

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

V.

OF

BGHA LLC, ET AL  
D/B/A CAMELOT  
PERMIT NOS. MB-242538 & LB-242539  
BEXAR COUNTY, TEXAS  
(TABC CASE NO. 593267)

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) and Protestant Universal City seeks to cancel or suspend the permits held by BGHA LLC, et al, D/B/A Camelot for alleged violations of the Texas Alcoholic Beverage Code (the Code) by allowing two of its dancers to solicit persons for immoral or sexual purposes and for allowing another employee to solicit drinks for consumption by the Permittee. Staff and Universal City also allege that Camelot's application for renewal of its licenses should be denied pursuant to Code Section 11.46(a)(8), on the basis that the business violates the general welfare, health, peace, morals, and safety of the people and the public sense of decency. The Permittee owns and operates a topless nightclub in Universal City, Bexar County, Texas. Based on a Universal City Ordinance prohibiting a sexually oriented business at the club location, along with the high incidences of police calls and criminal activity at the club, the Administrative Law Judge (ALJ) recommends that the Commission deny Camelot's renewal application.

**I. PROCEDURAL HISTORY & JURISDICTION**

On November 28, 2001, a public hearing was convened before ALJ Leah Bates at the offices of the State Office of Administrative Hearings in San Antonio, Texas. The Staff was represented by Dewey Brackin, an attorney with the Texas Alcoholic Beverage Commission (TABC) Legal Division. Camelot was represented by Roberto Maldonado, attorney. Universal City, the city in which the night club is located, also participated as a party to this proceeding, and was represented by Harry B. Adams, III, attorney.

In the amended notice of hearing, the Commission set out three allegations made by Commission staff: that Respondent allowed two of its agents, servants, or employees to solicit persons for immoral or sexual purposes and that Respondent allowed another employee to solicit drinks for consumption by the Permittee. These events are alleged to have occurred at the club on December 14, 2000. The amended notice of hearing also set out allegations brought by Universal City. According to these allegations, the place or manner in which Camelot conducts its business

warrants the cancellation or suspension of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of Section 11.46(a)(8) of the Code in that the location is subject to an inordinate amount of calls for service from the Universal City Police Department and is operating without an adult entertainment license issued by the city.<sup>1</sup> Staff of the TABC has viewed these complaints as a protest to Camelot's pending license renewal application.

At the beginning of the hearing, the Respondent objected to Universal City's standing and requested that it be prevented from offering testimony in support of its allegations. The ALJ denied this motion but allowed the parties to brief the issue. In its brief, the Respondent observes that Section 11.62 of the Code requires that protests be "supported by the sworn statement of at least one credible person." It correctly observes that Universal City's protest letter is unsworn.

The ALJ concurs with the ruling made at hearing that the lack of a sworn protest letter is not fatal to the City and Staff's pursuit of these issues at the hearing. Pursuant to Code Section 11.62, the Commission has the authority to call a hearing to address issues pertaining to the cancellation or suspension of original or renewal permits. By including the allegations raised by the City in the amended notice of hearing, the Commission effectively did that. Although the Commission apparently was not obligated to include these issues within the scope of the hearing since the City's petition was unsworn, the ALJ is unpersuaded that it lacked the authority to do so. The key requirements are the provision of adequate notice and an opportunity for a hearing, and they have been met.

Following the conclusion of the hearing, the matter was transferred to ALJ Kerry D. Sullivan for preparation of the proposal for decision. The record of this proceeding closed on April 12, 2002, with the filing of supplemental arguments requested by the ALJ.

## II. DISCUSSION

### A. Applicable Law

Pursuant to Section 11.61 of the Code, the TABC may cancel or suspend a permit "if it is found, after notice and hearing, that any of the following is true:

\*\*\*\*

(2) the permittee has violated a provision of this code or a rule of the Commission;

\*\*\*\*

---

<sup>1</sup> As addressed below, Universal City Ordinance 504 now renders Camelot ineligible for such a license.

Section 104.01 of the Code provides in part:

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

\*\*\*\*

(4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;

\*\*\*\*

(7) permitting solicitations of persons for immoral or sexual purposes.

With respect to the allegations raised by Universal City, Section 11.46(a)(8) of the Code authorizes the Commission to deny an original or a renewal application if the place or manner in which the permittee conducts his business warrants the refusal of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

B. The Evidence

Staff presented the testimony of Detective Matheny, a San Antonio vice squad officer, who investigated the nightclub at the request of the Universal City Police Department. The following summarizes his direct testimony.

An official with the Universal City Police Department requested that Detective Matheny visit Camelot in an undercover capacity. Detective Matheny agreed to do so. He went with a Detective Guzman, now retired. In early December 2000, Detective Matheny visited the club, apparently without observing any incidences of illegal behavior. He went again on December 14, 2000. Shortly after Detective Matheny entered the club on December 14, 2000, a dancer named Cynthia Subirias approached him and asked if he wanted company. He said yes and she sat down with him. Ms. Subirias asked Detective Matheny to buy her a drink, which he did. Detective Matheny asked Ms. Subirias if she performed at private parties or worked as an escort. Ms. Subirias said that she did provide escort services. Detective Matheny asked her to tell him more. Instead, Ms. Subirias suggested a table dance. Detective Matheny agreed, and Ms. Subirias performed a table dance for him.

Following the table dance, Detective Matheny then asked, "What all do you usually do on an escort?" Ms. Subirias replied by asking Detective Matheny if he was "a cop." Detective Matheny assured her that he was not. Ms. Subirias then asked Detective Matheny what he would expect on an escort. Detective Matheny replied that he would expect either oral sex or a "hand job." Ms. Subirias then offered to give Detective Matheny the latter for \$200. Detective Matheny agreed to pick Ms. Subirias up at the club and take her to a motel up the road.

Detective Matheny then mentioned that he had a friend with him. Ms. Subirias agreed to talk with her sister, who was also working at the club that day. She did, and the sister agreed to perform the same services for the same price. Detective Matheny then went to the restroom, called his lieutenant, and had the Subirias sisters arrested for solicitation of prostitution.

On cross examination, Detective Matheny reaffirmed that he instigated the conversation about sexual activity. On redirect, though, he contradicted his earlier testimony. He stated that he asked Ms. Subirias what he would get for his money, and she first offered to perform a sexual act. Finally, Detective Matheny testified that he videotaped his activities at the club on December 14, 2000, but the videotape was not offered into evidence at the hearing.

Universal City offered documentation that it has passed a Sexually Oriented Business Ordinance which Camelot violates in its current location. This Ordinance, Universal City Ordinance 504, prohibits the location of adult entertainment establishments such as Camelot within 500 feet of a church, school, day care center, or park, or within 300 feet of a residential district or residential lot. It is undisputed that Camelot's location violates the terms of this ordinance, which was adopted on April 5, 1994. As a pre-existing nonconforming use, Section 3.02 of the Ordinance authorized Camelot to continue operation for three years. Additionally, upon a showing by a particular business that, without an extension, it would not be able to recoup its investment in the nonconforming structure, Section 3.02(B) of the ordinance also allowed the City Council to authorize a one-time extension of the nonconforming use.

In accordance with this Ordinance, Camelot continued operating as a nonconforming use for three years. Camelot applied for an extension, and on October 1, 1996, the City Council approved an additional three-year extension. This extension expired on April 5, 2000. As addressed below, Camelot has challenged the constitutionality of this ordinance to no avail.

Universal City also sponsored the testimony of retired San Antonio police officer Alan Hicke. Mr. Hicke testified that he reviewed Universal City police reports and call reports associated with the club from 1996, through 1998, and that he checked them against a night club that did not feature topless dancing. According to Mr. Hicke, during the period of his review, Camelot averaged 62 calls per year for police assistance. These included numerous calls for breaches of the peace; an incident in which an eight year old and four year old child were "wandering around" the club during business hours; and a 1997 incident reporting that a sixteen year old child was performing topless on stage.

Mr. Hicke recognized that, "On the surface, 62 calls for police service may not seem to be excessive. . . .". But given Universal City's relatively small size (approximately 15,500 residents) and correspondingly small police force (21 sworn officers), Mr. Hicke believed Camelot poses an inappropriate drain on police resources. He observed that the 62 calls per year represent six tenths of one per cent of the roughly 10,500 calls for service made to the Universal City Police Department each year. He further observed that, applying this same percentage of calls from one location to the

City of San Antonio's police force would equate to 4,133 calls from one location. Having extrapolated this number, Mr. Hicke then satisfied himself with a conversation with a San Antonio official that San Antonio would never allow a business with more than 4,000 complaints per year to remain open.

Mr. Hicke further testified that he compared the number of calls from Camelot with the Pawn Pub, another nightclub in Universal City. According to Mr. Hicke, the Pawn Pub averages 12 police calls per year. Therefore, according to Mr. Hicke, the number of police calls to Camelot are attributable to the sexually oriented nature of the business rather than to the alcohol sold there. According to Mr. Hicke, establishments such as Camelot typically have problems with prostitution, violence, intoxication, and drugs. Based on the police reports, Mr. Hicke found Camelot to be no exception to this rule.

Camelot called four witnesses in its defense: Cynthia Subirias, the dancer who first approached Detective Matheny; Ms. Ramona McDonald, a former dancer and current waitress at Camelot; Jesse Jones, a narcotic's officer for the City of Live Oak, who has performed drug searches at Camelot at the request of the owner, and Mr. Ali Arabyaghobi, the owner of the club. Ms. Subirias testified that she and her sister went to the club for the first and only time on December 14, 2000 - the day they were arrested - and that neither she nor her sister has been back to the club. When she got there that day, she talked with a person named Boomer, who she understood to be the manager. She filled out some paper work, started dancing, and was soon arrested. Ms. Subirias testified that the prostitution charge remained pending, and she invoked her fifth amendment right against self incrimination when she was questioned about the alleged solicitation.

Ms. McDonald testified that she was arrested at the club on December 14, 2000, for soliciting a customer to buy her a drink. She testified that she performed table dances for both detectives at the club that day. According to her, the tall, Anglo detective talked constantly with her about sex, and asked, "What would it take for me to go home with you?" Following the dance, one of the officers asked her, "Is there anything else we can get for you?" Ms. McDonald replied that they could get her a rum and coke, which they did. Ms. McDonald testified that she knew it was illegal to ask customers to buy her a drink and that she would never do so because she treated every customer as if they were a police officer. She testified that Mr. Arabyaghobi had installed video cameras around the club to ensure that business was conducted lawfully. Ms. McDonald testified that the TABC confiscated the tape from December 14, 2000, and that she would welcome its introduction into evidence. The persuasiveness of Ms. McDonald's testimony was compromised somewhat, however, by her sworn testimony that she was sure the Anglo detective she described came into the bar every week and was one of her regular customers. The person she described, however, was Alan Hicke, who appears never to have set foot in the bar. On cross-examination, Ms. McDonald conceded that she was probably confused as to the identity of this regular customer.

Officer Jesse Jones, a narcotic's officer with the City of Live Oak Police Department, testified that he lives a half block from the club. He has known Mr. Arabyaghobi for eight to ten years. They met at a restaurant, and Mr. Arabyaghobi hired him to periodically bring his drug sniffing dog through the club in search of drugs. Mr. Jones testified that he has been in the club

about six times to do searches and three times as a customer. He discovered one small bag of cocaine in 1997, but found no other drugs. He has observed no other illegal activity at the club.

Finally, Mr. Arabyaghobi testified on his own behalf. He testified that he has invested about \$500,000 in the club, although his tax records and TABC application suggest far smaller investments. He said this club is his first business, and he has owned it since 1993. He testified that the 4 year old and 8 year old supposedly wandering around the club in 1997, were the children of his fiancée, and that they stayed behind a closed door in the office and could not see the dancers. According to Mr. Arabyaghobi, TABC personnel were aware of this arrangement and did not object to it.

Mr. Arabyaghobi also testified that he was fighting the Universal City Ordinance that prohibited the location of a sexually oriented business within specified distances of specified institutions and land uses. The record shows that Camelot challenged the constitutionality of this ordinance in a federal district court lawsuit.<sup>2</sup> The lawsuit was pending at the time of the hearing, but on January 24, 2002, the Court entered an order “granting (the City’s) motion for summary judgement on (Camelot’s) constitutional challenges to SOB Ordinance No. 504....” The Protestants attached a copy of the judgment to their closing argument. In an Order issued April 2, 2002, the ALJ proposed to take Official Notice of the Court’s judgement in this proceeding and invited the parties to address the impact of the ordinance and the judgment upholding it in assessing whether Camelot’s TABC permits should be canceled. The Commission and the Protestants each replied that the court’s judgment denying the constitutional challenge is *res judicata* as to the same issues raised by Camelot in this administrative proceeding. Neither objected to the taking of official notice of the Court’s judgment. Camelot did not respond to the Order. Accordingly, the ALJ hereby takes official notice of the Court’s judgment.

C. ALJ’s analysis.

The ALJ finds the City ordinance, the purpose of which was “to regulate Adult Entertainment Establishments to promote the health, safety, morals and general welfare of the citizens of the City...” shows that Camelot’s business violates the general welfare, health, peace, morals, and safety of the people and public sense of decency--at least as seen through the eyes of the City’s elected officials. This local perspective is important in the statutory scheme, in that Section 11.41 of the Code provides that the Commission may give “due consideration” to the recommendations of local officials in assessing whether a permit should be granted.

The City’s view is also supported by the relatively high number of calls to the police that have come from the bar over the years. This is not to suggest that the ALJ accepts the City’s extrapolation theory (equating the strain of 62 calls to the Universal City police force with 4,131 calls to the San Antonio police). That approach is generally unpersuasive because Camelot and its

---

<sup>2</sup> *BGHA, L.L.C. d/b/a Camelot v. City of Universal City, Texas, et al*, Case No. SA 00 CA 1473 NN in the United States District Court, Western District of Texas.

clientele would presumably constitute a correspondingly larger percentage of the public to be protected—and of the tax base from which funding is drawn—in Universal City than they would in San Antonio. Nevertheless, the ALJ accepts the general proposition that the drain of a single trouble spot would be harder to absorb in a smaller town than in a large city. And based on the comparison of calls to Camelot with calls to the Pawn Pub (62 per year versus 12 per year), Camelot does appear to be something of a trouble spot.

Additionally, there is no apparent reason to ignore the fact that the ordinance prohibiting the operation of this business at its current location has now been upheld. Both the original application and the renewal application list the primary business of the permitted facility as “Sexually Oriented,” and Camelot has provided no hint that it wishes to use it permits for any purpose other than to sell alcohol in a topless bar. Accordingly, granting a renewal permit at this point would appear to be an unnecessary and useless act.<sup>3</sup> Based on these circumstances, the ALJ recommends the renewal application be denied on the basis that the place or manner in which the permittee conducts its business is inconsistent with the general welfare, health, peace, morals, and safety of the people and the public sense of decency.<sup>4</sup>

### III. FINDINGS OF FACT

1. On October 28, 1993, BGHA LLC, et al, D/B/A Camelot (“Camelot”) applied with the Texas Alcoholic Beverage Commission (“Commission”) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for its business located at 2101 Pat Booker Road, Universal City, Bexar County, Texas.
2. The Commission issued the requested permits.
3. On November 16, 2000, Camelot filed a renewal application for the same location.

---

<sup>3</sup> Cf. *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943) (“...the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith.”) Camelot’s failure to respond to the ALJ’s April 2, 2002, Order tends to confirm Camelot’s lack of interest in renewing its permit for a different type of business.

<sup>4</sup> The incidents involving Ms. Subirias and Ms. McDonald add some additional justification to this result in that Ms. Subirias did ultimately agree to perform a sexual act on Detective Matheny in exchange for money. The ALJ would not, however, recommend denial of Camelot’s license or a significant suspension based on these incidents alone. To the extent solicitation was occurring in the bar on December 14, 2000, it was primarily done by Detective Matheny, who first requested the sexual act and had to repeatedly bring the conversation around to this extracurricular activity in order to get Ms. Subirias and her sister to finally agree to it.

Regarding the allegation of solicitation of a drink by a bar employee, Ms. McDonald was the one arrested for this offense, which she flatly denied. Detective Matheny did not address the allegation against Ms. McDonald in his testimony, and the ALJ accepts Ms. McDonald’s version of these events. Detective Matheny did, however, testify that Ms. Subirias asked him to buy her a drink, and the ALJ accepts that this likely occurred. In isolation, however, the ALJ does not believe the unauthorized activities of Ms. Subirias on the one and only day she worked at the club would warrant the strict sanction requested.

4. On August 17, 2001, the staff of the Commission sent notice of hearing to Camelot alleging that Camelot's permits should be canceled or suspended. The notice provided the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
5. The hearing was originally set for September 11, 2001, but was continued to November 28, 2001, on which date the hearing was held in San Antonio, Bexar County, Texas, before an administrative law judge with the State Office of Administrative Hearings (SOAH). Camelot was represented by Roberto Maldonado; the Staff was represented by Dewey Brackin, an attorney with the TABC Legal Division; Protestant City of Universal City was also admitted as a party and was represented by Harry B. Adams, III. The record of this proceeding closed on April 12, 2002, with the filing of supplemental arguments requested by the ALJ.
6. Universal City Ordinance 504 prohibits the location of adult entertainment establishments such as Camelot within 500 feet of a church, school, day care center, or park, or within 300 feet of a residential district or residential lot. Camelot's location violates the terms of this ordinance, which was adopted on April 5, 1994.
7. As a pre-existing nonconforming use, Section 3.02 of Ordinance 504 authorized Camelot to continue operation for three years. Additionally, upon a showing by a particular business that, without an extension, it would not be able to recoup its investment in the nonconforming structure, Section 3.02(B) of the ordinance also allowed the City Counsel to authorize a one-time extension of the nonconforming use.
8. In accordance with Ordinance 504, Camelot continued operating for three years as a nonconforming use. Camelot applied for an extension and, on October 1, 1996, the City Counsel of Universal City approved an additional three-year extension. This extension expired on April 5, 2000.
9. Camelot challenged the constitutionality of Ordinance 504 in a federal lawsuit styled *BGHA, L.L.C. d/b/a Camelot v. City of Universal City, Texas, et al*, Case No. SA 00 CA 1473 NN in the United States District Court, Western District of Texas. On January 24, 2002, the Court entered an order granting Universal City's motion for summary judgement on Camelot's constitutional challenges to the Ordinance.
10. Camelot averages approximately 62 calls per year for police assistance. These included numerous calls for breaches of the peace; an incident in which an eight year old and four year old child were wandering around the club during business hours; and a 1997 incident reporting that a sixteen year old child was performing topless on stage.
11. On December 14, 2002, Cynthia Subirias, a dancer who worked at Camelot on that day only, agreed to perform a sexual act in exchange for money on an undercover detective who was posing as a customer at the club.

12. On December 14, 2002, Ms. Subirias's sister, who also worked at the club on that day only, agreed to perform a sexual act in exchange for money on a "friend" of the undercover detective.
13. On December 14, 2002, Cynthia Subirias requested the undercover officer to buy her a drink at Camelot.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to §§ 11.46 and 11.61 of the Code.
2. SOAH 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 manner in which Camelot conducts its business warrants the denial of its renewal application and cancellation of its permits, based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

**SIGNED May 20, 2002.**

  
\_\_\_\_\_  
**KERRY D. SULLIVAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DOCKET NO. 593267**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	ALCOHOLIC
BGHA LLC, ET AL	§	
D/B/A CAMELOT	§	
PERMIT NOS. MB-242538 & LB-242539	§	
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-3577)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 3<sup>rd</sup> day of September, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Leah Bates. The hearing convened on November 28, 2001, and adjourned the same day. Administrative Law Judge Kerry D. Sullivan made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 20, 2002. 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. Exceptions to the Proposal were filed on June 27, 2002. Replies to the Exceptions were filed July 19, 2002. The Administrative Law Judge, by letter, rejected Respondent's Exceptions.

On August 7, 2002, Respondent filed a Motion to Reconsider Motion to Reopen Evidence. Petitioner replied to the Motion on August 12, 2002. The Administrative Law Judge did not rule on the Motion, citing no jurisdiction.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Exceptions, Replies and Motion to Reconsider, 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 Renewal Application of BGHA LLC, et al, d/b/a Camelot, for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **DENIED** and that the above-referenced permits be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on September 24, 2002, 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 3<sup>rd</sup> day of September, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

RY/yt

Jennifer S. Riggs  
**ATTORNEY FOR RESPONDENT**  
HILL, GILSTRAP, RIGGS, ADAMS & GRAHAM, L.L.P.  
1005 Congress Avenue, Suite 880  
Austin, Texas 78701  
**VIA FACSIMILE: (512) 457-9066**

BGHA LLC., et al  
d/b/a Camelot  
**RESPONDENT**  
2101 Pat Booker Road  
Universal City, Texas 78148  
**CERTIFIED MAIL NO. 7001 2510 0000 7277 7491**

Administrative Law Judge Sullivan  
State Office of Administrative Hearings  
Austin, Texas  
**VIA FACSIMILE: (512) 475-4994**

San Antonio District Office  
Licensing Division