

DOCKET NO. 610147

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
POLE KATZ SPORTS BAR & GRILL LLC D/B/A POLE KATZ SPORTS BAR & GRILL LLC, Respondent	§	ALCOHOLIC
	§	
PERMITS MB765030, LB	§	
	§	
HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-12-6731)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 10th day of July, 2013, 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 July 13, 2012, and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 5, 2012. 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.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate 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 the Assignment of Certificate of Deposit No. 1242998628 held by Capitol One Bank with Respondent as Assignor, and posted by Respondent in lieu of a conduct surety bond pursuant to Alcoholic Beverage Code §11.11 and 16 Tex. Admin. Code §33.24, be **FORFEITED** to the State of Texas.

This Order will become final and enforceable on the 3rd day of August, 2013, unless a Motion for Rehearing is filed on or before the 2nd day of August, 2013.

SIGNED this the 10th day of July, 2013, at Austin, Texas.



Sherry K-Cook, 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 10th day of July, 2013.



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, TX 77018
VIA FACSIMILE: 512-322-2061

Pole Katz Sports Bar & Grill LLC
d/b/a Pole Katz Sports Bar & Grill LLC
RESPONDENT
1533 W. Alabama, Suite 100
Houston, TX 77006
VIA FIRST CLASS MAIL, CMRRR #70120470000133006657

Clyde W. Burleson
ATTORNEY FOR RESPONDENT
1533 W. Alabama, Suite 100
Houston, TX 77006
VIA FIRST CLASS MAIL, CMRRR # 7012-0470000133006657
AND VIA FACSIMILE: 713-526-3787

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: sandra.patton@tabc.state.tx.us

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 5, 2012

RECEIVED

SEP 07 2012

TABC HOUSTON
LEGAL

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

VIA REGULAR MAIL

RE: SOAH Docket No. 458-12-6731; Texas Alcoholic Beverage Commission vs. Pole Katz Sports Bar & Grill LLC d/b/a Pole Katz Sports Bar & Grill LLC

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 black ink, appearing to read "Timothy Horan", written over a horizontal line.

Timothy Horan
Administrative Law Judge

TH/mr
Enclosure

xc Sandra Patton, Staff Attorney Texas Alcoholic Beverage Commission, 427 w 20TH Street, Suite 600, Houston, TX 77002 - VIA REGULAR MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA REGULAR MAIL (with Certified Evidentiary Record and 1 Hearing CD/s)
Clyde Burleson, Attorney at Law, 1533 W. Alabama, Suite 100, Houston, TX 77006 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-12-6731

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
VS.	§	
	§	
POLE KATZ SPORTS BAR & GRILL	§	OF
LLC	§	
D/B/A POLE KATZ SPORTS BAR &	§	
GRILL LLC	§	
PERMIT NO(s). MB-765030, LB	§	
HARRIS COUNTY, TEXAS	§	
(TABC DOCKET NO. 610147),	§	ADMINISTRATIVE HEARINGS
Respondent		

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Pole Katz Sports Bar & Grill LLC d/b/a Pole Katz Sports Bar & Grill LLC (Respondent). Staff requests that 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) recommends that Respondent's conduct surety bond be forfeited.

I. PROCEDURAL HISTORY

The hearing in this matter convened on July 13, 2012, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Sandra K. Patton, staff attorney, represented TABC at the hearing. Clyde W. Burlison, attorney, represented Respondent. The hearing concluded and the record closed the same day.

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

II. APPLICABLE LAW

The holder of a retail dealer's permit must provide TABC with a \$5,000 surety bond conditioned on the holder's conformance with alcoholic beverage law. Code § 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 (TAC) § 33.24(j).

III. DISCUSSION

On January 7, 2011, TABC issued a Mixed Beverage Permit MB-765030, which included the Mixed Beverage Late Hours Permit, for Respondent's premises located at 2033 Mangum Road, Houston, Harris County, Texas. Respondent posted a Conduct Surety Bond Number 1242998628 in the amount of \$5,000 payable to the State of Texas.

On May 24, 2011, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code. TABC found that Respondent violated the Code by:

1. Place or Manner Prostitution; and (b) waived hearing on the matter.
2. Place and Manner, Misc. and (b) waived hearing on the matter.

On March 14, 2012, Respondent signed a Settlement Agreement and Waiver regarding two additional violations of the Code. TABC found that Respondent violated the Code by:

1. Permitted others to possess a narcotic on the licensed premises; and (b) waived hearing on the matter.
2. Acquired alcoholic beverage for the purpose of resale from another retail permit; and (b) waived hearing on the matter.

By letter dated April 2, 2012, TABC notified Respondent that it intended to seek forfeiture of the full amount of the conduct surety bond. Respondent requested a hearing on the bond forfeiture.

Respondent did not present any evidence at the hearing.

IV. ANALYSIS.

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 or more 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 the violations listed on the Settlement Agreement and Waiver dated May 24, 2011, are vague and not specific violations.

Respondent chose to waive the right to a contested hearing and admitted to the four violations by executing two separate Settlement and Waiver Agreements. The language of each Settlement Agreement and Waiver states that Respondent understood that the violations would become part of the violation history and a forfeiture of any conduct surety bond may result. Respondent clearly signed the waivers on all four violations and TABC entered final waiver orders. Respondent did not offer any evidence that the TABC waiver orders were appealed or contested. This is not the proper forum to do so now.

The evidence in the record is sufficient to establish that Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995. Staff notified Respondent in writing of the intent to seek forfeiture of the bond as authorized by 16 TAC § 33.24(j).

Staff met its burden of proof for forfeiture of Respondent's conduct surety bond. Therefore, Respondent's conduct surety bond should be forfeited.

V. FINDINGS OF FACT

1. The Texas Alcoholic Beverage Commission (TABC) issued a Mixed Beverage Permit, which includes the Mixed Beverage Late Hours Permit, to Pole Katz Sports Bar & Grill LLC d/b/a Pole Katz Sports Bar & Grill LLC (Respondent). The permit number is MB-765030.
2. Respondent posted a Conduct Surety Bond Number 1242998628 in the amount of \$5,000 payable to the State of Texas.

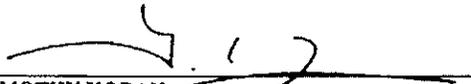
3. The conduct surety bond provides: "If the holder of this permit or license violates a law of the state relating to alcoholic beverages or a rule of the commission, the amount of the certificate of deposit shall be paid to the state."
4. On May 24, 2011, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code, which occurred on January 18, 2011.
5. On March 14, 2012, Respondent signed a Settlement Agreement and Waiver regarding two violations of the Code, which occurred on June 3, 2011.
6. Each Settlement Agreement and Waiver included the statement, "this agreement may result in the forfeiture of any conduct surety bond on file."
7. Respondent has been finally adjudicated of three or more violations of the Code since September 1, 1995.
8. On April 2, 2012, TABC Staff sent Respondent written notice of the intent to seek forfeiture of the conduct surety bond.
9. Respondent requested a hearing on this matter.
10. On June 15, 2012, 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.
11. The hearing in this matter convened on July 13, 2012, before State Office of Administrative Hearings (SOAH) ALJ Timothy Horan. Sandra K. Patton, staff attorney, represented TABC at the hearing. Clyde Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Code ch. 5 and § 11.11, as well as 16 TAC § 33.24(j).
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 ch. 2003.
3. Respondent received notice of the proceedings and hearing, pursuant to Tex. Gov't Code § 2001.051 and 2001.052.

4. Based on the foregoing findings of and conclusions, Respondent has committed three violations of the Code since September 1, 1995.
5. Based on the findings of fact and conclusions of law, Respondent's conduct surety bond should be forfeited. Code §11.11 and 16 TAC § 33.24(j).

SIGNED SEPTEMBER 5, 2012.



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