post required sign.Respondent waived hearings on these matters.
5. The Settlement and Waiver of Hearing included the statement, "this agreement may result in the forfeiture of any conduct surety bond I have on file."
6. Respondent committed three or more violations of the Code since September 1, 1995.
7. On November 1, 2010, the Staff of TABC (Staff) sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
8. Respondent requested a hearing on this matter.
9. On January 5, 2011, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice to the parties contained the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
10. The hearing in this matter convened on March 4, 2011 before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Shelia A. Lindsey, staff attorney, represented TABC at the hearing. Shawn Lokhanowala, owner, appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.11.
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. 2001.

3. Respondent received notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE § 2001.051 and 1 TEX. ADMIN. CODE ch. 155.
4. Based on the findings of fact and conclusions of law, Respondent's conduct surety bond No. 1074989 should be forfeited. TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN CODE § 33.24(j).

SIGNED APRIL 15TH 2011.



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