

DOCKET NO. 61112

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
CHILLIN & GRILLIN LLC D/B/A SPARKY'S LLC, Respondent	§	ALCOHOLIC
	§	
	§	
PERMIT MB311691	§	
	§	
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-12-7873)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 10th day of July, 2013, the above-styled and numbered cause.

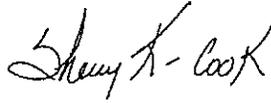
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge John H. Beeler presiding. The hearing convened on August 29, 2012, and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 25, 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. 004-334478 held by Frost 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.



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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.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

John H. Beeler  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, TX 78701  
*VIA FACSIMILE: 512-322-2061*

Chillin & Grillin LLC  
d/b/a Sparky's  
**RESPONDENT**  
1946 SW Military  
San Antonio, TX 78221-1474  
*VIA FIRST CLASS MAIL, CMRRR #70120470000133007180*

Judith Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
*VIA E-MAIL: [judith.kennison@tabc.state.tx.us](mailto:judith.kennison@tabc.state.tx.us)*

SOAH DOCKET NO. 458-12-7873  
TABC CASE NO. 611112

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§ § § § § § § § § § §	BEFORE THE STATE OFFICE
V.		
CHILLIN & GRILLIN, LLC, D/B/A SPARKY'S PERMIT NO. MB311691, BEXAR COUNTY, TEXAS, Respondent		OF          ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Texas Alcoholic Beverage Commission (TABC) alleges that Chillin & Grillin, LLC, d/b/a Sparky's (Respondent), has three or more adjudicated violations of the Texas Alcoholic Beverage Code (Code) or the TABC rules and seeks forfeiture of Respondent's conduct surety bond. The Administrative Law Judge (ALJ) recommends that Respondent's conduct surety bond be forfeited.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened by telephone on August 29, 2012, before ALJ John H. Beeler. Judith Kennison, TABC Legal Services Division attorney, represented Staff, and part-owner James Krig represented Respondent. The hearing concluded and the record closed that same day.

Mr. Krig questioned the manner in which he was notified of the hearing, but did not assert that notice was improper. There are no contested issues of jurisdiction. Therefore, notice and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion.

## II. DISCUSSION

### A. Applicable Law

Section 11.11 of the Code requires the holder of a retail dealer's permit to provide TABC with a surety bond conditioned on the holder's conformance with alcoholic beverage law. The bond may be forfeited if the licensee has had three final adjudications of violations of the Code or the TABC rules.<sup>1</sup>

### B. Relevant Facts

On November 29, 2011, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. TABC found that Respondent violated the Code by possessing an empty alcohol bottle with an unmutilated stamp.

On February 1, 2012, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. TABC found that Respondent violated the Code by selling alcohol while under suspension.

On April 30, 2012, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code. TABC found that Respondent violated the Code by permitting consumption of alcohol during prohibited hours.

By letter dated May 23, 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.

### C. Respondent's Argument

Mr. Krig argues that he was not aware of the first violation set out above because another of the owners had been in charge of the bar at the time. The second violation, he testified, was the result of a misunderstanding that the premises were under suspension at the time alcohol was

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<sup>1</sup> 16 Tex Admin. Code § 33.24(j).

sold. Finally, Mr. Krig stated that the consumption during prohibited hours violation was not noticed by the employees of the premises.

#### **D. 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 TABC Rules since September 1, 1995, and that, as a matter of law, the conduct surety bond is now subject to forfeiture. Respondent's argument is set out above.

Respondent chose to waive the right to contested hearings and admitted to the three violations by executing 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 the violations and TABC entered final waiver orders. Respondent did not offer any evidence that the TABC waiver orders were appealed or contested.

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 Tex. Admin. Code § 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.

### **III. FINDINGS OF FACT**

1. The Texas Alcoholic Beverage Commission (TABC) issued Chillin & Grillin, LLC, d/b/a Sparky's (Respondent), Permit No. MB311691 for its licensed premises.
2. On February 29, 2012, Frost National Bank issued a Conduct Surety Bond for the licensed premises.

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 bond shall be paid to the state...."
4. On November 29, 2011, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Texas Alcoholic Beverage Code (Code), which occurred on October 21, 2011.
5. On February 1, 2012, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code, which occurred on January 6, 2012.
6. On April 30, 2012, Respondent signed a Settlement Agreement and Waiver regarding a violation of the Code, which occurred on April 30, 2012.
7. On May 23, 2012, the staff of TABC (Staff) sent Respondent written notice of its intent to seek forfeiture of the conduct surety bond.
8. Respondent requested a hearing on this matter.
9. On August 16, 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.
10. The hearing convened on August 29, 2012. Both parties appeared by telephone. Judith Kennison, TABC Legal Services Division attorney, represented TABC at the hearing, and part-owner James Krig represented Respondent. The hearing concluded and the record closed that same day.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Code 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 ch. 2003.
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. S914-4091 should be forfeited. Code § 11.11 and 16 Tex. Admin. Code § 33.24(j).

SIGNED October 25, 2012.



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**JOHN H. BEELER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**