

**DOCKET NO. 583120**

IN RE LUIS CARDERO MORALES  
D/B/A EL RETIRO II  
PERMIT NO. BG-408071 & BL-408072

GREGG COUNTY, TEXAS  
(SOAH DOCKET NO. 458-01-1543)

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BEFORE THE  
  
TEXAS ALCOHOLIC  
  
BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 26th day of March, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge . The hearing convened on July 26, 2000, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 27, 2001. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

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 renewals for Permit/License Nos. BG-408071 and BL-408072 are hereby **DENIED**.

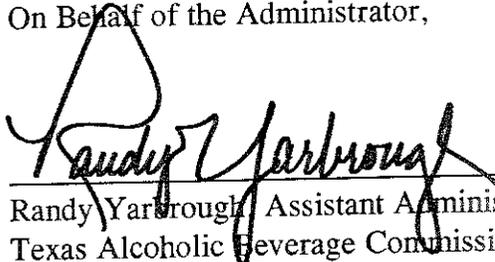
**IT IS FURTHER ORDERED** that the renewal applications for the above described permit and license will be **DENIED**.

This Order will become final and enforceable on April 16, 2001, 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.

**WITNESS MY HAND AND SEAL OF OFFICE** on this the 26th day of March, 2001.

On Behalf of the Administrator,



Randy Yarbrough Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Richard Farrow  
Administrative Law Judge  
State Office of Administrative Hearings  
Tyler, Texas  
**VIA FACSIMILE: (903) 534-7076**

Luis Cardero Morales  
**RESPONDENT**  
107 Leonard Drive  
Longview, Texas 75602-3411  
**CERTIFIED NO. 7000 0520 0024 8846 7731**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Longview District Office



The Petitioner introduced the permit and violation history of the Respondent, letters from the Longview Police Chief and Interim Police Chief, Longview Police Department run sheets setting out the number of calls for service of the police department, offense reports, and a report by TABC Agent Rodgers. These letters request the TABC deny the renewal application of the Respondent based on the number of calls received by the Longview Police Department. The Department had received over 321 calls between February 24, 1997 and July 23, 2000, resulting in 98 criminal cases filed. The Chief's letter stated that this volume of calls was excessively high in comparison to the number of calls that other clubs experience in Longview. The Chief also felt that the history of the club suggests that the problems have never been addressed by the Respondent and that the volume had not diminished and would not be likely to improve. For those reasons he asked that the renewal applications be denied.

Sgt. Russell with the Longview Police Department testified that she worked the graveyard shift of the department and that the Respondent and Respondent's nightclub were "totally corrupt": people were stabbed in the club; weapons had been found in the bathroom; reports of gunshots had been made; people were found drunk and passed out at the tables and even on the floor of the club; and the bouncer at the club would intentionally divert the police officer's attention when on a call at the club, to keep the officer from observing what was going on. Sgt. Russell had seen the same bouncer assault people smaller than was. Sgt. Russell said that it would usually take several units to handle a call at the El Retiro II due to the lack of cooperation from the employees and patrons of the club and because of the likelihood of weapons being involved. Sgt. Russell was adamant that the club "needs to be shut down."

TABC Agent Tommy Rodgers testified that the TABC had brought several administrative cases against the Respondent and that several criminal cases had also been filed. Agent Rodgers said that he would sometimes monitor the police radio and the Longview police would get two or three calls a night concerning the Respondent. Agent Rodgers was of the opinion that the Respondent's renewal application should be denied based on the number and types of disturbances and problems the club had experienced.

Longview police officer Jesse Garner testified that the run sheets accurately show that the department receives excessive calls for service to the Respondent's club and that the department always has to send at least two units and sometimes up to seven units to respond to a call to the club.

The Respondent offered the testimony of the bouncer, John Millwood, also known as or nicknamed "Pappa Grande", who stated that he had been there five years and no shots had ever been fired at the club, that when the police are called only one car is usually needed and in fact only one patrol unit usually shows up. He stated he had never seen any weapons at the club and had never seen any drunks lying on the floor or in the bar. Mr. Millwood testified that he and Sgt. Russell did not get along and he had never interfered with her at the club but had tried to stay away from her as much as he could. Mr. Millwood did admit that he had been involved in a shooting in the parking lot of the premises in which someone had tried to run over him with a motor vehicle and he had fired a shot or shots to chase them off.

Jennifer Bailey, the manager of the club, did not feel that the police were called to the club any more than any other club and that some of the calls on the run sheets introduced by the Petitioner

did not involve the club. She said that she had never seen any weapons at the club, that there were no drunks on the floor or on the tables and that she did not run the club in that manner.

Respondent, Luis Cardero Morales, testified through an interpreter that he did not know that he was such a problem to the Longview police department and said that he would close the bar at the end of the renewal period if the renewal was granted. He asked that the application be granted on that basis.

### **III. Applicable Law**

The Texas Alcoholic Beverage Commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that "...the 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." TEX. ALCO. BEV. CODE §11.46(a)(8). The commission or administrator may give due consideration to the recommendations of the...chief of police ...of the city or town in which the premises sought to be licensed are located.... TEX. ALCO. BEV. CODE §11.41.

There was no documentary evidence offered to compare the number of calls to the Respondent's club to the number of police calls to other clubs in Longview. However, the police chief and the police officers involved in handling the calls stated that the number was excessive. It would seem likely that they would be able to make such comparisons, being familiar with the call volume of other clubs in town, even though the Respondent was of the opinion that the number of calls was not excessive.

The officers' testimony, along with the documentary evidence submitted about the number, type, and severity of the calls indicate that the manner in which the business is, has been, and will likely be operated jeopardize the general welfare, health, safety, and peace of the community.

The testimony of the Respondent does not indicate that the Respondent admits to a problem with the manner the business is conducted or that he intends to improve or attempt to improve it. Although the Respondent only asks for the one renewal he offers no justification for such renewal. Therefore, the application should be denied.

### **IV. Findings of Fact**

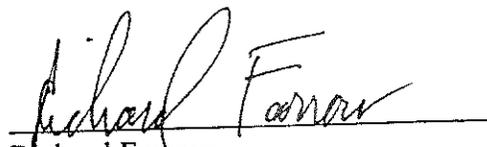
1. The Respondent holds licenses issued by the TABC on February 25, 1997, BG-408071 and BL-408072, and has held such licenses continuously.
2. The Longview Police Department has received 321 calls for service to the Respondents premises between February 24, 1997 and July 23, 2000.
3. Response to calls for service generally require more than one officer or unit from the Longview Police Department.

4. The calls for service often involve assaults, disturbances, public intoxication, fights, and weapons, and injuries to people at the premises.
5. The number and type of calls for service are excessive compared to other clubs in Longview.
6. The conduct of the patrons that require police intervention, such as fights, disturbances, public intoxication, often continue away from the premises and are not necessarily confined to the licensed premises.
7. Illegal weapons have been found on the premises.
8. Stabbing victims have been found by the police on the premises, stabbing victims, in response to a call for service, for which no explanation was offered.
9. The calls for service have been consistent, with no improvement, since the licenses or permits were first issued.
10. Notice of hearing was sent to Respondent on June 9, 2000, setting out a brief statement of the allegations and of the date and time and place of hearing as required..

#### V. Conclusions of Law

1. Service of proper and timely notice was effected on the Respondent pursuant to TEX. GOV'T CODE ANN. § 2001.
2. Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 11.11.
3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 and TEX. GOV'T CODE ANN. § 2003.
4. Based on Findings of Fact Nos. 2-9, since the original permits were issued, Respondent has conducted his business in a manner contrary to the general welfare, health, peace, morals, and safety of the people of the community and will likely continue to conduct the business in that manner in violation of TEX. ALCO. BEV. CODE ANN § 11.46(a)(8).
5. Based on the findings and conclusions, the denial of the Respondent's renewal application is warranted.

Signed this 27<sup>th</sup> day of February, 2001.

  
Richard Farrow  
Administrative Law Judge Presiding