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DOCKET NO. 606917

IN RE INNER CITY MANAGEMENT, INC.	§	BEFORE THE
D/B/A CLUB DMX	§	
PERMIT/LICENSE NOS. MB469913,	§	
LB469914, PE469915	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-3670)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 24th day of October, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on July 29, 2005, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 26, 2005. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions were filed in this cause.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, 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.

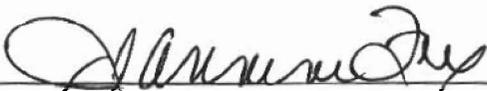
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondents permits and/or licenses be **GRANTED**.

This Order will become final and enforceable on November 14, 2005, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on this 24th day of October, 2005, at Austin, Texas.

On Behalf of the Administrator,


Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Jerry Van Hamme
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Daniel Perez
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Inner City Management Inc.
d/b/a Club DMX
RESPONDENT
10733 Spangler Road
Dallas, Texas 75220
CERTIFIED MAIL/RRR NO. 7005 0390 0005 7550 4778

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

TG -

SOAH DOCKET NO. 458-05-3670

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Protestant	§	
	§	
V.	§	
	§	
INNER CITY MANAGEMENT, INC.	§	
d/b/a CLUB DMX	§	OF
Respondent	§	
	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 606917)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Staff) brought this protest action against Inner City Management, Inc., d/b/a Club DMX, (Respondent), 10733 Spangler Road, Dallas, Dallas County, Texas, asserting Respondent's permits should not be renewed because Respondent failed to operate its premises in a peaceful and safe manner and that its reputation for being a peaceable, law-abiding citizen in the community is bad. The Administrative Law Judge (ALJ) finds that Staff has not proven the allegations and recommends that Respondent's renewal permits should be granted.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On July 29, 2005, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy Griffith, attorney. Respondent was represented by Daniel C. Perez, attorney. The record



was closed on that date.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Texas Alcoholic Beverage Commission (Commission) may refuse to issue a renewal permit if it has reasonable grounds to believe that the place or manner in which Respondent may conduct its business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, or because Respondent is not of good moral character or because Respondent's reputation for being a peaceable, law-abiding citizen in the community where Respondent resides is bad. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6) & (8).

III. EVIDENCE

A. Staff's Evidence and Contentions

Sgt. Chris Hamilton, a Staff enforcement agent, testified that in his capacity as a supervisor he reviewed an incident report prepared by Agent Gage, a former Staff agent, regarding Respondent's premises. The report showed that a total of 212 "calls for service" were made to the Dallas Police Department (DPD) from Respondent's premises requesting police assistance. In the report, Agent Gage categorized 129 of the 212 calls for service by criminal offense, ranging from motor vehicle burglary to robbery. The remaining 83 of the 212 calls were unaccounted for in the report and not categorized. Of the 212 calls for service, DPD generated Offense/Incident reports in 89 cases and made seven arrests. Eighteen of the Offense/Incident reports related to alleged assaults against persons on Respondent's premises.¹

¹Although evidence was submitted showing that 212 calls for service were made, the basis for the protest, according to Sgt. Hamilton's testimony at the hearing, was 129 calls for service:

Staff: And how did you find out whether or not you needed to investigate this location?

Although Agent Gage concluded in his report that it was “unclear if sufficient facts exist to warrant a protest,” Sgt. Hamilton testified he believed the number of calls, and specifically the number of calls related to alleged assaults against persons, was excessive and therefore justified filing a protest. However, Sgt. Hamilton did not know if the number of calls from Respondent’s premises was greater than the average number of calls for service from any other licensed premise of a comparable size as Respondent’s, nor did he know what, if any, standards or objective criteria were used by Staff for determining what constitutes an “excessive” number of calls.

Staff also offered into evidence an Agreed Final Judgment and Permanent Injunction between G.T. Management, Inc. and the City of Dallas dated October 21, 2002. G.T. Management, Inc. owns the property where Respondent’s premises is located, and, according to paragraph 2.b) of the Injunction, operated Club DMX on October 21, 2002. The injunction sets forth, among other things, security measures G.T. Management, Inc. was to implement at Respondent’s premises between October 21, 2002, and March 1, 2003. In addition, Staff offered into evidence a 70-page exhibit of DPD Offense/Incident Reports dating from March 2002 to May 2003.

B. Respondent’s Evidence and Contentions

1. Beverly Bray

Beverly Bray, office manager and bookkeeper for Respondent, testified that in 2001

Hamilton:	Because the agents who work with us are aware of all the problems going on at this address.
Staff:	More so than other...
Hamilton:	More so than other locations.
Staff:	And these 129 calls over that time period, that is what caused this protest to be filed?
Hamilton:	Yes, sir.

the City of Dallas filed an injunction against G.T. Management, Inc. following the murder of a DPD officer on Respondent's premises. The officer was working security for Respondent and was killed responding to a fight in Respondent's parking lot. She further testified G.T. Management, Inc. presently owns the property where Respondent is located.

2. Kevin Schoch

Kevin Schoch, a Dallas County Constable, testified he worked security for Respondent from December 2003 to December 2004.²

3. Elgin Karvel Allen

Mr. Allen testified he was in charge of Respondent's security in June 2002 through June 2003. He stated that Respondent is a large club, and he is familiar with the number, location, and duties of Respondent's security employees, as well as the location and amount of parking on Respondent's premises. He also testified that Respondent met all of its obligations under the terms of the Agreed Final Judgment and Permanent Injunction of October 21, 2002, between G.T. Management, Inc. and the City of Dallas.

IV. ANALYSIS

The evidence shows DPD received 212 calls for service from Respondent's premises prior to

²Pursuant to the notice of hearing, the relevant dates of the calls for service to DPD in the instant case were prior to July 10, 2003. Mr. Schoch began work for Respondent in December 2003. Staff objected at the close of Mr. Schoch's testimony that his testimony was irrelevant. The objection was sustained. No weight has therefore been given this witness' testimony.

July 10, 2003. Of this number, 129 were identified as actual offenses, and eighteen of these were related to alleged assaults against persons. Staff filed this protest action alleging that 129 calls for service to the police department is excessive and thereby shows that reasonable grounds exists to believe that the place or manner in which Respondent conducted its business warrants the refusal to renew Respondent's permits based on the general welfare, health, peace, morals, and safety of the people; on the public sense of decency; because Respondent is not of good moral character; and because Respondent's reputation for being a peaceable, law-abiding citizen in the community where Respondent resides is bad.

The evidence, however, does not show that 129 calls for service, including 18 calls for alleged assaults, is an excessive number for a licensed premise of Respondent's size. No evidence was presented showing what standards or objective criteria were used by Staff for determining what an excessive number of calls for service is, nor was any evidence offered showing the average number of calls received by DPD from any other licensed premises of a comparable size. As Sgt. Hamilton testified:

ALJ: Does the Commission have some kind of standards and objective criteria by which they insure whether or not there have been too many calls for service at a particular location at a particular time?

Hamilton: That is why we forward it to Legal.

ALJ: Would the answer then be, "No"?

Hamilton: To be honest I don't know, there, exactly sure, in, in Legal Department.

ALJ: I guess my question is: Do I know based on this information that 129 calls for service is excessive, such that it would warrant the granting of the protest?

Hamilton: In and of itself, you would probably not know.

ALJ: And how would I find that out?

Hamilton: Obtaining information on other licensed locations.

ALJ: And do you have that information with you?

Hamilton: No sir, I do not.

In addition, the criteria Staff does use for making its decisions is not persuasive. As Sgt. Hamilton testified:

ALJ: What I'm trying to get a handle on: I have the impression that part of the concern by the Commission is related to statements being made by patrol officers.... Is that a fair statement?

Hamilton: The agents and myself get information, get complaints, unofficial complaints that we don't document or anything. This is an agency [DPD] we work with hand-in-hand, and they will come up and say, "We're having problems with this club," or "We're having problems with that club," or, in passing, saying, "Week after week we keep going to a fight at this club, can you do something about it?" And that's when we start looking into how many calls are going out there, whether an administrative case would be warranted for a breach of the peace held against a licensed establishment or not....

ALJ: And that would be based in part on the "word on the street;" the feelings of officers; a lot of ... ephemeral, subjective, non-quantitative, and certainly not verifiable information. Is that a fair statement?

Hamilton: Yes, sir.

To the extent Staff based its protest on the allegation that an excessive number of calls for service came from Respondent's premise, including an excessive number of calls related to alleged assaults, Staff, by failing to show what, if any, objective criteria or standards were used for determining

what constitutes an “excessive” number of calls for service, has failed to show that the number of calls received from Respondent’s premises was excessive. Furthermore, by failing to show any evidence concerning the number of calls for service made from other licensed premises of a comparable size over a comparable period of time, Staff has further failed to show that the number of calls received by DPD from Respondent’s premises was excessive. In addition, to the extent Staff based its protest on the “word on the street” and unofficial, ephemeral, subjective, non-quantitative, and non-verifiable feelings of DPD officers, Staff’s contention is neither persuasive nor supported by a preponderance of evidence on the record.

Staff also argues that the injunction filed by the City of Dallas against G.T. Management, Inc. and the subsequent Agreed Final Judgment and Permanent Injunction between these parties dated October 21, 2002, was evidence that Respondent had failed to operate its premises in a peaceful and safe manner and that its reputation for being a peaceable, law-abiding citizen in the community was bad. However, the last petition filed by the City of Dallas – Plaintiff’s Second Amended Petition, filed September 16, 2002 – merely alleges that G.T. Management, Inc. had committed six violations of the Dallas City Code dealing with public health or fire safety. In particular, it alleged G.T. Management, Inc. had gas-fueled equipment stored upstairs, damaged fire-resistive construction, address numbers missing from its building, an untested fire alarm system, improperly screened garbage dumpsters, and had not filed plans for a new fire alarm system with the Dallas Fire Department. None of these allegations were set forth in the notice of hearing in the instant case as grounds for Staff’s protest, nor was any evidence presented showing that these allegations were true or, if true, of such a nature as to warrant non-renewal of Respondent’s permits.

Furthermore, nowhere in the Agreed Final Judgment and Permanent Injunction does G.T. Management, Inc. admit having committed any of the alleged violations, or, for that matter, admit having committed any violations at all. Although the injunction lists, among other things, security measures to be taken at Respondent’s premises by G.T. Management, Inc. from October 21, 2002, to March 1, 2003, the injunction does not, on its face, support Staff’s contention that Respondent failed

- to operate its premises in a peaceful and safe manner and that its reputation for being a peaceable, law-abiding citizen in the community was bad. Accordingly, Staff has failed to show, by a preponderance of the evidence, that the place or manner in which Respondent has conducted its licensed premises warrants the non-renewal of Respondent's permits.

V. RECOMMENDATION

The ALJ recommends that Respondent's renewal permits for Inner City Management, Inc., d/b/a Club DMX, 10733 Spangler Road, Dallas County, Texas, be granted.

VI. FINDINGS OF FACT

1. On June 6, 2000, the Texas Alcoholic Beverage Commission Staff (Staff) issued a Mixed Beverage Permit, MB-469913, a Mixed Beverage Late Hours Permit, LB-469914, and a Beverage Cartage Permit, PE-469915, to Inner City Management Inc., d/b/a Club DMX (Respondent), 10733 Spangler Road, Dallas, Dallas County, Texas.
2. On October 21, 2002, G.T. Management, Inc. operated Club DMX. On that date, G.T. Management, Inc. entered into an Agreed Final Judgment and Permanent Injunction with the City of Dallas whereby G.T. Management, Inc. agreed to implement certain security measures at Respondent's premises from October 21, 2002, to March 1, 2003.
3. During the relevant time period prior to July 10, 2003, a total of 212 "calls for service" to the Dallas Police Department (DPD) were made from Respondent's location. Of these 212 calls for service, 129 constituted identifiable offenses. Eighty-nine of the calls resulted in DPD Offense/Incident reports being generated. Seven resulted in arrests. Eighteen of the Offense/Incident reports related to alleged assaults against persons.
4. Staff has not established objective criteria or standards for determining what constitutes an "excessive" number of calls for service from a given licensed premise.
5. Staff has not established that the number of calls for service from Respondent's premises

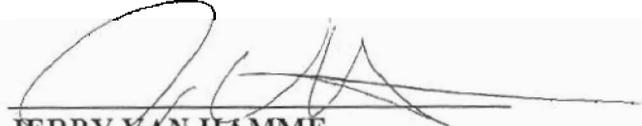
during this time was greater than the number of calls for service from any other comparably-sized licensed establishment during this time.

6. Staff relied, in part, on unofficial, ephemeral, subjective, non-quantitative, and non-verifiable feelings of DPD officers and the "word on the street" in determining Respondent had an excessive number of calls for service.
7. A Notice of Protest Hearing dated January 25, 2005, was issued by Staff notifying Respondent that it was protesting Respondent's renewal of its permits, and informing Respondent of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
8. On July 29, 2005, a public hearing was held before Jerry Van Hamme, ALJ, at the offices of the State Office of Administrative Hearings, Dallas, Dallas County, Texas. Staff was represented by Timothy Griffith, attorney. Respondent was represented by Daniel C. Perez, attorney. The record was closed on that date.

VII. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8) & (6).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
4. Staff did not prove that the place or manner in which Respondent conducts its business warrants the non-renewal of Respondent's permits.
5. Respondent's permits should be renewed.

SIGNED September 26, 2005.



JERRY VAN HAMME
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION
CASE: TABC vs. Inner City Management, Inc. D/B/A Club DMX
DOCKET NUMBER: 458-05-3670
AGENCY CASE NO: 606917

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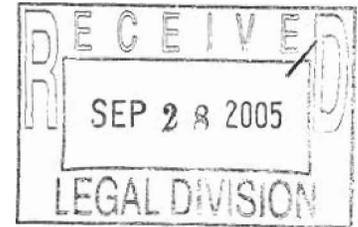
as of September 26, 2005

State Office of Administrative Hearings

10-12



Shelia Bailey Taylor
Chief Administrative Law Judge



September 26, 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-05-3670
TABC VS. INNER CITY MANAGEMENT, INC.,
D/B/A CLUB DMX

Dear Ms. Fox:

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,

Jerry Van Hamme
Administrative Law Judge

JVH/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax;
Daniel Perez, Respondent's Attorney, Via Fax