

**DOCKET NO. 616023**

|                                  |   |                     |
|----------------------------------|---|---------------------|
| A K M INC.                       | § | BEFORE THE TEXAS    |
| D/B/A GIGI'S                     | § |                     |
| PERMIT NO(s). MB243203, LB243204 | § | ALCOHOLIC           |
|                                  | § |                     |
| HARRIS COUNTY, TEXAS             | § |                     |
| (TABC CASE NO. 458-06-1467)      | § | BEVERAGE COMMISSION |

**ORDER**

**CAME ON FOR CONSIDERATION** this 10<sup>th</sup> day of July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Carrie L. McLarty. The hearing convened on April 28, 2006 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 16, 2006. The Proposal For Decision, attached 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. 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 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 the application for the renewal of a Mixed Beverage Permit and Mixed Beverage Late Hours Permit (MB243203 & LB243204) is **GRANTED**.

This Order will become final and enforceable on July 31, 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** on the 10<sup>th</sup> day of July 2006.

On Behalf of the Administrator,

  
Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

RMP/aa

A K M Inc.

**RESPONDENT**

d/b/a Gigi's

11150 Nw Fwy

Houston, Texas 77092

**CERTIFIED MAIL NO. 7005 3110 0000 6409 1342**

Nelson Hensley

**ATTORNEY FOR RESPONDENT**

24 Greenway Plaza, Suite 1822

Houston, Texas 77046

**VIA FACSIMILE: (713) 850-8538**

Texas State Representative

Jessica Farrar

**PROTESTANT**

6515 Irvington Blvd.

Houston, Texas 77022

**CERTIFIED MAIL NO. 7005 3110 0000 6409 1359**

Houston City Council Member

Toni Lawrence

**PROTESTANT**

900 Bagby, 1<sup>st</sup> floor

Houston, Texas 77002

**CERTIFIED MAIL NO. 7005 3110 0000 6409 1366**

Ramona M. Perry

**ATTORNEY FOR PETITIONER**

TABC Legal Section

Licensing Division

Houston District Office

# State Office of Administrative Hearings



*RP*  
*Protest*

**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

June 16, 2006

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

VIA REGULAR MAIL

**RE: Docket No. 458-06-1467; Texas Alcoholic Beverage Commission, Texas State Representative Jessica Farrar, Houston City Council Member Toni Lawrence v. AKM, Inc. d/b/a Gigi's**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Carrie L. McLarty".

Carrie L. McLarty  
Administrative Law Judge

*6/16/06 23*

CLM/mc  
Enclosure

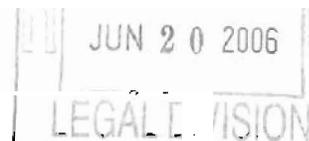
cc: Ramona Perry, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, Texas 77008 -

VIA REGULAR MAIL

Texas State Representative Jessica Farrar, 6515 Irvington Blvd., Houston, Texas 77022 - VIA REGULAR MAIL

Council Member Toni Lawrence, 900 Bagby, 1st Floor, Houston, Texas 77002 - VIA REGULAR MAIL

Nelson T. Hensley, Attorney at Law, 24 Greenway Plaza, Suite 1822, Houston, Texas 77046 - VIA REGULAR MAIL





in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On February 22, 2006, Petitioner issued its notice of hearing, directed to Respondent and Protestants. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. § 2001.052.

On April 28, 2006, a hearing convened before SOAH ALJ Carrie McLarty, in Houston, Texas. Petitioner was represented by Ramona Perry, TABC Staff Attorney. Protestant Farrar appeared through her staff member Carlos Ayala. Protestant Lawrence appeared through Yolanda Woods, Attorney. Respondent appeared and was represented by Nelson T. Hensley, Attorney. The hearing concluded and the record closed on the same day.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8), TABC may refuse to renew a permit if it has reasonable grounds to believe that the following circumstances exist:

[T]he place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

## III. EVIDENCE

### A. Petitioner's Position

Petitioner took no position on the renewal applications and represented that Respondent met all the requirements for renewal of its permits. Petitioner produced its license packet for Respondent

as well as proof of service of its notice of hearing on the parties and copies of the protest letters. Its license packet included copies of TABC Administrator's Orders, and Respondent's Complaint/Violation History.

### **1. TABC Administrator's Orders**

By Waiver Order dated April 19, 2005, TABC's Administrator accepted Respondent's Agreement and Waiver of Hearing and assessed penalties against Respondent under two separate docket numbers. A total fine of \$9,000 was assessed against Respondent. The violations on which the penalty was based were solicitation of sex, solicitation of alcoholic beverages and other unspecified conduct against the public's general welfare, health, peace, morals, safety, and sense of decency.

By Waiver Order dated January 9, 2003, TABC's Administrator accepted Respondent's Agreement and Waiver of Hearing and assessed a \$3,000 penalty against Respondent. The violations on which the penalty was based were for solicitation of alcoholic beverages.

By Agreement and Waiver of Hearing dated April 25, 2001, Respondent accepted a civil penalty of \$1,500 for violations involve sales of alcoholic beverage to a minor and to an intoxicated person.

By Agreement and Waiver of Hearing dated January 22, 1997, Respondent accepted a civil penalty of \$1,500 for permitting public lewdness.

By Agreement and Waiver of Hearing dated November 28, 1995, Respondent accepted a civil penalty of \$1,950 for violations of permitting public lewdness, sexual contact, obscene acts, and soliciting of alcoholic beverages.

## **2. Complaint/Violation History**

TABC logged 35 complaints against Respondent since June 8, 1995, five of which resulted in findings of no violations, and five of which resulted in the issuance of written warnings. The remaining 25 complaints progressed to the investigative stage, with 12 resulting in disciplinary action.

### **B. Protestants' Case**

The Protestants, who have the burden of proof, opposed renewal of the permits on the basis that Respondent's business involves inappropriate activity, including prostitution, drug use, fighting, and sexual assault. They alleged the business posed a threat to the neighborhood.

Protestant Lawrence called several Houston Police Department (HPD) officers as witnesses. Protestant Farrar did not present any evidence or cross-examine any witnesses.

#### **1. April 19, 2006 Investigation and Raid**

On April 19, 2006, HPD Vice Division conducted an investigation of and a resulting raid on Respondent's business. Officers D. Hendrickson, M. Williams, B. Suringer, K. Smith, D. Miller, and M. Dexter participated in the investigation and raid, whereupon arrests were made for violations of the 3-foot rule, and solicitation of drinks. Several of the dancers did not have licenses and some made physical contact with customers. The waitress arrested for soliciting drinks was a minor.

Officer Hendrickson testified that he has been to Respondent's business on several occasions in the last 16 years, but that this recent raid is the only incident he knows of involving Respondent during the last two years.

**2. Officer Michael Douglas**

Officer Douglas is with HPD's Vice Division. Within the last two years he has been to Respondent's business four to five times and observed violations of the three-foot rule and has seen dancers touching customers. Out of the hundreds of prostitution arrests made at these types of clubs in Houston, Officer Douglas knows of only one such arrest at Respondent's business.

**3. Officer David Nieto**

Officer Nieto is with HPD's Vice Division. He has been to Respondent's business two times within the last two years during which time he made one arrest for prostitution.

**4. Officer Robert Price**

Officer Price is with HPD's Vice Division. He has been to Respondent's business two times within the last two years. He observed a dancer expose her genitalia and a dancer wearing only a g-string. He also made a prostitution arrest at Respondent's business within that time.

**C. Applicant's Case**

Applicant appeared and cross-examined witnesses called by Protestants. It did not present any direct testimony or documentary evidence.

**IV. ANALYSIS**

Having considered the evidence, the ALJ finds insufficient grounds to demonstrate that the place or manner in which Respondent conducts its business warrants denial of the renewal

applications for the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

Although there is a history of administrative violations against Respondent, only five penalties have been assessed against Respondent over the last eleven years. Respondent has shown itself willing to accept responsibility and pay the fines assessed by Petitioner. Moreover, there is nothing to suggest that Respondent actively encourages or condones improper behavior by its employees.

Protestants presented evidence regarding a recent raid on Respondent's business. The record is silent as to whether administrative action is pending as a result of these events. Neither is there any evidence as to the dispositions of any criminal cases resulting from these arrests.

Protestants asserted Respondent's business posed a threat to the neighborhood, but presented no evidence of specific instances of harm or threats of harm to the neighborhood. Respondent's business is located at 11150 Northwest Freeway, near West 34<sup>th</sup> Street, in Houston, Texas. Although there may be residential neighborhoods in the vicinity of this portion of the Northwest Freeway, there is no indication in the record that Respondent's business abuts or is otherwise adjacent to any residences.

Petitioner represented that all requirements for renewal of Respondent's permits have been met. Beyond this, Petitioner took no formal position in this case. It is, however, reasonable to assume that had Petitioner felt Respondent conducted its business in a manner that violated or offended the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, that it would have denied the permit renewals.

Protestants did not establish that renewal of the permits would endanger the general welfare, health, peace, morals, and safety of the people or the public sense of decency. Accordingly, the ALJ recommends renewal of Respondent's permits.

### V. FINDINGS OF FACT

1. AKM, Inc. d/b/a Gigi's (Respondent) seeks to renew its Mixed Beverage Permit No. MB-243203 and Mixed Beverage Late Hours Permit No. LB-243204.
2. Texas State Representative Jessica Farrar and Houston City Council Member Toni Lawrence (Protestants) protested renewal of the permits.
3. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) took no position on the renewal applications.
4. On February 22, 2006, Petitioner issued its notice of hearing, directed to Respondent and Protestants. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. On April 28, 2006, a hearing convened before SOAH ALJ Carrie McLarty, in Houston, Texas. Petitioner was represented by Ramona Perry, TABC Staff Attorney. Protestant Farrar appeared through her staff member Carlos Ayala. Protestant Lawrence appeared through Yolanda Woods, Attorney. Respondent appeared and was represented by its attorney, Nelson T. Hensley. The hearing concluded and the record closed on the same day.
6. Five administrative penalties have been assessed against Respondent during the 11-year period preceding this hearing. Respondent paid all fines assessed.
7. Respondent meets all the requirements for renewal of its permits.

### VI. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.41, 11.46, and 32.01.
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 proposed 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 upon the foregoing findings of fact, renewal of Respondent's permits will not adversely affect the general welfare, health, peace, morals, and safety of the people or the public sense of decency.
5. Based on the foregoing findings of fact and conclusions of law, Respondent's permits should be renewed.

**SIGNED June 16, 2006.**



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**CARRIE L. MCLARTY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**