

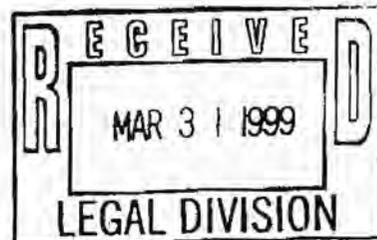
DOCKET NOS. 458-98-0601 and 458-98-2212

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION AND	§	
	§	
CITY OF HOUSTON, AVONDALE CIVIC	§	
ASSOCIATION, AND	§	
KENNETH BROUGHTON,	§	
PROTESTANTS	§	
	§	
V.	§	OF
	§	
534 WESTHEIMER, INC. D/B/A	§	
VERA'S CLOSET, RESPONDENT	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 577109) AND	§	
V. WOLNEE CORPORATION D/B/A QT'S,	§	
RESPONDENT,	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 56404)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff), the City of Houston (City), and Kenneth Broughton and the Avondale Civic Association (Avondale) (collectively called Protestants) protested the renewal application of Wolnee Corporation d/b/a QT's (Wolnee) to renew its permits to sell and serve alcohol and the original application of 534 Westheimer Inc., d/b/a Vera's Closet (534 Westheimer) to sell and serve alcohol. Both Wolnee's renewal application and 534 Westheimer's original application were for the same location, a club variously known as QT's or Vera's Closet (the Club), located at 534 Westheimer, Houston, Harris County, Texas. In 1997, Wolnee leased the Club to 534 Westheimer contingent upon the latter obtaining the required permits from the Texas Alcoholic Beverage Commission (Commission).

Protestants claimed the Club is a danger to the community's health, welfare, and safety because of the ongoing problems with noise, traffic, drug sales, prostitution, and violence involving club patrons in and outside the Club. Protestants also asserted 534 Westheimer and Wolnee had engaged in a subterfuge in that 534 Westheimer was operating the Club under Wolnee's permits. 534 Westheimer denied any involvement in or responsibility for the Club as currently operated by Wolnee. At the hearing, Wolnee stated it did not wish to renew the application, and its only interest was the transference of the business to 534 Westheimer. After the hearing, Wolnee filed a written notice that it had withdrawn its renewal application. This proposal for decision recommends that both the renewal and original applications be denied because the business being run as QTs' or Vera's Closet at 534 Westheimer, Houston, Texas, endangers the community's health, safety, and welfare.



I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There was no challenge to notice in this matter and except for one post-hearing matter discussed in paragraph IB, jurisdiction was not challenged. With the noted exception, jurisdiction and notice will be discussed only in the Findings of Fact and Conclusions of Law herein.

After several prehearing conferences in State Office of Administrative Hearings (SOAH) Docket No. 458-98-0601, at which counsel for Staff and for 534 Westheimer appeared telephonically, those counsel appeared in person at a prehearing conference held November 18, 1998. Assistant City of Houston Attorney Lisa Bass and Ken Broughton, on behalf of himself and Avondale, appeared telephonically at that prehearing. In addition to setting a discovery schedule and hearing date during the prehearing, the Administrative Law Judge also determined that, if referred to SOAH, Staff's contemplated protest of Wolnee's renewal application should be heard along with the protest of 534 Westheimer's original application. Subsequently, Staff referred the protests of Wolnee's renewal application to SOAH for hearing under Docket No. 458-98-2212. The hearing on Wolnee's renewal application was set to be heard simultaneously with the protest of 534 Westheimer's application. Prehearing orders setting discovery schedules were issued in both dockets. Wolnee filed its answer approximately a week before the hearing and did not respond to any of the Protestants's discovery requests.¹

The hearing in this case began and concluded February 2, 1999, at SOAH's Houston Regional Office, 2020 North Loop West, Houston, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Gayle Gordon, Commission General Counsel, represented Staff. Assistant City Attorney Lisa Bass appeared for the City of Houston. Attorney Ken Broughton, representing himself and Avondale, appeared with Avondale's representative, Jeffrey Cole. Attorney Ron Pruitt appeared for 534 Westheimer along with its corporate representative, Ben Conner. Attorney James DeFoyd represented Wolnee. After the close of evidence, the record was left open for submission of written closing arguments. The record closed March 5, 1999, after receipt of those arguments.

A. Staff's Pleadings

Prior to the hearing, Staff's live pleadings for both Respondents alleged that: (1) Respondents had engaged in a subterfuge to surrender control of the Club to 534 Westheimer in violation of TEX. ALCO. BEV. CODE ANN. § 109.53 and 11.46(a)(15); (2) Respondents had operated, and would continue to operate, the Club in a manner detrimental to the general welfare,

¹ Just before the hearing began Staff made a Motion to Compel based on Wolnee's failure to answer discovery, claiming that Wolnee's failure deprived them of evidence needed to prove the subterfuge allegation under TEX. ALCO. BEV. CODE ANN. § 109.53. The Motion was denied as untimely and because granting it would probably delay the hearing. All parties had long been on notice that the hearing would proceed on February 2, 1999. (The ALJ indicated she would reconsider if the case lasted more than one day, which did not happen). Protestants argued that Wolnee's late filing of an answer caught them off-guard, because they had expected Wolnee to default. The ALJ notes that the Commission had the authority, separate and apart from discovery in this proceeding, to request disclosure of documentation about any changes in control of the Club or Wolnee pursuant to 16 TEX. ADMIN. CODE (TAC) § 41.48 (e) [Disclosure. Upon request of the administrator, any corporation holding a mixed beverage permit ... shall disclose to the commission any information which may assist the administrator in determining whether or not any change has occurred in the control of that corporation...]. Apparently, Staff did not chose to pursue this option to obtain the desired information.

health, peace, morals, and safety of the people and the public sense of decency in violation of TEX. ALCO. BEV. CODE ANN. § 11.46(g)(8); (3) Respondents' employee served alcohol to a minor in violation of TEX. ALCO. BEV. CODE ANN. §§ 106.04 and 106.05; and (4) Respondents allowed intoxicated persons to remain in the Club and failed to adequately supervise the premises, allowing illegal activities and breaches of the peace in violation of TEX. ALCO. BEV. CODE ANN. §§ 28.11, 11.46, and 11.61.

At the hearing and in their post-hearing briefs, Protestants presented evidence² and argument only regarding the alleged violations of TEX. ALCO. BEV. CODE ANN. §§ 11.46(g)(8) and 109.53. Therefore, the ALJ finds allegations enumerated above as 3 and 4 were waived.

B. Wolnee's Posthearing Actions

After the hearing, Wolnee filed a Motion to Purge the Record, asking the ALJ to allow it to withdraw its announcement of ready at the hearing and remove all evidence against it from the hearing record. On February 8, 1999, 534 Westheimer filed its Motion to Purge Record and for Rehearing which alleged the same basis for relief as Wolnee's subsequent and similarly captioned motion. Wolnee based its request on the fact that, pursuant to TEX. ALCO. BEV. CODE § 28.17, the State Comptroller's office administratively suspended Wolnee's TABC permits, effective February 5, 1999, for failure to pay state taxes, a suspension Wolnee and 534 Westheimer asserted deprived SOAH of jurisdiction to decide whether Wolnee's renewal application should be granted. In the Motion to Purge, Wolnee gave notice to the Commission that it was withdrawing its renewal application and no longer intended to operate QT's under the Commission's letter of authority.³

In Posthearing Order No.1 issued February 11, 1999, 534 Westheimer's Motion to Purge the Record and for Rehearing was denied. The ALJ found 534 Westheimer failed to establish that a summary suspension proceeding under TEX. ALCO. BEV. CODE ANN. § 28.17 deprived SOAH of its jurisdiction to hear these dockets. For reasons expressed Posthearing Order No. 1, Wolnee's Motion to Purge was likewise denied.

C. Public Comment

Pursuant to § 5.435 of the Texas Alcoholic Beverage Code (Code), the hearing began with public comment session. Only one person chose to make a comment on behalf of the public. Elizabeth Biggers, who lives in the neighborhood near the establishment, stated the club patrons caused problems with noise, traffic and criminal activities which endangered the health, safety, and welfare of the local community.

² Although there was evidence that arrests had been made at the Club for various offenses under the Code, that evidence did not rise to the level of proof needed to establish the offenses had actually occurred.

³ A letter of authority from the Commission allows a permittee whose permit has expired to continue operating pending the renewal of the permit or the sale of the permitted business. Wolnee had been operating the Club under a letter of authority since October 15, 1998.

II. SUMMARY OF FINDINGS AND EVIDENCE

A. Findings

Protestants proved that neither Wolnee nor 534 Westheimer should be permitted by the Commission to sell or serve alcohol at 534 Westheimer. The Club has been, and most likely will continue to be, operated in such a manner as to endanger the health, safety, and welfare of the surrounding community. The Club's location and affect on traffic and crime levels, as shown by incident reports and arrests there, justify denial of the applications.

Traffic. The Club's insufficient parking facilities cause its patrons to invade the neighborhood looking for parking. Prostitutes, who loiter in and around the Club, attract traffic onto residential side streets as they meet their customers. These prostitutes and other Club patrons trespass, urinate, and strow trash on residential property. They have been observed assaulting one another and engaging in sexual acts in cars parked on residential streets. Some of these patrons appear to be underage or intoxicated or both.

Crime and Arrests. The significant number of reports of criminal activities and actual arrests at the Club warrant denial of the applications. The Club attracts patrons who sometimes become violent, intoxicated, or criminal, and whose activities are not limited to the Club or the Club's parking lot, but regularly and dangerously spill into the surrounding neighborhood. Occasionally, exasperated neighborhood residents confront patrons about their criminal, violent, or profane behaviors. The residents endanger themselves in these confrontations because the patrons are often violent, intoxicated, vindictive, or a combination thereof.

Location. Club patrons loiter in the neighborhood day and night, disturbing the peace by soliciting for prostitution, selling or using drugs, engaging in public lewdness, attracting excessive amounts of traffic onto residential streets, making loud noises, and engaging in violence. Wolnee Corporation has done little or nothing to discourage this patronage. The actions of 534 Westheimer's president, Ben Conner, such as implementing a male strip contest, show he intends to run Vera's Closet under much the same philosophy that made the Club such a problem for the neighborhood.

Subterfuge Not Shown. While significant as an indication of his intentions for the Club, Mr. Conner's involvement with the Club since 1997 has been too peripheral to establish that either Mr. Conner or 534 Westheimer took control of the Club from Wolnee in violation of the Code's prohibition against subterfuge operations.

Both permit applications should be denied.

B. Evidence Presented

A summary of the evidence -- testimonial, documentary, and photographic-- is attached hereto as Attachment A.

III. DISCUSSION

A. Legal Basis For Refusal Of Permits

The Commission may refuse to issue a permit if it finds the existence of certain circumstances as specified in Section 11.46(a) of the Code. The burden of proof is on the party contending the permit should be denied. The Commission may refuse to issue an original or renewal permit if it has reasonable grounds to believe that the place and manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).⁴

Some unusual condition or situation must be shown so as to justify a finding that the place or manner in which the business may be conducted warrants refusal of a permit. Simonton Gin, Inc., 616 S.W.2d 274 (Tex. Civ. App. - Houston [1st Dist.] 1981, no writ) [mere conclusions about possible traffic hazards or potential loud noise and disturbances insufficient to support denial]; Texas Alcoholic Beverage Commission v. Mikulenska, 510 S.W.2d 616 (Tex. Civ. App. - San Antonio 1974, no writ) [fact that a large number of residents of the area protest the issuance of the permits is not of itself sufficient reason to deny the application of an otherwise qualified applicant]; Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667, 669 (Tex. Civ. App. - Corpus Christi 1976, no writ) [unusual traffic safety condition supports denial of permit].

A permittee may not allow another to use his permit and must maintain exclusive occupancy and control of the entire licensed premises. Any arrangement that surrenders the permittee's control of its employees, premises, or business to another is unlawful pursuant to TEX. ALCO. BEV. CODE ANN. § 109.53.⁵ A violation of TEX. ALCO. BEV. CODE ANN. § 109.53 would be grounds for denial or cancellation of an application under TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(3) and 11.61(b)(2).

⁴ For existing permits, the analogous Code provision at TEX. ALCO. BEV. CODE ANN. § 11.61(b)(7) allows the Commission to cancel an original or renewal permit if the place or manner in which the permittee conducts his business warrants the cancellation based on the general welfare, health, peace, morals, and safety of the people and the public sense of decency. Thus, if Wolnee operated the Club under an active permit, instead of a letter of authority, this section would have allowed the Commission to cancel that permit.

⁵ The statute reads: "No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. . . . Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful."

B. Evidence Warranting Denial of Permits

The impact of the Club on the surrounding community justifies the denial of both permit applications. The Club known as QT's or Vera's Closet is an anachronistic holdover from the days when Montrose's Westheimer strip was a notorious bar area frequented by drug dealers, prostitutes, and other troublesome itinerants. In its immediate area, the Club is the sole attraction catering to a crowd primarily occupied with loitering, drugs, and solicitation of prostitution. It does not blend well with the mix of respectable, and often upscale, businesses and residences now in the area. The Club operates in such a way as to attract disruptive, loitering patrons whose activities endanger the neighborhood's health, safety, and welfare.

I. The Club's Location Inappropriate

The Club is located on a segment of Westheimer Street that is primarily commercial, but which is surrounded by neighborhoods with mixed commercial and residential areas. This portion of Westheimer runs through what is commonly known as the Montrose or lower Westheimer area of Houston, an area of town long known for its clubs, restaurants, and bars. The 500 block of Westheimer, where the Club is located, lies within the Avondale neighborhood, an area designated as historic and which boasts many large houses built in the 1920s and 1930s. Many of these homes have been restored to their former splendor.

The 500 block of Westheimer is bounded by Whitney Street on the east and by Stanford Street on the west. Besides the Club, there is an upscale restaurant (called Marrakesh) with a residence above, and a residential building on the north side of that block. On the south side of the 500 block of Westheimer, across from the Club, are vacant lots. These vacant lots back up to a church, which faces Lovett Boulevard, the street immediately south of Westheimer. Also facing Lovett Boulevard, and catty-corner from the Club to the southwest, is a child-care center.⁶ The Houston Police Department has a storefront station two blocks west of the Club on Westheimer.

Four blocks west of the Club is Montrose Boulevard, the first major traffic artery in that direction. At, or just off, the corner of Montrose Boulevard and Westheimer are several large and heavily trafficked businesses, including a Kroger's grocery store, a small shopping center, a Stop N Go convenience store, a Walgreen's drug store, and a Taco Cabana restaurant. This intersection is purely commercial and heavily traveled. It tends to attract a large transient population.

The Avondale Civic Association represents about 100 Avondale neighborhood residents from a ten-square-block area that includes the 500 block of Westheimer. Avondale Street, immediately north of the 500 block of Westheimer, is a residential street lined with large single family homes. Home values on Avondale Street have doubled and quadrupled in the past dozen years, thanks to restoration of the homes and a general rise in real estate values. Within the past decade, several bars on the south side of the 500 block of Westheimer were demolished in an effort to remove what was considered an undesirable element. The Club is the only bar⁷ remaining on that block.

⁶ There was no evidence that the Club was impermissibly close to either the church or child-care center in violation of regulations adopted pursuant to TEX. ALCO. BEV. CODE ANN. § 109.33.

⁷ While Marrakesh Restaurant does serve liquor, it is primarily an eating establishment. The Club is a bar in the sense that its primary business is the sale and service of alcoholic beverages, not food.

Only four or five cars can park in the Club's parking lot, so Club patrons park on side and residential streets, especially Avondale Street. The result is an increase in pedestrian and vehicular traffic, noise, and trash on Stanford, Whitney, and Avondale Streets. The traffic and noise levels on the streets around the Club remain high most of the night, at least on weekends.⁸ As a residential street which does not intersect with major traffic arteries, Avondale Street would not be expected to have a high traffic volume, and Whitney and Stanford would normally have only slightly more traffic than Avondale Street.

2. The Club's Current And Prospective Manner Of Operation

The Club has been operated, and will continue to be operated, in a manner that is detrimental to the neighborhood's health, safety and welfare. The Club is owned by Wolnee, whose president is Bob Neely. Mr. Neely and Ben Conner, 534 Westheimer's president and sole shareholder, have been friends since high school. (Tr. 206). In 1997, Mr. Neely began discussing selling the Club to Mr. Conner. According to Mr. Conner, Mr. Neely had grown tired of the club business about the time Mr. Conner became interested in running a club. Mr. Conner, who owns a small apartment complex and a clock shop, had no previous experience in running a club or bar. (Tr. 228). He thought the Club would be a lucrative sideline. (Tr. 207).

Mr. Conner incorporated 534 Westheimer to buy the Club's lease and fixtures from Wolnee. (Tr. 201). The 534 Westheimer corporate bank account lists its address as 534 Westheimer, Houston, Texas. The two signatories on the corporate bank account are Mr. Conner and Terry Harlan, who was a Wolnee employee at the time of incorporation. (Tr. 223; Vera's Closet Exh. 7).

The parties signed the lease in July 1997. The lease term begins on the date 534 Westheimer obtains a mixed beverage permit from the Commission. (VC Exh. 3). During the lease negotiations, Mr. Conner asked for, and Mr. Neely made, certain changes to the Club's physical structure and operation. Lighting was changed, the bartenders' line of sight improved, and security enhanced. The physical plant was brought up to code. (Tr. 204).

In 1998, the Club ran a print advertisement using both the QT's and Vera's Closet trade names. (Avondale Exh. 5). From at least July to October 1998, the QT's sign on the Club facade was covered with a banner that read "Vera's Closet." (Avondale Exh. 1-A; TABC Exh. 3-A to 3-E). Although he was not responsible for the banner being posted, Mr. Conner knew it existed and did not ask for its removal until after being advised to do so by his attorney. (Tr. 208).

Despite being in the Club on a weekly or bi-weekly basis since 1997, Mr. Conner denied having a role in the Club's operation. He did admit to implementing and emceeing a Saturday night male strip contest in the spring of 1998. He felt the contest would increase business. (Tr. 208-209). Wolnee paid him about \$250 a contest for his work. (Tr. 214).

⁸ The Club is open daily from 8 a.m. to 2 p.m. (from noon on Sundays) (Avondale Exh. 3).

Except for his Saturday night duties, Mr. Conner usually visits the Club midday. (Tr. 216). In the four or five years he has been visiting the Club, Mr. Conner stated he never saw any illegal activity there. He did admit to hearing about an incident when a Club bartender sold alcohol to a minor in August 1998, but he did not know how that was handled by Club management. (Tr. 226). Mr. Conner's impression is that the Club attracts a middle-aged clientele, most of whom live in the surrounding area. (Tr. 211). While he denied seeing prostitutes or drug usage in the Club, Mr. Conner admitted seeing "quite a bit" of "milling about" on Stanford Street near, rather than right outside, the Club. (Tr. 233). At Mr. Neely's request, Mr. Conner prepared a sign, which Mr. Neely posted, warning against drug usage on the Club premises. (Tr. 219; VC Exh. 1).

Mr. Conner believed the Club's patrons do not cause parking problems in the area. He believes the traffic and parked cars on Avondale Street come from patrons of bars on and north of Pacific Street.⁹ (Tr. 234). Pacific Street is a "long" city block north of Avondale Street.¹⁰ (Avondale Exh. 4).

Based on what he heard at the hearing, Mr. Conner felt that he would have considerable work to do to improve the Club's relationship with the surrounding community. He intends to cater to the older, neighborhood customers he described as being the Club's existing clientele. To this end, he may implement a dress or a one drink minimum to discourage improperly dressed patrons and prostitutes from entering the Club. (Tr. 229, 232). He believes that cooperation between the police and the neighborhood association is needed to solve the area's prostitution problems. (Tr. 230). Except for his Saturday night duties, Mr. Conner usually visits the Club midday. (Tr. 216).

3. The Club's Adverse Impact On The Neighborhood

Testimony from Avondale neighborhood residents proved that the Club has a deleterious impact on the neighborhood's general welfare, health, peace, and safety. Since the early nineties, the surrounding area has "gentrified" as property values escalated. Rising values have attracted new business owners, such as Marrakesh owner Jean Soussan, who chose to locate both his restaurant and his residence in the 500 block of Westheimer. Professionals, such as attorneys Kenneth Broughton and George Neely and real estate investor Tim Womble, have homes in the Avondale neighborhood. Homeowner Bryan Gagnier is raising his family on Avondale Street. The activities of Club patrons in the Avondale neighborhood regularly disturb the peace and security of these residents, among others.

George Neely is an attorney who has resided on Avondale Street since June 1998. From his front porch, he can view activity on the corner of Stanford and Westheimer, where crowds of teenage, partially clothed males usually congregate. He sees this same group in front of the Club.

⁹ The establishments termed "Pacific Street area clubs" are JR's (710 Pacific Street), 611 Club (611 Hyde Park), Bricks II (617 Fairview), and Cousins (817 Fairview). As explained in Footnote 9 below, Pacific Street is a long city block north of Avondale Street. Hyde Park Street is one, and Fairview is two, blocks north of Pacific Street. Both Fairview and Hyde Park intersect with Montrose Avenue.

¹⁰ The Avondale neighborhood's block sizes are not uniform. Avondale and Westheimer Streets are a "short" block apart, while Avondale and Pacific Streets are a "long" block (approximately the equivalent of two short blocks) apart (Avondale Exh. 4)

These persons stop cars to solicit prostitution. Once, when he slowed to go over a speed bump, Mr. Neely's car was approached by a Club patron who offered prostitution services. (Tr. 80-82). Mr. Neely has seen suspicious activities within the group, including one man who appeared to have been severely beaten. (Tr. 83).

Tim Womble, a realtor, property manager, and an Avondale Street resident since 1987, currently owns two houses on that street. His home, bought for approximately \$90,000 in 1987, has been restored and is currently valued around \$400,000. (Tr. 157). When Mr. Womble moved to Avondale, the adjacent block of Westheimer contained mostly bars, where prostitution and drug dealing flourished. All those bars except the Club were razed several years ago. (Tr. 156). The Club is the only remaining haven for area prostitutes and drug dealers. Mr. Womble described seeing a "constant parade of prostitutes" from the Club. He opinion that the prostitutes and their customers bring crime to the area is based on personal experience. The Avondale house he is restoring has been repeatedly burglarized. Recently, he caught a prostitute in the back yard of that house. When accosted, she informed him she was hiding her "trick" money there. Mr. Womble followed her around the corner and saw her enter the Club. (Tr. 159). Mr. Womble believes that the Club's patrons are the source of the area's prostitution, and accompanying crime, and that the Club threatens the health, safety, and welfare of the neighborhood.

Jeffrey Cole is the 1999 Avondale Civic Association President. He lives on Crocker Street, into which Avondale Street dead-ends. Not only has Mr. Cole made a point of observing the activities of Club patrons, he has been a witness to criminal activity. In the early fall of 1997, Mr. Cole saw two men assaulting a third man in his driveway. He chased the assailants off his property and got help from the police storefront. The police caught the assailants. The assailants had accosted the victim in the Club, then followed the man out of the Club, catching and assaulting him in Mr. Cole's driveway. (Tr. 167). Mr. Cole described the Club notoriously pandering to "hustlers." (Tr. 170).

Jean Soussan has operated the Marrakesh restaurant in the 500 block of Westheimer for 3 ½ years. It is an "upscale" restaurant where the average tab runs around \$50 per person. (Tr. 147). He lives at the restaurant with his family. The restaurant's parking lot separates it from the Club. To prevent Club patrons from using this parking lot, Mr. Soussan erected a fence around the lot. His intention to use separate gates for the entrance and exit was thwarted by the activities of Club patrons who would attempt to park in the restaurant's lot or would loiter in it. Mr. Soussan has been forced to keep the gate nearest the Club locked. (Tr. 148). He is extremely wary of the Club's patrons who sometimes come into Marrakesh looking for a bar. He will not leave the restaurant's front unlocked if he is called into the kitchen for fear Club patrons may enter the restaurant by mistake. He regularly sees Club patrons soliciting for prostitution in front of his restaurant and around the parking lot. (Tr. 152). He believes the Club's patrons threaten the safety of his family and his customers. (Tr. 150).

Kenneth Broughton has lived on Avondale Street since April 1995. He noted that the Club is the only area establishment that attracts prostitutes and "rift-raft." (Tr. 124). Other area clubs are more upscale, have dress codes, and do not pose the same parking problems for the neighborhood.

(Tr. 126). Prostitutes go in and out of the Club and walk around the neighborhood yelling at and flagging down passing cars to solicit. At night vehicles driven by persons seeking prostitution services circle the Avondale-Westheimer block. (Tr. 130). He has followed the prostitutes from the neighborhood streets to observe where they go. These prostitutes always go to the Club, never to any of the area's other bars. (Tr. 128). In the wake of the Club patrons, Mr. Broughton finds beer bottles, condoms, and other trash. He has seen Club patrons urinating in his yard. He regularly sees Club patrons park on Avondale Street and walk to the Club. Although he knows it is dangerous to do so, Mr. Broughton has occasionally confronted the prostitutes and other Club patrons about their activities. (Tr. 132). In fear of retaliation by Club patrons, Mr. Broughton is wary of parking his car in front of his house. (Tr. 121).

Bryan Gagnier has lived on Avondale Street for 2 ½ years. He and his wife have a five-month-old daughter. (Tr. 194). Mr. Gagnier chose the Avondale area in part because he enjoys the proximity of the clubs and restaurants. However, he finds the Club and its clientele atypical of of area clubs. He has seen Club patrons yelling, fighting, and dealing drugs in the neighborhood. (Tr. 196). He has seen prostitutes service customers in vehicles parked on neighborhood streets, then go into the Club. (Tr. 195). On weekend nights, noise from Club patrons and prostitution activity goes on until 2 or 3 a.m. with traffic "whipping around all night long . . . like Times Square." (Tr. 196- 197). After 2 ½ years, Mr. Gagnier has come to recognize the Club patrons loitering and causing disturbances in the neighborhood. A core group of Club patrons cause the problems. For this reason, Mr. Gagnier believes closing the Club would help end the current disturbances in the neighborhood. (Tr. 198).

For the past 1 ½ years, Houston police officer Richard Kent has worked the night shift at the Houston Police Department (HPD) storefront station on Westheimer two blocks down from the Club. He takes complaints brought to the storefront. The Club generates a disproportionate number of complaints in the lower Westheimer area. From Westheimer-area bar patrons, the most common complaint is that a car was towed. (Tr. 45). With regard to the Club, Officer Kent has received all sorts of complaints, but primarily reports of assaults. He receives a complaint emanating from 534 Westheimer at least weekly. (Tr. 46). For the period from May 1995 through December 1998, HPD received over 40 reports of assaults (from simple contact to aggravated) and fights occurring at 534 Westheimer. There were at least that many complaints for other crimes ranging from thefts to homicide. (City Exh. 1). Officer Kent considered this to be an unusually large number of complaints for a bar in that area.

When asked to compare the complaints from 534 Westheimer with complaints from other area businesses such as the convenience and grocery store at Westheimer and Montrose, Officer Kent noted those businesses had higher volumes of customers in a more heavily trafficked locations so would be expected to generate more complaints than the Club. He noted those businesses generated mostly theft complaints. (VC Exh. 9). He found the Club unique among area businesses, including other bars, in the number of physical assaults reported. (Tr. 48). For instance, for the nearby "Pacific Street" clubs, during the period from January 1996 through January 1999, HPD showed the

following reports of assaults or disturbances: one assault at Bricks II; five at Cousins; eleven at EJ's; ten at JR's; six at Pacific Street; and five for the 611 Club (VC Exh. 10-13, 15, 16). He noted that the Club is a gathering spot for male prostitutes. (Tr. 48). Based on his experiences, the Club is the only bar Officer Kent considers to be a problem in the lower Westheimer area. (Tr. 69).

Houston police officer David Nieto is familiar with the Club from his work as a vice officer. He was present at the Club on August 20, 1998, when four persons, including two prostitutes, were arrested in the Club for public intoxication. On that same occasion, a Club employee was arrested for selling alcohol to a minor. (Tr. 94; City Exh. 2). Officer Nieto also described various other arrests made at the Club. On June 27, 1997, a call regarding twelve males fighting in the Club parking lot resulted in the arrest of the Club's owner for being intoxicated on the premises. (Tr. 96; City Exh. 6). On April 17, 1997, an unnamed individual at the Club was arrested for selling alcohol to a minor. (Tr. 94; City Exh. 10). Arrests were made at the Club for assaults on September 7, 1995, October 15, 1995, February 15, 1996, and October 1, 1997. (Tr. 96; City Exhs. 5 and 7-9). Officer Nieto has seen both male and female prostitutes frequenting the Club. In addition to prostitution, drug dealers frequent and conduct business at the Club. (Tr. 100). The Club's patrons are not welcome at other area clubs. (Tr. 101). In addition to loitering at or near the Club, the prostitutes attract traffic to the neighborhood streets as the "johns" stop to pick up the prostitutes. (Tr. 111).

C. Denial of Applications Warranted

The location and surrounding area of a proposed bar are proper considerations in assessing whether to grant or deny a license. Helms v. Tex. Alco. Bev. Comm'n, 700 S.W.2d 607,611(Tex. App.-Corpus Christi 1985, no writ). The fact that an establishment is, or will be, noisy and disrupt the sleep of nearby residents may be grounds for denial of an application. See, In re Simonton Gin, Inc., 616 S.W.2d 274,276(Tex. Civ. App.-Houston [1st] 1981, no writ). Both Wolnee's and 534 Westheimer's applications should be denied based on the Club's location and its effect on local traffic patterns and crime in the neighborhood. Whether operated by Wolnee or by 534 Westheimer, the Club has endangered, and will continue to endanger, the community's general welfare. For years, the Club has attracted patrons who are prostitutes or customers of prostitutes. The Club acts as a harbor for these people. Unfortunately, the activities of these Club patrons are not confined to the Club, but spill over into the neighborhood. The evidence established that Club patrons strow trash, urinate in yards, yell at passing cars, perform lewd acts in parked vehicles, trespass into yards, and commit assaults in the Avondale neighborhood. The evidence showed repeated instances where perpetrators of crimes in the neighborhood came from or returned to the Club. The evidence further showed that these activities endanger the neighborhood residents, whether the resident acts as Mr. Cole did to rescue an assault victim, or whether the resident simply observes suspicious activities of trespassers, such as Mr. Womble did when he found the prostitute in his yard. Avondale residents rightfully fear for the safety both of their persons and property. This fear alters their behavior as shown by Mr. Broughton's reluctance to leave his car in front of his house.

The presence of the Club increases traffic in the Avondale neighborhood. Causing an increase in traffic may be sufficient grounds for denying a permit. Dienst v. Tex. Alco. Bev. Comm'n, 536 S.W.2d 667 (Tex. Civ. App.-Corpus Christi 1976, no writ). Bavarian Properties, Inc. v. Tex. Alco. Bev. Comm'n 870 S.W.2d 686 (Tex. App.-Ft. Worth 1994, no writ) involved the denial of a permit on a public safety issue regarding the particular street and traffic pattern configurations of the proposed location. In upholding the denial of the permit, the court stated the Code should be liberally construed to accomplish the protection of the safety of the people. Even the location of a restaurant on a dangerous curve on a highway may be sufficient evidence to deny a license because it creates an increased safety hazard. Tex. Alco. Bev. Comm'n v. Sierra, 784 S.W.2d 359 (Tex. 1990).

The activities of Club patrons significantly alter traffic patterns to the neighborhood's detriment in two ways. Prostitutes patronizing the Club divert vehicular traffic onto residential streets. For lack of adequate parking space at the Club, patrons park along residential streets. Protestants established a nexus between the presence of Club patrons and the excessive noise and traffic levels on the residential streets north of the Club. Under normal circumstances, the noise and traffic levels on Avondale Street should not, even on weekend nights, approach Times Square's levels.

Some unusual condition or situation must be shown to justify a finding the place or manner in which an applicant may conduct business warrants refusal of a permit. Kermit Concerned Citizens Comm. v. Colonial Food Stores, Inc., 650 S.W.2d 208, 210 (Tex. App.-El Paso 1983, no writ). The Club is unusual in that it attracts a clientele with a large criminal element as evidenced by the number of criminal complaints and arrests at the Club. Evidence of arrests at a licensed premises may constitute substantial evidence sufficient to support a denial of a license. See Texas Liquor Control Board v. Stevens, 310 S.W.2d 688 (Tex. Civ. App. - Dallas 1958, writ ref'd n.r.e.).¹¹ From 1995 through 1998, there have been at least eleven arrests within the Club for alcohol related offenses or assaults, including an arrest of the owner.

While there was no evidence as to the number of arrests of the prostitutes who frequent the club, those patrons brazenly and constantly leave the Club to misuse Avondale's streets plying their trade. While they may make good bar customers, prostitutes do not make good neighbors. Not only is prostitution a crime, it is the type of crime that engenders other crimes. The evidence showed that the prostitutes brought criminal trespass, public lewdness, assaults, and other breaches of the peace into the Avondale neighborhood. Because prostitution and its related crimes endanger the public, any element that attracts prostitutes endangers the public. The Club attracts prostitutes and their customers and thus endangers the surrounding community.

¹¹ In Stevens, the applicant for a retail wine and beer license had been arrested six times and there had been 149 arrests made on the premises. The appellate court found the evidence of the arrests substantial evidence to support a denial of the license. The applicable standard in that case was found in former Penal Code art. 667 which provided the license could be denied if the place and manner in which the applicant may conduct his business is of such a nature, based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency, warrants a refusal. This standard is identical to current standard found in TEX. ALCO. BEV. CODE. ANN. Sec. 11.46(a)(8).

The evidence established Wolnee operates the Club in a manner that endangers the general welfare of the surrounding community. Wolnee's renewal application should be denied for this reason. Nothing in the record suggests Mr. Conner would change the Club's operation in a way that would significantly reduce its adverse impact on the neighborhood. He thought the Club would be a "lucrative sideline" business. He allowed Wolnee to use the Vera's Closet trade name, an action calculated to acclimate the existing clientele to the Club's prospective change in management. To increase revenue, he suggested and implemented the male strip contest. Because of its obvious advertising potential, a male strip contest is the sort of event more likely to attract than discourage the patronage of prostitutes.

Mr. Conner claimed to have never seen any illegal activity in the Club, not even prostitution. He stated he would not want prostitutes in the Club because they compete with the Club for the clientele's entertainment dollar. However, Mr. Conner is apparently one of the few people who can go in and out of or near the Club's entrance without recognizing the prostitutes milling about the Club's parking lot. He also has never seen any illegal drug use or alcohol violations at the Club. Mr. Conner expressed his desire to keep prostitutes and drug dealers out of the Club. It is hard to believe that he will be able to do so if he has been unable to recognize the extent to which those activities have flourished at the Club. Finally, Mr. Conner's belief that the area prostitution problem was one to be left to the police, or the police and the civic association, evidenced a disregard for the Club's role in perpetuating the problem. This is not the attitude of a concerned neighbor. Mr. Conner is either in denial about the type of establishment he is buying or he simply does not care about the adverse impact the Club's clientele has on the Avondale neighborhood. It seems unlikely Mr. Conner would reverse the adverse impact the Club has on the neighborhood.

The fact other area businesses generated complaints to the police did not diminish the Club's impact on the neighborhood crime levels. There was no evidence that any area business, other than the Club, had an adverse impact on the neighborhood. The HPD incident reports introduced by 534 Westheimer simply confirmed Officer Kent's testimony that the Club was unique in the number of breaches of the peace, especially assaults, generated at one locale.

The Club attracts high levels of traffic and crime to the Avondale neighborhood under Wolnee's management, a style of management likely to continue under 534 Westheimer's management. These are an unusual circumstances that justify the denial of Wolnee's renewal and 534 Westheimer Corporation's original applications for Commission permits.

D. Subterfuge Not Shown

The evidence did not establish that Mr. Conner and Mr. Neely had engaged in a subterfuge in violation of TEX. ALCO. BEV. CODE ANN. § 109.53 to surrender control of the Club to 534 Westheimer under Wolnee's permit. The Code at § 109.53 defines "subterfuge" as "any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee . . ." Although the Code does not specify what constitutes "control" of a business, with regard to a permitted premise, the Commission's rule at 16 TAC §41.48(a) discusses several types of control:

(2) Effective control--Shall include, but is not limited to, situations, in which a person (or persons) is in fact able to direct the general course of corporate affairs, even though such person or persons may not hold controlling ownership.

(3) Managerial control- . . . includes but is not limited to:

(A) having discretion to formulate and institute operating policy regarding purchases, disbursements, maintenance of records or handling of funds;

(B) having authority to hire or fire personnel; and

(C) having general supervisory authority over the operation of the business on a regular basis.

Based on the Commission's rule, to "control" a permitted premises, a person must exercise some ongoing authority over either the physical structure, the employees, or the organization and handling of day-to-day business (such as setting prices, deciding hours of operation, or paying bills).

Protestants did not show that Mr. Conner directed Wolnee's corporate affairs, set Club policy about any issue, had authority over Club personnel, or supervised anyone or anything at the Club on a regular basis. The evidence established Mr. Conner's nexus with the Club as follows: (1) he was a part-time employee and regular patron; (2) he used the Club as the corporate address for 534 Westheimer; (3) he implemented the male strip contest; (4) he allowed the Club to advertise using 534 Westheimer's trade name; (5) he got Mr. Neely to make some changes to the Club as part of the lease negotiation; and (6) he had a Club employee as a co-signatory on the 534 Westheimer corporate bank account. Of these acts, only the implementation of the male strip contest was an act implying any type of control over the Club. But Protestants proved only that Mr. Conner was one of several persons whom the Club employed to host the contest. Although a November 1998 print advertisements for the Club boasted "new management, new attitude," there was nothing to establish that "new management" referred to Mr. Conner or 534 Westheimer, as opposed to a new Wolnee employee. (Avondale Exh. 6). Even had it referred to Mr. Conner, the advertisement was not enough, by itself, to establish he exercised control over the Club.

The evidence of Mr. Conner's involvement with the Club was significant enough to establish that he intends to run the same type of operation. The overlapping use of the QT's and Vera's Closet trade name were clearly intended to acclimate the current clientele to the new name while implying that it was business as usual at the Club. Mr. Conner believes the existing clientele is well-behaved and has not seen any of the illegal activities which go on around the Club. Therefore, he has no reason to want to discourage the patronage of the Club's current customers. But while the evidence showed an intent to have an orderly transition from Wolnee to 534 Westheimer, it did not show Mr. Conner was actually running the Club under Wolnee's permit.

IV. PROPOSED FINDINGS OF FACT

1. Until October 1998, Wolnee Corporation d/b/a QT's (Wolnee) held mixed beverage, mixed beverage late hours, and beverage cartage permits issued by the Texas Alcoholic Beverage Commission (TABC or Commission) for a club located at 534 Westheimer, Houston, Texas (the Club).
2. From October 1998 through at least February 2, 1999, Wolnee operated the Club under a Letter of Authority issued by the Commission.
3. Wolnee applied to renew the Commission permits mentioned in Finding of Fact No. 1.
4. In July 1997, Wolnee entered into an agreement to lease the Club and all its fixtures to 534 Westheimer Corporation (534 Westheimer). The lease term does not begin until 534 Westheimer obtains the Commission permits necessary to operate the Club.
5. 534 Westheimer d/b/a Vera's Closet applied for Commission mixed beverage, mixed beverage late hours, and beverage cartage permits for the premises located at 534 Westheimer, Houston, Texas.
6. TABC Staff joined the City of Houston (City), and Kenneth Broughton and Avondale Civic Association (Avondale) (collectively called Protestants) in protesting both Wolnee's renewal application (SOAH Docket No. 458-98-2212) and 534 Westheimer's original application for the Club (SOAH Docket No. 458-98-0601).
7. The hearing in these dockets was held February 2, 1999, at the SOAH Houston Regional Office in Harris County, Texas. All parties appeared in person or by and through counsel. The hearing concluded, except for submission of written closing argument, on February 2, 1999. The record closed March 5, 1999, after receipt of closing arguments.
8. At the hearing, Wolnee presented no evidence or argument. After the hearing, Wolnee filed a Motion to Purge Record, in which it stated it was withdrawing its renewal application.
9. The Club, located in the 500 block of Westheimer, Houston, Texas, is the only bar on that block and has been operated by Wolnee for several years.
10. The 500 block of Westheimer is bounded by Whitney Street on the east and Stanford Street on the west. Both Whitney and Stanford are primarily residential streets.
11. Immediately north of the Club is Avondale Street, a residential street lined with single-family homes.
12. Only seven blocks long, Avondale Street is not a major traffic artery and does not intersect with any major traffic arteries. It dead-ends into Crocker Street two blocks west of the Club.

13. The Avondale Civic Association represents about 100 residents from a ten-square-block area, which includes the 500 block of Westheimer. The Avondale neighborhood, a mixed commercial and residential area, is recognized as an historic neighborhood due to its many large houses from the 1920's and 1930's. Many of these homes have been restored.
14. The Club's regular clientele includes both male and female prostitutes and the customers of prostitutes. These patrons loiter in and around the Club and cause the following problems in the Avondale neighborhood:
 - a) Attract traffic onto residential streets where the prostitute-patrons solicit and meet their clients;
 - b) Use residential streets as a parking lot;
 - c) Strew trash in residential yards;
 - d) Perform lewd acts in parked cars as the prostitutes service their customers;
 - e) Urinate in public, sometimes in neighborhood yards;
 - f) Cause an ongoing barrage of loud noises from traffic, fights, and prostitutes yelling at passing vehicles;
 - g) Disrupt traffic by stopping cars to solicit;
 - h) Trespass into residential yards;
 - i) Commit assaults on residents' property; and
 - j) Appear in public while intoxicated.
15. For the period from May 1995 through December 1998, the Houston Police Department received over 40 reports of assaults (from simple contact to aggravated) and fights occurring at 534 Westheimer. There were at least that many complaints for other crimes ranging from thefts to homicide at that locale.
16. On the following occasions, arrests have occurred at the Club:
 - a) On August 20, 1998, four persons, including two prostitutes, were arrested in the Club for public intoxication and a Club employee was arrested for selling alcohol to a minor;
 - b) On June 27, 1997, a call regarding twelve males fighting in the Club parking lot resulted in the arrest of the Club's owner for being intoxicated on the premises;
 - c) On April 17, 1997, an unnamed individual at the Club was arrested for selling alcohol to a minor;

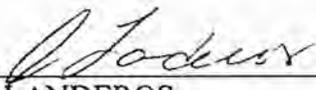
- d) On September 7, 1995, October 15, 1995, February 15, 1996, and October 1, 1997, an unknown number of persons were arrested for assault.
17. Compared to other area bars and clubs, the Club generates a disproportionate number of criminal complaints.
 18. The Club does not fit in with the mix of residences and commercial businesses in the Avondale neighborhood.
 19. Avondale neighborhood residents, and their property, are endangered by the Club patrons, particularly if the resident tries to confront Club patrons loitering in the neighborhood.
 20. The Club's parking lot is inadequate to accommodate its patrons.
 21. The Club's patrons increase the traffic on Whitney, Stanford, and Avondale Streets to unusually high levels.
 22. The Club's patrons contribute disproportionately to the level of crime in the Avondale neighborhood.
 23. The Club generates an unusual level of criminal complaints and arrests.
 24. Due to the nature of its clientele, the Club's presence endangers the Avondale neighborhood residents.
 25. Mr. Ben Conner, the president and sole shareholder of 534 Westheimer, entered into the lease for the Club because he thought running a club would be a lucrative business.
 26. Mr. Conner has no previous experience running a club or bar.
 27. Mr. Conner implemented and hosted a male strip contest for the Club to attract patrons from other clubs and increase Club revenue.
 28. One reason Mr. Conner allowed Wolnee to advertise the Club using 534 Westheimer's trade name of Vera's Closet was to inform the Club's existing clientele of the Club's impending name change.
 29. A male strip contest is an attraction likely to attract prostitutes.
 30. Mr. Conner wants to retain the Club's existing clientele if 534 Westheimer obtains Commission permits.
 31. The Club's location adversely impacts the Avondale neighborhood because it attracts traffic and crime into the neighborhood.
 32. Mr. Conner visited the Club only as a patron and part time employee and he used the Club as 534 Westheimer's corporate address.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Sections 6.01 and 11.46 of the Texas Alcoholic Beverage Code (Code), TEX. ALCO. BEV. CODE ANN. §1.01 et seq.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of 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 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. The Commission may refuse to issue an original or renewal permit if it has reasonable grounds to believe that the place and manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. Some unusual condition or situation must be shown to justify a finding the place or manner in which an applicant may conduct business warrants refusal of a permit. Kermit Concerned Citizens Comm. v. Colonial Food Stores, Inc., 650 S.W.2d 208, 210 (Tex. App.-El Paso 1983, no writ). The following circumstances may constitute an unusual condition or situation warranting the denial of a permit:
 - a) The location and surrounding area of a proposed bar are proper considerations in assessing whether to grant or deny a license. Helms v. Tex. Alco. Bev. Comm'n, 700 S.W.2d 607 (Tex. App.-Corpus Christi 1985, no writ);
 - b) Arrests at a licensed premises are sufficient to support a denial of a license. See Texas Liquor Control Board v. Stevens, 310 S.W.2d 688 (Tex. Civ. App. - Dallas 1958, writ ref'd n.r.e.); or
 - c) Causing an increase in traffic may be sufficient grounds for denying a permit. Dienst v. Tex. Alco. Bev. Comm'n, 536 S.W.2d 667 (Tex. Civ. App.-Corpus Christi 1976, no writ); Bavarian Properties, Inc. v. Tex. Alco. Bev. Comm'n 870 S.W.2d 686 (Tex. App.-Ft. Worth 1994, no writ).
6. The Club has an adverse affect on the Avondale neighborhood in that in attracts excessive crime and traffic to the neighborhood.
7. Based on Findings of Fact Nos. 14, 19, 24, and 31, the presence of the Club endangers the safety of the residents of the Avondale neighborhood.
8. Based on Conclusions of Law Nos. 5-7, Wolnee has operated the Club in a manner that endangers the safety and general welfare of the Avondale neighborhood residents.

9. Based on Findings of Fact Nos. 25-30 and Conclusions of Law Nos. 6-9, 534 Westheimer and Ben Conner are likely to operate the Club in a manner that endangers the safety and general welfare of the Avondale neighborhood residents.
10. Based on Conclusions of Law Nos. 5 and 8, the Commission should deny Wolnee Corporation's application to renew its mixed beverage, mixed beverage late hours, and beverage cartage permits for the establishment at 534 Westheimer, Houston, Texas.
11. Based on Conclusions of Law Nos. 5 and 9, the Commission should deny 534 Westheimer Corporation's original application for a mixed beverage, mixed beverage late hours, and beverage cartage permits for the establishment at 534 Westheimer, Houston, Texas.
12. A permittee may not allow another to use his permit and must maintain exclusive occupancy and control of the entire licensed premises. Any arrangement that surrenders the permittee's control of its employees, premises, or business to another is unlawful pursuant to TEX. ALCO. BEV. CODE ANN. § 109.53.
13. Based on the Commission's rule at 16 TEX. ADMIN. CODE § 41.48, to "control" a permitted premises, a person must exercise some ongoing authority over either the physical structure, the employees, or the organization and handling of day-to-day business (such as setting prices, deciding hours of operation, or paying bills).
14. Based on Finding of Fact No. 32 and Conclusions of Law Nos. 12 and 13, neither Ben Conner nor 534 Westheimer were in control of the Club under Wolnee's permit in violation of TEX. ALCO. BEV. CODE ANN. § 109.53.

SIGNED this 31 Day of March, 1999.



ANN LANDEROS
Administrative Law Judge
State Office of Administrative Hearings

ATTACHMENT A

Protestants presented the testimony of the following witnesses:

Houston Police Department Officer Richard Kent;
Avondale resident George Neely;
Houston Police Department Officer David Nieto;
Avondale resident Kenneth Broughton;
Restaurant owner and Westheimer resident Jean Soussan;
Avondale resident Tim Womble;
Avondale Civic Association president Jeffrey Cole;
TABC agent Eric Doman; and
Avondale resident Bryan Gagnier.

The City of Houston had admitted into evidence the following:

Houston Police Department (HPD) location inquiry reports for the Club and various other Montrose areas (City of Houston Exh. 1-10); and
Copies of two photographs of 534 Westheimer (City Exh. 11).

Staff introduced as evidence:

Wolnee's permits from the Commission (TABC Exh. 1);
534 Corporation's original application for Commission permits (TABC Exh. 2);
Photographs of the Club taken in July 1998 (TABC Exhs. 3-A to 3-D); and
Agent Doman's investigative report on 534 Corporation's application (TABC Exh. 4).

Avondale Civic Association had admitted the following:

Photographs of houses on Avondale Street and the Club (Avondale Exh. 1-A to 1-N);
Houston Voice advertisement dated December 25, 1998, for QT's (Avondale Exh. 2);
This Week in Texas advertisement dated November 13, 1998, for QT's (Avondale Exh. 3);
Diagram of Montrose/Avondale neighborhood (Avondale Exh. 4);
This Week in Texas advertisement dated June 12, 1998, for QT's/Vera's Closet (Avondale Exh. 5);
Houston Voice advertisement dated November 27, 1998, for QT's (Avondale Exh. 6);
534 Corporation's response to Avondale's Request for Production No. 12 (Avondale Exh. 7);
534 Corporation's response to Avondale's Request for Production No. 1 (Avondale Exh. 8).

534 Corporation presented the testimony of its president, Ben Conner, and had admitted the following documentary evidence:

Warning sign posted in the Club (Vera's Closet Exh. 1);
Wolnee's letter of authority from the Commission (VC Exh. 2);
Wolnee's lease with 534 Corporation (VC Exh. 3);
Harris County Real Property Appraisal for 534 Westheimer (VC Exh. 4);

534 Corporation's Articles of Incorporation (VC Exh. 5);
Map of Montrose area (VC Exh. 6);
Map of the Club's neighborhood (VC Exh. 7);
HPD location reports for 926 Westheimer (VC Exh. 8);
HPD location report for 3300 block Montrose (VC Exh. 9);
HPD location report for 617 Fairview (VC Exh. 10);
HPD location report for 817 Fairview (VC Exh. 11);
HPD location report for 2517 Ralph (VC Exh. 12);
HPD location report for 800 block Pacific (VC Exh. 13);
HPD location report for 1022 Westheimer (VC Exh. 14);
HPD location report for 710 Pacific (VC Exh. 15); and
HPD location report for 611 Hyde Park (VC Exh. 16).