

DOCKET NO. 624636

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
	§	
WILLIAM P. MCMANUS, CHIEF OF POLICE, Protestant	§	
	§	
VS.	§	
	§	
	§	
T & A LONGORIA VENTURES LLC, D/B/A GEMINI ULTRA LOUNGE/SPORTS BAR, Respondent/Applicant	§	ALCOHOLIC
	§	
	§	
PERMIT MB792063, LB	§	
	§	
	§	
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-14-3559)	§	
	§	
	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of February, 2015, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Steven M. Rivas presiding. The hearing convened on August 26, 2014 and the SOAH record closed on that same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 17, 2014. The 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. No exceptions were filed.

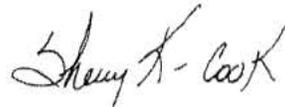
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order as if such were fully set out and separately stated herein.

All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied unless specifically adopted herein.

IT IS THEREFORE ORDERED that Respondent's application for renewal of the above permits be **GRANTED**.

This Order will become **final and enforceable** on the 27th day of February, 2015, **unless a Motion for Rehearing is filed by the 26th day of February, 2015.**

SIGNED this the 3rd day of February, 2015, at Austin, Texas.



Sherry K-Cook, Executive Director
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 3rd day of February, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Steven M. Rivas
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, TX 78701
VIA FACSIMILE: (512) 322-2061

T & A Longoria Ventures, LLC
d/b/a Gemini Ultra Lounge/Sports Bar
RESPONDENT/APPLICANT
442 W. Hildebrand
San Antonio, TX 78212-2158
VIA FIRST CLASS MAIL, CMRRR #70120470000133006367

Chief William P. McManus
San Antonio Police Department
PROTESTANT
315 South Santa Rosa Street
San Antonio, TX 78283
VIA FIRST CLASS MAIL, CMRRR #70120470000133006374

David Duncan
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: david.duncan@tabc.texas.gov

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 17, 2014

Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA INTERAGENCY MAIL

RE: SOAH Docket No. 458-14-3559; Texas Alcoholic Beverage Commission v. T&A Longoria Ventures, LLC d/b/a Gemini Ultra Lounge/Sports Bar

Dear Ms. Cook:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "SMR", with a long horizontal line extending to the right.

Steven M. Rivas
Administrative Law Judge

SMR/fh
Enclosure

xc David Duncan, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with Certified Evidentiary Record and Hearing CD)
Aaron Longoria, Owner, T & A Longoria Ventures, LLC, d/b/a Gemini Ultra Lounge/Sports Bar, 442 W. Hildebrand, San Antonio, TX 78212 - VIA REGULAR MAIL
Chief William P. McManus, San Antonio Police Department, 315 South Santa Rosa Street, San Antonio, TX 78283 - VIA REGULAR MAIL

SOAH DOCKET NO. 458-14-3559

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
<i>Jurisdictional Petitioner</i>	§	
	§	
WILLIAM P. MCMANUS, CHIEF OF POLICE	§	
<i>Protestant</i>	§	
	§	
v.	§	OF
	§	
RENEWAL APPLICATION OF T&A	§	
LONGORIA VENTURES LLC D/B/A	§	
GEMINI ULTRA LOUNGE/SPORTS BAR	§	
PERMIT NO. MB792063	§	
<i>Respondent</i>	§	
	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO 624636)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

T&A Longoria Ventures LLC d/b/a Gemini Ultra Lounge/Sports Bar (Respondent) submitted a renewal application (Application) for its mixed beverage permit from the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 442 W. Hildebrand, San Antonio, Texas, 78212. San Antonio Police Chief William McManus filed a protest against the renewal application but did not appear at the hearing. After considering the arguments and evidence presented, the Administrative Law Judge (ALJ) finds there is insufficient basis for denying the renewal of the permit and, therefore, recommends that the renewal permit be granted.

I. PROCEDURAL HISTORY

On August 26, 2014, a public hearing was convened in this matter at the State Office of Administrative Hearings in San Antonio, Texas, before ALJ Steven M. Rivas. Respondent appeared and was represented by its owner Aaron Longoria. Chief McManus did not appear. TABC (Staff) was represented by Staff Attorney, David T. Duncan. However, Staff took no position regarding the

renewal application. There were no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here. The hearing concluded and the record closed on that same day.

II. DISCUSSION

A. Applicable Law

Protestant has alleged the following reason for the protest, as set out in Texas Alcoholic Beverage Code § 11.46(a)(8)

The place or manner in which Respondent or Respondent's agent, servant, or employee, conducts his business warrants the refusal of Respondent's permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

B. Evidence and Arguments

Chief McManus did not appear and, as such, offered no testimony concerning any opposition to the renewal application. Although TABC took no position on the renewal application, Staff offered four exhibits, including Respondent's permit history, which showed several violations Respondent has received since the initial permit was issued on December 8, 2011. Respondent's previous violations include failure to report a breach of peace, permitting a minor to possess/consume alcohol, and possessing distilled spirits without ID stamps. For each violation, Respondent paid the required fine and/or accepted a period of suspension.

On November 27, 2013, Respondent entered into a Nuisance Abatement Settlement Agreement with the City of San Antonio. The agreement called for Respondent to close its business for two months beginning on November 29, 2013 to January 29, 2014. The agreement further

stipulated that when the business reopened, Respondent would ensure that at least one certified security officer would be present to monitor the premises and prevent any further criminal activity.

Mr. Longoria admitted that he made mistakes in the past by not ensuring the premises attracted and catered to law-abiding clientele. In other words, anyone who was willing to pay for drinks was allowed to enter. And, according to Mr. Longoria, this approach allowed patrons with criminal intent to be present on the premises, which eventually led to criminal activity. Mr. Longoria asserted he has remodeled the premises by adding extra lighting in the parking lot and by installing security cameras throughout the premises. This is in addition to hiring more security officers and requiring every patron to be patted down for weapons before entering the premises, Mr. Longoria stated.

Staff noted it received notice that Chief McManus would not attend the hearing, but offered no reason as to why he chose not to attend. Staff also stated that other TABC personnel had reviewed Respondent's renewal application and had possibly considered the recent renovations and other changes in deciding not to take part in denying the application.

III. ANALYSIS

The Code provides that a respondent may not operate in a place or manner that warrants refusal of a permit based on the general welfare, health, peace, morals, and safety of the people. The protest to the renewal application was made by Chief McManus as a representative of the San Antonio Police Department, but Chief McManus did not appear at the hearing to offer and testimony as to why Respondent's renewal application should be denied. Likewise, Staff took no position on whether the application should be denied. Hence, the ALJ does not believe the evidence in this case warrants denial of the renewal application.

Although Respondent has several prior violations, TABC did not consider these administrative violations to be sufficient cause to deny the renewal application. The evidence is

insufficient to show that the place or manner in which Respondent operates warrants refusal of the renewal application at this time given the changes Respondent has made. Therefore, the ALJ recommends this renewal application be granted.

IV. FINDINGS OF FACT

1. T&A Longoria Ventures, LLC, d/b/a Gemini Ultra Lounge/Sports Bar (Respondent) has filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for its mixed beverage permit MB 792063 for the premises located at 442 W. Hildebrand, San Antonio, Texas 78212.
2. Protest to the application was filed alleging that the place or manner in which Respondent may conduct its business warrants a refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated May 12, 2014, was issued by TABC Staff notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On August 26, 2014, a hearing began before ALJ Steven M. Rivas at the State Office of Administrative Hearings in San Antonio, Texas. TABC Staff appeared as a jurisdictional petitioner and was represented by Staff Attorney David Duncan. Respondent appeared and was represented its owner, Aaron Longoria. Protestant Chief William McManus did not appear. The record closed that same day.
5. Respondent has had several administrative violation citations from TABC since the initial license was issued on December 8, 2011.
6. Respondent entered into a Nuisance Abatement Settlement Agreement, wherein Respondent agreed to close for two months, and has made renovations to the premises.
7. Respondent renovated the premises by adding extra lighting in the parking lot and by installing security cameras throughout the premises.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code Chs. 5, 11, and 28, and §§ 6.01, 11.46(a)(8).

2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code Ann. Ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act. Tex. Gov't Code Ch. 2001; 1 Tex. Admin. Code § 155.401.
4. There was insufficient evidence to demonstrate that the place or manner in which Respondent conducts its business warrants the refusal of a permit based on the general welfare, health, peace, morals, or safety of the people or on the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).
5. Respondent's renewal application for its Mixed Beverage Permit MB 792063 for the premises located at 442 W. Hildebrand, San Antonio, Texas 78212, should be granted.

SIGNED October 17, 2014.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**