

DOCKET NO. 589100

IN RE OSHIA WALTON PAPILION	§	BEFORE THE
D/B/A ROVOR'S CLUB	§	
PERMIT NOS. MB181584, LB181585,	§	
PE181586	§	TEXAS ALCOHOLIC
	§	
ORANGE COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1701)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 21st day of June 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened and adjourned September 28, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 23, 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.

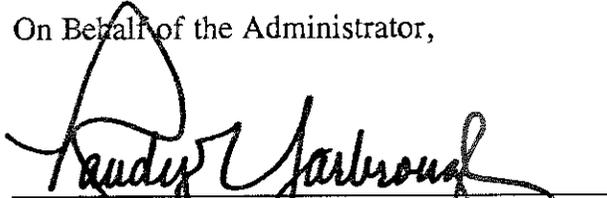
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the allegations regarding Permit Nos. MB181584, LB181585 and PE181586 be hereby **DISMISSED** with prejudice.

This Order will become final and enforceable on July 12, 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 21st day of June 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Rex A. Shaver
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (713) 812-1001

Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
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Oshia Walton Papilion
d/b/a Rovor's Club
RESPONDENT
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TABC Legal Section

Licensing Division
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SOAH DOCKET NO. 458-00-1701

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, PETITIONER, AND
THE CITY OF ORANGE, PROTESTANT

VS.

OSHIA WALTON PAPILION
D/B/A ROVOR'S CLUB
PERMIT NOS. MB-181584, LB-181585
& PE-181586
HARRIS COUNTY, TEXAS
(TABC CASE NO. 589100)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (the Commission) and the City of Orange (Protestant) brought this action against renewal of a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit, which Oshia Walton Papilion (Permitee) sought to have renewed by the Commission, for the licensed premises known as Rovor's Club, located at 304 W. Park, Orange, Orange County, Texas 77630.

The Commission and Protestant alleged that the Permitted "has conducted its business against the public's general welfare, health, peace, morals, safety and/or sense of decency" and had therefore violated Texas Alcoholic Beverage Code § 11.46 (a) (8) (Vernon 1995 and Supp. 2000). The specific allegation is that "the premises are the recipient of an inordinate amount of calls for service from the Orange Police Department, especially assaults, and is an alleged hub of gang activity". Having found that the allegation was not proven by a preponderance of the evidence presented at this hearing, the Administrative Law Judge recommends that no action be taken to suspend or cancel this permit. and that the renewal application be granted.

I. PROCEDURAL HISTORY

On May 23, 2000, the Staff of the Commission (Staff), notified Oshia Walton Papilion d/b/a Rovor's Club (Permitee) that a protest against the issuance of a renewal of the permits held by the Permitted and that the renewal application and protest were being forwarded to the Commission's legal department for review. On June 23, 2000 Permitee was noticed that a hearing on the application for renewal would be held September 28, 2000.

The hearing commenced on September 28, 2000, at 10:00 a.m. at the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas. The Staff was represented by Christopher Burnett. The Respondent, Oshia Walton Papilion d/b/a Rovor's Club appeared and represented herself pro se. On that same date after the taking of evidence and argument

the hearing was concluded. The record was left open until November 1, 2000 at 5:00 p.m. for the filing of post hearing briefs, proposed findings of fact and conclusions of law by the parties.

II. JURISDICTION

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. (the Code) Subchapter B of Chapter 5, §§ 6.01 and 11.46 of the Texas Alcoholic Beverage Code Ann, § 1.01 *et seq.* (V.T.C.A. 1997), the Texas Administrative Procedures Act, Tex. Gov't Code Ann. § 2001 *et seq.* (V.T.C.A. 1997). 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. Gov't. Code Ann. Chapter 2003.

III. EVIDENCE

From the Staff:

Documentary Evidence:

TABC Exhibit 1: Affidavit of Brian L. Guenther, Licensing Department Director for the Texas Alcoholic Beverage Commission regarding copies of permits issued and renewed by Oshia Walton Papilion d/b/a ROVOR's Club.

TABC Exhibit 2: Affidavit of Olga Lydia Hernandez, Records Division Clerk of the City of Orange Police Department and attached records of service calls to the area of the premises of ROVOR's Club.

TABC Exhibit 3: Videotape of exterior of Rovor's Club on or about 2:00 a.m. April 2, 2000 and April 9, 2000

All exhibits were offered and accepted without objection.

Testimony:

1. Lynn Thompson Arceneaux:

Mr. Arceneaux testified that he is a member of the City of Orange Police Department. His duties include handling all liquor licenses in the City of Orange. In this capacity Mr. Arceneaux had contact with Oshia Papilion and employees of Rovor's Club, a licensed premises at 304 W. Park in the City of Orange and located at the intersection of 2nd Street and Park Street. The

premises does not have a parking lot so that patrons must park on the adjacent streets. When asked if he had problems "with Rovor's Club" Mr. Arceneaux responded that while he had problems with the patrons of the club he had not had problems with Respondent herself.

The witness stated that he had researched the calls for service to the area and that the City of Orange Police Department records of those calls were contained in TABC Exhibit 2. The witness stated that many of the calls had to do with large crowds in the street or fighting. The crowds included persons not from the club but "hanging around outside". He had seen crowds of 50 to 100 persons in front of the club at closing time. The witness stated that Oshia Papilion and her husband tried to keep the crowds from gathering outside and on several occasions had called the police for help in making the crowd move on.

Mr. Arceneaux estimated that between May of 1998 and January of 2000 there may have been 5-10 service calls concerning assaults at or near Rovor's Club. It was his testimony that his review of the service calls showed 81 service calls to the area of the premises, including calls regarding automobile and pedestrian traffic congestion. The witness commented upon the videotape evidence and explained that the arrival of police units was usually enough to cause the crowds to move on.

From Respondent:

No Documentary Evidence was offered.

Testimony:

1. Oshia Walton Papilion

Ms. Papilion is the holder of a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit, which she sought to have renewed for the licensed premises known as ROVOR's Club. Ms. Papilion operates premises located at 304 W. Park, Orange, Orange County, Texas 77630. Ms. Papilion stated that there was little she and her employees could do to make the persons near her club disperse. The witness stated that she would call the Orange police when she felt that the crowd outside of her club was not dispersing quickly enough. She hoped that by dispersing the crowd any other problems connected to the crowd could be avoided. Her testimony was that often the police would be slow to arrive and when they did arrive would make more of an effort to direct traffic rather than disperse the crowd. The witness further stated that she had no complaints from the neighbors about the club. She approached the neighbors herself and felt that any complaints were about traffic congestion and the noise from cars in the street.

Ms. Papilion testified that the Code enforcement officer has advised them that they have a capacity of 150 persons inside Rovor's Club. There are no chairs or tables on the outside of the club. There are no loud speakers on the outside of the club. On occasion an altercation has started inside

the club and the employees have ejected the people involved and called the police if the altercation continued outside.

2. Raymond Papilion

Mr. Papilion testified that he worked full time at Rovor's Club. The club has in the past had security provided by an individual. The witness did not know if the individual was a sworn law enforcement officer. That individual left the employment after a few months alleging a lack of cooperation from the Orange Police Department. Mr. Papilion testified that he was advised that City of Orange policy prevents hiring off duty officers to work inside a club. He had made several of the calls for service himself. He would do so when he felt that he needed help in clearing the crowd.

IV. STATUTORY CRITERIA

1. Tex. Alco. Bev. Code Ann. § 11.46 (Vernon 1995 and Supp. 2000) states, in relevant parts . . .

“GENERAL GROUNDS FOR REFUSAL. (a) The 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 any of the following circumstances exists; . . .

(8) 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; . . .”

V. DISCUSSION

The Texas Alcoholic Beverage Commission staff has alleged that grounds for a refusal of a renewal permit exist in this case “based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.” Specifically, the staff alleges that “the premises are the recipient of an inordinate amount of calls for service from the Orange Police Department , especially assaults, and is an alleged hub of gang activity”.

There was no testimony or documentary evidence presented at this hearing concerning gang activity at the premises. Therefore the allegation that the premises was a hub of gang activity was not proven.

The testimony of Lynn Thompson Arceneaux was that his review of TABC Exhibit 2 indicated that between May of 1998 and January of 2000 there were 81 service calls to the area of Rovor's Club. It should be noted that the witness estimated that only 75 percent of the calls set out in TABC Exhibit 2 were related to Rovor's Club. The witness Arceneaux estimated that during the May 1998 to January 2000 period there may have been 5-10 service calls concerning

assaults at or near Rovor's Club. There was no evidence that 5-10 service calls concerning assaults during a 21 month period was an inordinate amount.

That the Orange Police Department made in excess of 80 service calls to the area of Rovor's Club in a 21 month period was not disputed by the permittee, Ms. Papilion. The witness Arceneaux testified that the majority of calls concerned traffic congestion at closing time. The permittee agreed that this was the case and that permittee had made many of the calls requesting assistance in dispersing the crowd. The witness Arceneaux testified that the crowds outside at closing time were made up of persons from Rovor's Club, persons who were not patrons, possible patrons from a club 3 blocks away and some underage people, and in his experience Ms. Papilion would not allow underage persons into the club.

The commission staff introduced TABC Exhibit 3, a videotape containing exterior views of Rovor's Club at about closing time on two separate weekend nights. The portion of the tape taken on April 2, 2000 begins at 2:09 a.m. and stops at 2:19 a.m. During that period it can be seen that traffic in front of Rovor's Club builds briefly and when a police patrol car activates its flashers traffic begins to clear and traffic congestion was cleared from the immediate area of Rovor's Club by 2:19 a.m. Less than 20 minutes after closing time. That portion of the videotape taken on April 9, 2000 begins at 1:52 a.m. At 1:57a.m. auto and pedestrian traffic in front of Rovor's Club begins to build. At 2:00 a.m. automobile traffic in front of the club is bumper to bumper and the sidewalks are crowded. Police at the scene direct traffic and by 2:20 a.m. the immediate area has been cleared. Since this is the tape that the Staff chose to introduce, the ALJ infers that the events on the tape are representative of the problem forming the basis of the complaint.

There was no substantial evidence at this hearing that any particular occurrence or accumulation of occurrences resulting from the place or manner in which the applicant conducts her business jeopardizes the general welfare, health, peace, morals and safety of the people or the public sense of decency. It is recommended that no action be taken against the permit and that the renewal application be approved.

VI. PROPOSED FINDINGS OF FACT

1. Respondent, Oshia Walton Papilion d/b/a/ Rovor's Club is the holder Mixed Beverage Permit, MB-181584, Mixed Beverage Late Hours Permit. LB-181585 and Beverage Cartage Permit, PE-181586.
2. The City of Orange Police Department made 81 service calls to the area of Rovor's Club during the period of May, 1998 and January, 2000.
3. The number of service calls in the area of Rovor's Club concerning assaults during the period of May, 1998 and January, 2000. was between 5 and 10.

4. The largest number of service calls to the area of Rovor's Club were in response to automobile and pedestrian traffic at or about the 2:00 a.m closing time.
5. The period of congestion near Rovor's Club lasts between 20 and 25 minutes in the video tape TABC Exhibit 3.

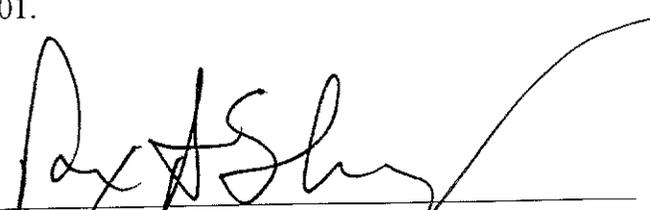
VII. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. (the Code) Subchapter B of Chapter 5, §§ 6.01 and 11.46 of the Texas Alcoholic Beverage Code, TEX ALCO. BEV. CODE ANN.
2. The State Office of Administrative Hearings has jurisdiction in 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. GOV'T. CODE ANN. Chapter 2003 (Vernon's 2000).
3. Service of proper and timely notice of the hearing was given to the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN., Chapter 2001 and 1 TEX. ADMIN. CODE, Chapter 155.4
4. The Respondent, Oshia Walton Papilion does not conduct her business in a place or manner which 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 as set out in TEX ALCO. BEV. CODE ANN.. § 11.46 (a) (8) (Vernon 1995 and Supp. 2000) .

VIII. RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that Respondents renewal application for Mixed Beverage Permit, MB-181584, Mixed Beverage Late Hours Permit. LB-181585 and Beverage Cartage Permit, PE-181586 be granted.

SIGNED this 23rd day of May 2001.



Rex A. Shaver
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS