

SOAH DOCKET NO. 458-00-0838

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, PETITIONER	§	
MANSOUR GHIYASSI, et al.,	§	
PROTESTANTS	§	
	§	
vs.	§	OF
FNA VENTURES, INC. d/b/a METEOR	§	
ORIGINAL APPLICATION	§	
MB and LB	§	
HARRIS COUNTY, TEXAS	§	
(TABC NO. 588452)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 20th day of June, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Ed Shipper. The hearing convened on April 19, 2000, and adjourned April 19, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 16, 2000. 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 applications be **GRANTED**.

This Order will become final and enforceable on August 10, 2000, 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 20th day of July, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Ed Shipper
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
VIA FACSIMILE: (512) 475-4994

Robert Levine
ATTORNEY FOR APPLICANT
146 Wescott Street, 2nd Floor
Houston, Texas 77007
CERTIFIED MAIL NO. Z 473 041 982

Mansour Ghiyassi
PROTESTANT
109 Fargo
Houston, Texas 77006
CERTIFIED MAIL NO. Z 473 041 983

Houston District Office
Licensing Division

DOCKET NO. 458-00-0838

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, PETITIONER	§	
MANSOUR GHIYASSI, et al.	§	
PROTESTANTS	§	
VS.	§	
FNA VENTURES, INC. d/b/a METEOR	§	OF
ORIGINAL APPLICATION	§	
MB & LB	§	
HARRIS COUNTY, TEXAS	§	
TABC NO. 588452	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Protestants, Mansour Ghiyassi, et al. filed a protest with the Texas Alcoholic Beverage Commission (“TABC”) requesting that the applications made by Respondent, FNA Ventures, Inc, d/b/a Meteor, for a mixed beverage permit and a mixed beverage late hours permit be denied. Protestants allege that the permit applications should be denied due to the location of the new business, which they contend is too proximate to residences, which would be adversely affected by loud noise, lack of parking, excessive traffic, urination and litter. The Staff of the Texas Alcoholic Beverage Commission (“Commission”) takes no position on the protests herein, but simply notes that the applicant for a mixed beverage permit and a mixed beverage late hours permit has met all statutory and regulatory requirements for the issuance of the permits. The ALJ recommends that the Commission grant Applicant’s requests for a mixed beverage permit and a mixed beverage late hours permit, finding the evidence insufficient that granting the licenses would be contrary to the general welfare, health, peace, morals, safety and/or the sense of public decency.

I. PROCEDURAL HISTORY

On or about April 7, 2000, the Staff of the Texas Alcoholic Beverage Commission issued a Notice Of Hearing to FNA Ventures, Inc. d/b/a Meteor and to Mansour Ghiyassi, et al., hereinafter Protestants. The hearing commenced and concluded on April 19, 2000, in the offices of the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Harris County, Texas. After the taking of evidence, the hearing was concluded. The TABC Staff was represented by Dewey Bracken, Texas Alcoholic Beverage Commission Legal Division. The Respondent, FNA VENTURES, INC. d/b/a Meteor, was represented by Frank Luccia and Andrew Pantos, the applicants for the licenses. Protestants represented themselves. Judge Ed Shipper presided.

II. JURISDICTION

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ("the Code"), §§§ 6.01, 11.46 and 1.01, and TEX. GOV'T. CODE ANN., Chapter 2001, et seq. (1998). 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. ADMIN. CODE, §155, et seq.

III. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

From the Staff:

Documentary Evidence:

- a. TABC Exhibit 1: Respondent's application for a mixed beverage permit and mixed beverage late hours permit.
- b. TABC Exhibit 2: Respondent's picture of the proposed business and a map
- c. TABC Exhibit 3: Respondent's architectural drawings for the proposed business.

Exhibits 1, 2 and 3 were admitted without objection.

Testimony:

1. License applicants, Frank Luccia and Andrew Pantos, testified that the neighborhood in which they propose to build the establishment is a mixed business and residential neighborhood. They testified that they intend to operate a quality bar and eating establishment at the proposed location. They further testified that their plans include protection of the neighborhood from further traffic problems, noise, etc.

2. The staff attorney, Dewey Bracken, introduced the Respondent's application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit into evidence. (Exhibit TABC 1). He further testified that Respondent's application meets all statutory and regulatory requirements. He further testified that TABC takes no position on the protest to applicant's license application.

3. Protestants testified that they oppose the new bar/eating establishment. They testified that it would be injurious to the quality of life enjoyed by the local residents, because it would inevitably lead to increased traffic and noise. They also testified that the neighborhood currently has six bars, and that the addition of a seventh by FNA Ventures, d/b/a Meteor is unwanted and unnecessary in their view.

IV. ANALYSIS

As the evidence indicates, Respondent, has filed an application for a mixed beverage permit and a mixed beverage late hours permit which meets the requirements of the Texas Alcoholic Beverage Code, as well as the implementing regulations of the Texas Alcoholic Beverage Commission. The testimony of witnesses regarding possible traffic hazards amounted to speculation and conclusions. For instance, protestor, Ted Kolbohm, testified at the hearing that the neighborhood already has six bars, which was a sufficient number. He testified that the proposed new bar and restaurant would detract from the character of the neighborhood because it would inevitably lead to parking problems, traffic problems, loud noise and the like. The testimony regarding the potential noise and unsavory elements associated with the proposed establishment is based upon speculation. While it is common knowledge that establishments such as that proposed to be built by the license applicants can be loud and offensive to those nearby, it is not necessary that they be such. The applicant testified that they have taken steps to address such concerns.

V. RECOMMENDATION

Because the License applicant has met all statutory and regulatory requirements for the issuance of these licenses, and the protestors have not produced evidence that issuance of these licenses would constitute a threat to the general health, safety or welfare of the public, this proposal recommends that Staff grant Applicant a mixed beverages permit and a mixed beverages late hours permit.

VI. PROPOSED FINDINGS OF FACT

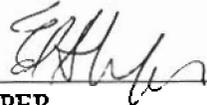
1. On or about February 7, 2000, license applicant, FNA Ventures, d/b/a Meteor filed an original application for a Mixed Beverages Permit and a Mixed Beverages Late Hours Permit with the Texas Alcoholic Beverages Commission.
2. On or about April 7, 2000, the Staff of the Texas Alcoholic Beverage Commission sent a notice of hearing, by certified mail, return receipt requested, to Frank Luccia, President of FNA Ventures, Inc, Respondent, and to Mansour Ghiyassi, Protestant.
3. All parties received notice of the hearing, all parties appeared, and no party objected to notice.
4. The hearing on the merits was held on April 19, 2000, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. The Respondent appeared at the hearing. Protestants also appeared at the hearing. Dewey Bracken appeared and represented TABC. Judge Ed Shipper presided.
5. Dewey Bracken, attorney for the TABC, testified at the hearing that FNA Ventures, d/b/a Meteor all legal and regulatory requirements for issuance of the licenses. He further testified that TABC would take no position on the Protestants claims.

6. Frank Luccia, President of FNA Ventures, Inc. d/b/a Meteor testified that FNA Ventures, Inc. intended to open a bar and restaurant at 2306-2308 Genessee, Houston, Harris County, Texas. He further testified that the property was located in a mixed residential and business location.
7. No evidence was presented at the hearing showing that issuance of the permit to Applicant would in any way constitute a threat to the general health, safety, or welfare of the public.

VII. PROPOSED CONCLUSIONS OF LAW

1. Based upon Findings of Fact Nos. 1, 2 and 3, the Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 61.71.
2. Based upon Findings of Fact Nos. 3 and 4, the State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing on this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003 (Vernon's 1977).
3. Based upon Findings of Fact Nos. 5, 6, and 7, granting a permit to Applicant's proposed business establishment does not constitute a threat to the general health, safety or welfare of the public. TEX. ALCO. BEV. CODE ANN. §109.33(a)(2)(b); § 11.46(a)(8).
4. Based on the foregoing Findings of Fact and Conclusions of Law, applicant's application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit should be granted.

SIGNED this 16th day of June, 2000.



ED SHIPPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS