

SOAH DOCKET NO. 458-06-1962

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION, Protestant	§	
	§	
VS.	§	
	§	
BEGO ENTERPRISES L.L.C.	§	OF
D/B/A SOUTH BEACH CLUB &	§	
LOUNGE	§	
PERMIT/LICENSE NOS. MB555698,	§	
LB, PE, CB	§	
LUBBOCK COUNTY, TEXAS	§	
(TABC CASE NO. 616035)	§	ADMINISTRATIVE HEARINGS

ORDER

CAME ON FOR CONSIDERATION this 18th day of October, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B. L. Phillips. The hearing convened on July 20, 2006 and the record was closed on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on August 12, 2006. 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.

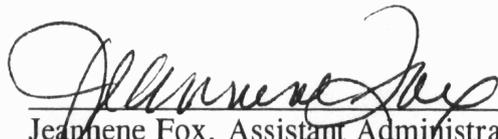
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Renewal Application of Bego Enterprises L.L.C., for the issuance of a Mixed Beverage Permit, Mixed Beverage Late Hours Permit, Beverage Cartage Permit and a Caterer's Permit, be **GRANTED**.

This Order will become final and enforceable on December 4, 2006, 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.

SIGNED on October 18th, 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

CGG/vr

Hon. B. L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
Lubbock, Texas
VIA FAX (806) 792-0149

BEGO Enterprises L.L.C.
d/b/a South Beach Club & Lounge
RESPONDENT
5414 35TH Street
Lubbock, TX 79407-3419
CERTIFIED MAIL NO. 7005 3110 0000 0768 2712

Christopher G. Gee
ATTORNEY FOR PETITIONER
TABC Legal Services Division

Licensing Division
Lubbock District Office

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 1, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-06-1962, BEGO Enterprises L. L. C. , d/b/a South Beach Club & Lounge

Dear Mr. Steen:

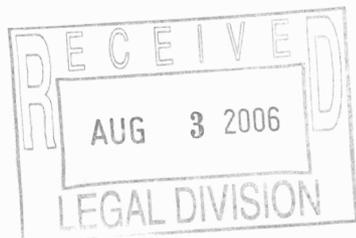
Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "B.L. Phillips".

B.L. Phillips
Administrative Law Judge



BLP/vu

Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Christopher G. Gee, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
BEGO ENTERPRISES L. L. C 5414 35th Street, Lubbock, TX. 79407-3419.-**VIA REGULAR MAIL**

SOAH DOCKET NO. 458-06-1962

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
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Petitioner	§	
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V.	§	
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BEGO ENTERPRISES L.L.C.	§	OF
D/B/A SOUTH BEACH CLUB &	§	
LOUNGE,	§	
LUBBOCK COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS
(TABC CASE NO. 616035),	§	
Respondent	§	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Commission) brought this protest action against Bego Enterprises L.L.C. d/b/a South Beach Club & Lounge, (Respondent), protesting the issuance of a renewal application and alleging that Respondent has or will violate Texas Alcoholic Beverage Code (the Code) §§ 1.01 *et seq.*, 11.46(a)(2), 109.532(b)(1), and/or Commission Rules 16 TAC § 31.1 *et seq.* and 33.1. Based on the evidence, the Administrative Law Judge (Judge) finds the Petitioner did not prove the allegations by a preponderance of the evidence and recommends that the Respondent's renewal application granted.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute protest action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

II. HEARING AND EVIDENCE

On July 20, 2006, a hearing was convened before Judge B. L. Phillips, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. Petitioner was represented by Christopher G. Gee, attorney. Respondent was represented Charles S. Chambers, attorney. The record closed the same day.

III. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to the Code § 11.46(a) (2), the Commission may refuse to issue a renewal permit if it has reasonable grounds to believe and finds that five years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony. Pursuant to the Code § 109.532(b)(1), the Commission may deny the renewal of a permit for the applicant if the Commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for the permit. 16 Texas Administrative Code (TAC) §33.1 relates to §§ 11.46 and 109.532 and states that a deferred adjudication for any felony offense may indicate that the applicant is not qualified to hold a permit or license and may be grounds for denial unless five years have elapsed since the termination of a sentence, parole, or probation served by the applicant.

IV. EVIDENCE

A. Documentary Evidence

Petitioner offered into evidence three exhibits: Respondent's permit history, a report made by TABC Agent Denver Carleton regarding the TABC protest of Respondent's renewal application, and a copy of Respondent's renewal application filed with TABC. Respondent offered into evidence a series articles and letters relating to Christopher Gonzales, an officer of the corporation under which Respondent operates. All offered exhibits were admitted into evidence.

Petitioner's exhibit number three, the copy of Respondent's renewal application, discloses that Mr. Christopher Gonzales, an owner of the corporation under which Respondent operates, received a six-year deferred adjudication beginning November 9, 2004, for a felony offense of aggravated assault. Respondent's exhibit number one is a series of articles and letters of recommendation regarding Mr. Gonzales. The articles describe how Mr. Gonzales and his business partner fell in love and married after opening the licensed premises and how Mr. Gonzales was recently named Business Man of the Year by the Lubbock Hispanic Chamber of Commerce. The letters are from Representative Randy Neugebauer congratulating Mr. Gonzales on his award and from local officials commenting on his excellent character and operation of the licensed premises.

B. Denver Carleton, TABC Agent

Mr. Carleton identified Petitioner's exhibit number two as the report that he made regarding Respondent's renewal application filed with TABC and recommending that a protest be made. He testified that the renewal application listed Mr. Christopher Gonzales as an officer in Respondent's parent corporation and his deferred adjudication for a felony offense. Mr. Carleton stated that the deferred adjudication for a felony offense is a disqualifier, under the Code and Rules, to hold a permit and the Mr. Gonzales' role as an officer under the corporation disqualified the corporation from holding the permit which was the subject of the renewal application. However, he also acknowledged that the language of the Code and rules is discretionary on the part of the Commission regarding non-renewal for a deferred adjudication for a felony offense. Mr. Carleton testified that he had no knowledge that Mr. Gonzales was otherwise not qualified to hold a permit under the Code or rules and that the only basis for the protest that he made was the deferred adjudication.

C. Christopher Gonzales

Mr. Gonzales testified that he and his wife Angela are the owners of the corporation under which Respondent operates the licensed premises. Regarding the deferred adjudication that he disclosed in the renewal application for the permit for the licensed premises, Mr. Gonzales testified

that he was separated from his first wife but thought they were reconciling when he found her with another man. He lost control, leading to the assault charge, and very much regrets his actions at that time. Mr. Gonzales pled no contest to the charge, received a six-year deferred adjudication beginning November 9, 2004. The charges were pending at the time that the original permits were issued by the Commission, and the subsequent deferred adjudication did not become an issue until the renewal application for the permits was filed.

V. ANALYSIS

Under the Code, the Commission may refuse to issue a renewal permit if it has reasonable grounds to believe and finds that five years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony, and may also deny the renewal of a permit for the applicant if the Commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for the permit. A deferred adjudication for any felony offense may indicate that the applicant is not qualified to hold a permit or license and may be grounds for denial unless five years have elapsed since the termination of a sentence, parole, or probation served by the applicant.

The evidence is uncontested that Mr. Gonzales is under a sentence of deferred adjudication for a felony offense that will continue for approximately four more years. Mr. Gonzales disclosed this information in the permit renewal application filed by Mr. Gonzales and his then partner, now spouse, for the licensed premises. However, the evidence does not show that Mr. Gonzales is unqualified or unsuitable to hold a permit and indeed demonstrates quite the opposite.

All of the Code and Rules sections dealing with the issue of a permit holder or applicant having a deferred adjudication for a felony offense use discretionary language to describe the Commission's determination as to whether a deferred adjudication is alone a disqualification for the applicant to hold a permit. Mr. Carleton, the TABC agent who testified that his decision to protest the renewal application was based on his interpretation of the Code and Rule sections that having

a deferred adjudication was a disqualifier for an applicant, although he did acknowledge that the language was discretionary on the part of the Commission. He also testified that his decision was not based on any other potential disqualifiers for Mr. Gonzales but based solely on the deferred adjudication. Mr. Gonzales testified that he deeply regretted his actions that led to the deferred adjudication and explained the circumstances which, while not an excuse for his actions, at least demonstrate the extenuating nature of the incident. The evidence of the exemplary manner in which Mr. Gonzales has conducted his life and business since the incident in the form of articles about his operation of the licensed premises and letters of recommendation are much more compelling evidence that he is and will continue to be an asset as a permittee of the Commission.

The evidence was insufficient to prove that Respondent is unqualified or unsuitable to hold a permit and the protest to the renewal application should be abated and the permits renewed.

VI. PROPOSED FINDINGS OF FACT

1. BeGo Enterprises L.L.C. d/b/a South Beach Club & Lounge, Lubbock County, Texas, holds Permit No. MB-555698, LB-555699, PE-555700 and CB-555701, issued by the TABC for the premises located at 1816 Avenue G, Lubbock, Lubbock County, Texas.
2. Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated April 13, 2006. The case was continued to July 20, 2006.
3. The hearing on the merits convened July 20, 2006, at the State Office of Administrative Hearings, 8212 Ithaca, Suite W3, Lubbock, Lubbock County, Texas. The TABC was represented by attorney Christopher G. Gee. The Respondent was represented by Charles S. Chambers, attorney. The record closed on the same day.
4. Respondent is the co-owner of BeGo Enterprises, L.L.C., the corporation holding the permits for the license
5. On April 7, 2005, Respondent filed a renewal application with the Commission for the permits under which it was operating.
6. Mr. Gonzales acknowledged in the renewal application that he had received a deferred adjudication for a felony offense and that it had not been five years since the termination of the probation.

7. The offense for which Mr. Gonzales received the deferred adjudication arose out of a domestic dispute and was not a crime involving any moral turpitude.
8. Mr. Gonzales has, since the incident leading to the deferred adjudication, married his business partner in the corporation operating the licensed premises and has had no further criminal history.
9. Mr. Gonzales has a reputation with the business community in Lubbock, Texas, as a good businessman with integrity and a commitment to the community.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 61.71, and 61.73.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing 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 TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Findings of Fact No. 4-9, the Commission did not prove that sufficient grounds exist to prove that Respondent is not qualified or suitable to hold a permit.
5. Based on the foregoing, abatement of Petitioner's protest of Respondent's renewal permit application is warranted and denial of the Respondent's renewal permit application for the grounds set forth above is not warranted.

SIGNED: August 1st, 2006



B. L. Phillips
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS