DOCKET NO. 605139

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Jurisdictional Petitioner	§	**BEFORE THE TEXAS**
JOHNNY F. BONNY, Protestant	§	
IBIZA CORPORATION D/B/A METRO HOUSTON STREET, Respondent/Applicant for Renewal	§	**ALCOHOLIC**
PERMITS NO. MB536831, LB	§	
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-12-1683)	§	**BEVERAGE COMMISSION**

ORDER

CAME ON FOR CONSIDERATION on this the 20th day of August, 2012, 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 Travis Vickery presiding. The hearing convened on November 23, 2011 and the SOAH record closed January 30, 2012. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on February 17, 2012. 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. As of this date no exceptions have been 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 Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, IT IS ORDERED that the application of Ibiza Corporation d/b/a Metro Houston Street for the renewal of its Mixed Beverage Permit and Mixed Beverage Late Hours Permit is **GRANTED**.

This Order will become final and enforceable on the 14th day of September, 2012, unless a Motion for Rehearing is filed on or before the 13th day of September, 2012.

SIGNED this the 20th day of August, 2012, at Austin, Texas.

Sherry K-Cook

Sherry K-Cook, Administrator
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 20th day of August, 2012.

Martin Wilson

Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Travis Vickery
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, TX 78701
VIA FACSIMILE: 512-322-2061

Ibiza Corporation
d/b/a Metro Houston Street
RESPONDENT
554 W Quill Dr
San Antonio, TX 78228
VIA REGULAR MAIL

Johnny F. Bonny
PROTESTANT
222 E. Houston Street #900
San Antonio, TX 78205
VIA REGULAR MAIL

John Sedberry
ATTORNEY FOR JURISDICTIONAL PETITIONER
TABC Legal Division

SOAH DOCKET NO. 458-12-1683

RENEWAL APPLICATION OF THE IBIZA CORPORATION D/B/A METRO HOUSTON STREET FOR A MIXED BEVERAGE PERMIT AND A MIXED BEVERAGE LATE HOURS PERMIT, MB536831 & LB (TABC DOCKET NO. 605139)	§	**BEFORE THE STATE OFFICE**
	§	
	§	
	§	**OF**
	§	
	§	
	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

Johnny F. Bonny (Protestant) protested the renewal application filed by The Ibiza Corporation d/b/a Metro Houston Street (Respondent or Metro) with the Texas Alcoholic Beverage Commission (TABC or Commission) on the basis that Respondent maintains a noisy establishment whose patrons breach the peace in violation of Section 11.46(a)(8) of the Texas Alcoholic Beverage Code (Code). The Administrative Law Judge (ALJ) recommends that the renewal application be granted.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Respondent holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit (Permit) for the premises at 229 East Houston Street, Suite 10, San Antonio, Bexar County, Texas, 78205. The hearing on the protest convened on November 30, 2011, in San Antonio, Texas, before ALJ Travis Vickery. Respondent and Protestant appeared *pro se*. TABC Staff Attorney John Sedberry represented Staff, but Staff took no position on the protest. The record closed on January 30, 2012. Notice and jurisdiction are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Legal Background

The basis for the denial of Respondent's renewal in the Notice of Hearing is for violation of Code § 11.46(a)(8), which provides:

> (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.

B. Evidence, Argument, and Analysis

Respondent operates a bar known as Metro in downtown San Antonio. The area is dense and urban, characterized by mixed-use buildings containing both business and residential units, including condominiums, restaurants, gift shops, and bars. Until June 2011, a bar known as Suede was operating directly adjacent to Metro. Both bars closed at 2 a.m.

Mr. Bonny lives on the ninth floor almost directly across the street from the Metro in a building known as the Majestic Towers. His primary complaint is that on Saturday and Sunday evenings after the bars close, there is usually a noisy crowd from roughly 2:15 a.m. until 2:45 a.m. and on some occasions, police sirens can be heard from the street below as officers break up the crowd. Because Mr. Bonny and his wife go to sleep well before 2 a.m., they were often awakened by the noise.

Although 52 individuals filed protest statements with the TABC against renewal of the Permit, Mr. Bonny was the only Protestant to attend the hearing on the merits.[1] Nevertheless, his testimony was consistent with other complaints in evidence admitted at hearing. The evidence

reflects neighbors' complaints of loud music, loud crowds gathered as late as 4 a.m., honking of car horns, fights, lewd and disorderly conduct necessitating police intervention, and arrests. In one instance, a riot broke out requiring 35 police officers, ambulances, and paddy wagons. Residents and businesses have complained of property damage, harassment, and disturbance of the peace as a result of drunken patrons leaving the bars.[2]

Winston Potgieter testified on behalf of Respondent. He acknowledged that Metro is imperfect and that there is always room for improvement. However, he testified that the vast majority of the conduct complained of actually stemmed from Suede, the bar adjacent to Metro. Because local businesses and tenants could not distinguish between patrons of Suede and Metro, Metro was blamed for Suede's problems. In fact, Metro was directly impacted by Suede, because Metro's customers were afraid to walk in front of Suede due to the behavior of its patrons.

The ALJ finds that much of the evidence in this matter supports Mr. Potgieter's testimony. Suede closed in June 2011. After that, many of these problems cleared up. Although Mr. Bonny still opposes the renewal of the Permit, he acknowledged that since Suede closed in June 2011 there is "not nearly as much" after-hours noise or police presence as before. He also readily admitted that things have improved now that Suede has closed. Mr. Potgieter suggested that this also explains why Mr. Bonny was the only protestant to attend the hearing out of 52 individuals who filed TABC protest forms against renewal of the Permit.[3]

Mr. Potgieter offered an exhibit demonstrating the number of calls to the police regarding Metro, Suede, and two other local bars from January through July 2011. The exhibit reflects police received a total of six calls in that period regarding Metro: three classified as "other" and three classified as "alarm." Suede on the other hand, was the subject of 39 calls during the same period, four classified as "violent," and 35 as "other."[4]

---

[1] TABC Ex. 1 consists of TABC protest forms filed by 52 individuals.

[2] Applicant's Ex. 4.

[3] Suede moved out of the space next to Metro in June 2011. TABC confirmed at hearing that Suede's license expired on August 11, 2011.

[4] Applicant's Ex. 2.

The evidence reflects that Mr. Potgieter has consistently claimed that Metro was being blamed for the behavior of Suede's customers. His actions have also been consistent with that position. In early May 2011, at roughly the same time the TABC protest statements were filed against renewal of the Permit, Mr. Potgieter wrote a letter to Metro's landlord. In that letter, Mr. Potgieter detailed the problems Metro was experiencing with Suede and explained that Metro was conducting its business in accordance with the law and its insurance mandates. Mr. Potgieter was instrumental in pointing out to Metro's landlord that Suede was operating without liquor liability insurance. Thereafter, in June 2011, Suede closed its doors and allowed its TABC permit to expire.

Mr. Potgieter met on a number of occasions with the Downtown Resident's Association, Metro's landlord, and local businesses in an attempt to discuss the problem and steps to limit disturbances. In that regard, the general manager of an adjacent restaurant recently told Mr. Potgieter that matters have improved with Suede's departure and that Metro is a good neighbor. Significantly, the owner of that restaurant was also one of the 52 individual protestants who failed to attend the hearing.

Finally, on June 24, 2011, the TABC initiated an investigation of the complaints against Suede and Metro and concluded that Metro was not at fault. The investigation was concluded on September 5, 2011, and the investigator produced a narrative report of the complaints and his conclusion. In the course of the investigation, the investigator interviewed numerous residents, local business owners, employees, Mr. Potgieter, and attended a Downtown Resident's Association meeting where Mr. Potgieter listened to and addressed neighborhood concerns. The report records a number of serious complaints of noise, lewd conduct, violence, and criminal activity directly associated with Metro, most of which occurred before January 2011. Yet, in other instances, the report reflects that Metro's patrons are either indistinguishable from Suede's or the crime took place at a time before either bar was open for business. Significantly, the investigator stated:

> On 8/4/2011 I spoke with SAPD Sgt Oberheu about the Metro protest over the phone. I told Sgt Oberheu that I had reviewed the SAPD calls for service at Metro and Sgt Oberheu stated since the next door bar (Suede Lounge) closed down there has not been any issues with the location. It seems a lot of the issues were caused by

> Suede Lounge and since they were located next door to each other both locations were clumped together; SAPD is not going to join the protest.[5]

The investigator also reported:

> On 8/14/2011 Agent Alfredo Alvarez, Jason Winter, and I conducted an inspection at Metro. The crowd was leaving the bar and the location was quiet with no violations observed.[6]

The investigator concluded:

> I received a protest for Metro Houston Street and Suede Lounge . . . at the same time. . . . The protest investigation revealed Metro Houston Street had some issues when it first opened, but since 2008 it does not have any noted TABC administrative violations. In January 2010 Suede Lounge was opened under new management and based on the police reports and TABC administrative history it had several public safety violations that spilled out into the street and the view of the public. I attempted to contact every business and resident who initially signed the "protestant form" . . . I compared the statements with the calls for service from SAPD and TABC for both locations. The incidents did occur that were reported by the citizens, however the incidents were associated with Suede Lounge. In approximately June 2011 the permittee of Suede Lounge was evicted from the property and Metro Houston has been the only bar open in that block of Houston Street. According to SAPD bike patrol, the crowd at Metro Houston Street has returned to its previous state prior to Suede Lounge coming into business and SAPD will not be joining the protest. Suede Lounge's permit has expired and the owner will not be renewing it.[7]

In response, Mr. Bonny testified although the problems have improved, they did not all stem from Suede, because he watched patrons emerge from Metro's exit and engage in the same activities as Suede's patrons. Nevertheless, Mr. Bonny acknowledged that this problem could be resolved if Metro's patrons simply left the bar and departed without lingering or disturbing the peace.

---

[5] Applicant's Ex. 4 at 10.

[6] Applicant's Ex. 4 at 11.

[7] Applicant's Ex. 4 at 11.

C. Conclusion

Based on evidence regarding timing and circumstances, the ALJ concludes that many of the problems experienced by residents and businesses in the vicinity of Metro were caused by the patrons of Suede. As acknowledged by Mr. Potgeiter in testimony and documents, Metro is imperfect, has had its problems, and there is always room for improvement. Nevertheless, the facts do not establish that Respondent violated Code § 11.46(a)(8). The ALJ recommends the renewal application be granted.

III. FINDINGS OF FACT

1. Johnny F. Bonny (Protestant) protested the renewal application filed by The Ibiza Corporation d/b/a Metro Houston Street (Respondent or Metro) with the Texas Alcoholic Beverage Commission (TABC or Commission) on the basis that Respondent maintains a noisy establishment whose patrons breach the peace.

2. Respondent holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit (Permit) for the premises at 229 East Houston Street, Suite 10, San Antonio, Bexar County, Texas 78205.

3. TABC's staff sent notice of hearing concerning the protest to Respondent and Protestant on November 16, 2011. The notice included the time, date, 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 a short, plain statement of the matters asserted.

4. The hearing on the protest convened on November 30, 2011, in San Antonio, Texas, before Administrative Law Judge (ALJ) Travis Vickery. Respondent and Protestant appeared *pro se*. TABC Staff Attorney John Sedberry represented Staff, but Staff took no position on the protest. The record closed on January 30, 2012.

5. Fifty-two individuals filed protest statements with the TABC against renewal of the Permit. Protestant, however, was the only protestant to attend the November 30, 2011 hearing.

6. Respondent operates a bar known as Metro in downtown San Antonio. The area is dense and urban, characterized by mixed-use buildings containing both business and residential units, including condominiums, restaurants, gift shops, and bars. Metro closes at 2 a.m. on Saturday and Sunday nights.

7. Until June 2011, a bar known as Suede Lounge (Suede) was operating directly adjacent to Metro. Suede closed at 2 a.m. Suede moved out of the space adjacent to Metro in June 2011 and Suede's TABC permit expired on August 11, 2011.

8. Protestant resides on the ninth floor almost directly across the street from Metro in a building known as the Majestic Towers. Protestant complains that on Saturday and Sunday evenings after Metro and Suede closed, there was usually a noisy crowd from roughly 2:15 a.m. until 2:45 a.m. On some occasions, police sirens could be heard from the street below as peace officers broke up crowds that formed after the bars closed. Protestant was often awakened by the noise.

9. Other residential and business neighbors complained of loud music, loud crowds gathered as late as 4 a.m., honking of car horns, fights, lewd and disorderly conduct necessitating police intervention, arrests and a riot requiring 35 police officers, ambulances, and paddy wagons. Residents and businesses have experienced property damage, harassment, and disturbance of the peace as a result of drunken patrons leaving the bars.

10. After Suede closed in June 2011, many of the problems with after-hours noise and criminal activity ceased.

11. The San Antonio Police Department did not join in the protest against renewal of the Permit, because most of the problems identified in Finding of Fact Nos. 8 and 9 stemmed from Suede.

12. From June 24, 2011, until September 5, 2011, the TABC conducted an investigation of the complaints against Suede and Metro and concluded that Metro was not at fault.

13. Most of the problems identified in Finding of Fact Nos. 8 and 9 were from the patrons of Suede and not from Metro patrons.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case. TEX. ALCO. BEV. CODE §§ 5.31, 5.33, 5.35, and 11.61.

2. 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. TEX. ALCO. BEV. CODE § 5.43 and TEX. GOV'T CODE §§ 2003.021(b).

3. Proper and timely notice of the hearing was provided as required in accordance with TEX. GOV'T CODE §§ 2001.051 and 2001.052.

4. Based on the Findings of Fact and Conclusion of Law, the manner in which Respondent operates the licensed premises was not shown to be detrimental to the public peace in violation of TEX. ALCO. BEV. CODE § 11.46(a)(8).

5. The Permit should be renewed.

SIGNED February 17, 2012

TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS