

State Office of Administrative Hearings



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Cathleen Parsley
Chief Administrative Law Judge

TABC HOUSTON
LEGAL

June 9, 2011

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

VIA INTERAGENCY MAIL

RE: DOCKET NO. 458-11-3245; TEXAS ALCOHOLIC BEVERAGE COMMISSION V. JESUS CARLOS GARCIA / DON JUANITO'S BAR

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,

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SGR:cm
Enclosure

- xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W. 20th Street, Suite 600, Houston, TX 77008 - VIA INTERAGENCY MAIL
- Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
- Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)
- Fela B. Olivarez, P.O. Box 3538, McAllen, TX 78502 - VIA REGULAR MAIL

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SOAH DOCKET NO. 458-11-3245

TEXAS ALCOHOLIC BEVERAGE COMMISSION

VS.

**JESUS CARLOS GARCIA
D/B/A DON JUANITO'S BAR
PERMIT NOS. MB, LB, AND PE 679676,
HIDALGO COUNTY, TEXAS
(TABC CASE NO. 598513)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-11-3245

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
JESUS CARLOS GARCIA	§	OF
D/B/A DON JUANITO'S BAR	§	
PERMIT NOS. MB, LB, AND PE 679676,	§	
HIDALGO COUNTY, TEXAS	§	
(TABC CASE NO. 598513)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Jesus Carlos Garcia d/b/a Don Juanito's Bar. Staff requests the Respondent's conduct surety bond be forfeited because Respondent has committed at least three violations of the Texas Alcoholic Beverage Code (Code) or the Commission's rules. The Administrative Law Judge (ALJ) agrees that the bond should be forfeited.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. By agreement of the parties, the hearing was conducted by telephone conference call. The ALJ initiated the call on April 25, 2011, from the State Office of Administrative Hearings (SOAH) in Austin, Texas. TABC Staff Attorney Sandra Patton represented the Commission's Staff, and attorney Fela Olivarez represented Respondent. The record closed that day.

II. DISCUSSION

On December 20, 2007, the Commission issued Mixed Beverage Permit MB679676, which included the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, for Respondent's premises located at 10600 Highway 107 East, Edinburg, Texas. The permit has been continuously

renewed. As the holder of an alcoholic beverage permit, Respondent was required to provide a \$5,000 conduct surety bond.¹ Respondent posted Conduct Surety Bond Number 9-16-06-42 in the amount of \$5,000 payable to the State of Texas. The Commission may seek forfeiture of the bond if Respondent is found to have committed three violations of the Code since September 1, 1995.²

On June 19, 2009, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code. Respondent waived his right to a hearing to contest Staff's assertions that on May 29, 2009, he permitted removal of an alcoholic beverage from the licensed premises and permitted a minor to possess or consume alcohol in violation of the Code. Respondent also acknowledged that his signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable on July 1, 2009, in Commission Docket No. 586527.

On October 29, 2010, Respondent signed a Settlement Agreement and Waiver regarding a third violation of the Code. Respondent agreed to waive his right to a hearing to contest Staff's claim that he sold, served, dispensed, or delivered an alcoholic beverage to a minor on April 19, 2009. Respondent also acknowledged that his signing of the waiver could result in the forfeiture of the bond. The Settlement Agreement and Waiver became final and enforceable on November 2, 2010, in Commission Docket No. 586114.

C. Arguments

Respondent argued that he did not realize the violations on May 29, 2009, would be counted as two separate violations. At the time, he discussed this issue with Staff and understood that it would count as one violation. Therefore, he asked that his bond not be forfeited. In the alternative, he asked that he be given six months before being required to post a new bond so that he can save enough money to obtain one.

¹ Code § 11.11.

² 16 TEX. ADMIN CODE (TAC) § 33.24(j).

Staff argued that the law allows no alternative to forfeiture. The waiver orders Respondent signed were clear, and he should have realized the May 29, 2009, waiver included two violations.

III. ANALYSIS

The evidence in the record is sufficient to establish that Respondent has been finally adjudicated of three Code violations since September 1, 1995. According to 16 TAC § 33.24(j), forfeiture of the conduct surety bond is the appropriate penalty for this violation. The Code makes no provision for delaying the time within which one must obtain a bond. Therefore, the ALJ recommends that Respondent's conduct surety bond be forfeited without any conditions on the time within which he must obtain a new bond.

IV. FINDINGS OF FACT

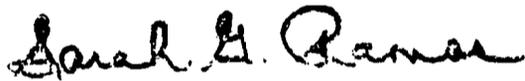
1. On December 20, 2007, the Texas Alcoholic Beverage Commission (Commission) issued Mixed Beverage Permit MB679676, which included a Beverage Cartage Permit and Mixed Beverage Late Hours Permit, to Jesus Carlos Garcia d/b/a Don Juanito's Bar (Respondent) for the premises located at 10600 Highway 107 East, Edinburg, Texas. The permit has been continuously renewed.
2. Respondent posted Conduct Surety Bond Number 9-16-06-42 in the amount of \$5,000, payable to the State of Texas.
3. Respondent has been finally adjudicated of three violations of the Texas Alcoholic Beverage Code (Code):
 - permitting removal of an alcoholic beverage from the licensed premises on May 29, 2009;
 - permitting a minor to possess or consume alcohol on the premises on May 29, 2009; and
 - selling, serving, dispensing or delivering an alcoholic beverage to a minor on April 19, 2009.
4. The Commission's Staff notified Respondent that it intended to seek forfeiture of Respondent's bond based on the Commission's final adjudication of Respondent's three violations of the Code.

5. Respondent requested a hearing to determine whether the bond should be forfeited.
6. The notice of hearing was sent on February 24, 2011, and stated the time, place, and nature of the hearing; legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and matters asserted.
8. The hearing convened on April 25, 2011, by telephone conference call initiated from the State Office of Administrative Hearings (SOAH) in Austin, Texas. TABC Staff Attorney Sandra Patton represented the Commission's Staff, and attorney Fela Olivarez represented Respondent.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Code ch. 5 and § 11.11 and 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 9, 2011.



**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

With this correction, I incorporate the Findings of Fact and Conclusions of Law that are contained in the Proposal for Decision 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.

THEREFORE IT IS ORDERED that Respondent's Conduct Surety Bond No. 9-16-06-42 is **FORFEITED**.

This Order will become final and enforceable on the 21st day of November, 2011, unless a Motion for Rehearing is filed **BEFORE** that date.

SIGNED this the 28th day of October, 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 28th day of October, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Sarah G. Ramos
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State Office of Administrative Hearings
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VIA REGULAR MAIL

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VIA ELECTRONIC MAIL