

DOCKET NO. 615994

IN RE LASER MAGIC INC.	§	BEFORE THE TEXAS
D/B/A LASER MAGIC	§	
PERMIT NOS. MB475022, LB475023	§	
	§	
	§	ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-7502)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 12th day of May, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Monica Garza. The hearing convened on December 9, 2005, and adjourned on January 30, 2006. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on March 22, 2006. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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.

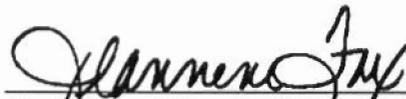
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits be renewed, pursuant to §11.43 of the Code.**

**This Order will become final and enforceable on June 2, 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 this 12th day of May, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Monica Garza  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE 817-377-3706**

John Gamboa  
**ATTORNEY FOR RESPONDENT**  
**VIA FACSIMILE 817-885-8504**

Laser Magic Inc.  
d/b/a Laser Magic  
**RESPONDENT**  
6025 Camp Bowie Blvd.  
Ft Worth, TX 76116-5621  
**CERTIFIED MAIL NO. \_\_\_\_\_**  
**RETURN RECEIPT REQUESTED**

Tim Griffith  
**ATTORNEY FOR PETITIONER**  
**VIA FACSIMILE 214-678-4001**

Licensing Division

Ft. Worth District Office

# State Office of Administrative Hearings



TG  
Protest

Shelia Bailey Taylor  
Chief Administrative Law Judge

March 22, 2006

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 458-05-7502; Texas Alcoholic Beverage Commission, Petitioner, Rick Shetty, Protestant v Laser Magic Inc d/b/a Laser Magic (TABC Case No. 615994)

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Tim Griffith, attorney for Texas Alcoholic Beverage Commission, and to John Gamboa, Attorney for the Respondent. The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) received a protest regarding a renewal application by Laser Magic, Inc d/b/a Laser Magic (Respondent) for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit. Rick Shetty (Protestant) alleged that the place or manner in which Respondent may conduct its business warrants denial 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 the Texas Alcoholic Beverage Code. Petitioner took no formal position in this matter. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends renewal of Respondent's permits.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Monica Garza  
Administrative Law Judge

TG/dd

Tim Griffith, TABC Staff Attorney, VIA FACSIMILE 214/678-4001  
John Gamboa, Attorney for Respondent, VIA FACSIMILE 817/885-8504



SOAH Docket No. 458-05-7502  
TABC Docket No. 615994

Proposal for Decision

asserted, as required by TEX. GOV'T CODE ANN. § 2001.052.

On December 9, 2005, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Protestant appeared *pro se*. Respondent appeared and was represented by its attorney, John Gamboa. Following presentation of evidence, the parties were given additional time to file written closing arguments. The record closed on January 30, 2006.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8), TABC may refuse to renew a permit if it has reasonable grounds to believe that the following circumstance exists:

[T]he 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.

## III. EVIDENCE

Respondent holds a Mixed Beverage Permit, MB-475022, and a Mixed Beverage Late Hours Permit, LB-475023, issued by TABC, for the premises located at 6025 Camp Bowie Blvd., Fort Worth, Tarrant County, Texas. These permits were originally issued on June 30, 2000, and they have been continuously renewed. On June 25, 2004, Respondent filed a renewal application regarding its permits.

On July 6, 2004, TABC received a protest from Rick Sheddy, a private citizen, regarding the renewal of Respondent's permits. As grounds for his protest, Mr. Sheddy alleged that his 17-year-old son had been assaulted by an off-duty security employee on Respondent's premises. On July 7,

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#### Proposal for Decision

2004, TABC Agent Nichole Hamilton initiated an investigation based on this protest.

While conducting her protest investigation, Agent Hamilton learned that an investigation was pending regarding the incident alleged by Mr. Sheddy. TABC Agent Ralph May investigated that incident, and he advised Agent Hamilton that TABC was requesting a 50-day suspension against Respondent for an Aggravated Breach of the Peace and subsequent Failure to Report Breach of the Peace. As noted in Agent Hamilton's report, that administrative case is still pending.

During the protest investigation, Agent Hamilton also reviewed all Fort Worth Police Department calls for service and reports for Respondent's premises. After reviewing those reports, Agent Hamilton found there were no additional incidents warranting administrative action against the permits. She also found there was not sufficient evidence to document a pattern of violations, having noted there were no previous administrative cases regarding the permits.

On March 18, 2005, Agent Hamilton issued her report, concluding that TABC would not protest issuance of the renewal permits. She noted that a protest hearing was required based on Mr. Sheddy's desire to pursue his protest.

In his protest letter and at the hearing, Mr. Sheddy argued there is a pattern of violence on Respondent's premises, referencing the police reports reviewed by Agent Hamilton. He conceded, however, that he has never visited the premises.

#### IV. ANALYSIS

Having considered the evidence, the ALJ finds insufficient grounds to demonstrate that the place or manner in which Respondent may conduct its business warrants denial of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

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**Proposal for Decision**

As indicated by Agent Hamilton, Respondent does not have a history of administrative violations. Other than the incident regarding Mr. Sheddy's son, there have been no administrative cases initiated against Respondent. Further, after reviewing all relevant police reports generated from calls to Respondent's premises, Agent Hamilton found no additional incidents warranting administrative action against the permits.

Having found insufficient evidence exists to show the place or manner in which Respondent may conduct its business warrants denial of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, the ALJ recommends renewal of Respondent's permits.

**V. PROPOSED FINDINGS OF FACT**

1. Laser Magic, Inc. d/b/a Laser Magic (Respondent) holds a Mixed Beverage Permit, MB-475022, and a Mixed Beverage Late Hours Permit, LB-475023, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 6025 Camp Bowie Blvd., Fort Worth, Tarrant County, Texas.
2. These permits were originally issued on June 30, 2000, and they have been continuously renewed.
3. On June 25, 2004, Respondent filed a renewal application regarding its permits
4. On July 6, 2004, TABC received a protest from Rick Sheddy, a private citizen, regarding the renewal of Respondent's permits.
5. As grounds for his protest, Mr. Sheddy alleged that his 17-year-old son had been assaulted by an off-duty security employee on Respondent's premises.
6. On July 7, 2004, TABC Agent Nichole Hamilton initiated an investigation based on this protest.
7. TABC Agent Ralph May investigated the incident regarding Rick Sheddy's son, and he advised Agent Hamilton that TABC was requesting a 50-day suspension against Respondent

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Proposal for Decision

- for an Aggravated Breach of the Peace and subsequent Failure to Report Breach of the Peace. The administrative case regarding that incident is still pending.
8. There are no additional incidents warranting administrative action against the permits.
  9. There is no documented pattern of violations by Respondent.
  10. There is insufficient evidence to demonstrate that the place or manner in which Respondent may conduct its business warrants denial of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
  11. On October 28, 2005, TABC staff (Petitioner) issued its notice of hearing, directed to both Respondent and Protestant.
  12. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
  13. On December 9, 2005, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
  14. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Protestant appeared *pro se*. Respondent appeared and was represented by its attorney, John Gamboa.
  15. Following presentation of evidence, the parties were given additional time to file written closing arguments. The record closed on January 30, 2006.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.43.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent and Protestant received proper notice of the hearing. TEX. GOV'T CODE ANN.

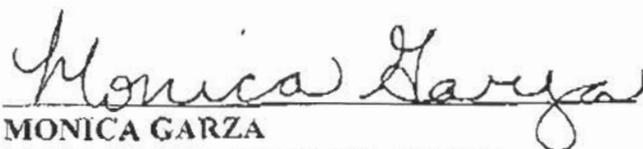
SOAH Docket No. 458-05-7502  
TABC Docket No. 615994

Proposal for Decision

§ 2001.052.

4. Respondent's application for renewal of its Mixed Beverage Permit and Mixed Beverage Late Hours Permit should be granted. TEX. ALCO. BEV. CODE ANN. § 11.43.

SIGNED March 22, 2006.



MONICA GARZA  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.  
Ft. Worth, Texas 76116  
Phone (817) 731-1733  
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: Laser Magic, Inc., d/b/a Laser Magic

DOCKET NUMBER: 458-05-7502

AGENCY CASE NO: 615994

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Timothy Griffith  
Staff Attorney  
Texas Alcoholic Beverage Commission  
Fax: 214/678-4001

AGENCY COUNSEL  
BY FAX

John Gamboa  
Attorney at Law  
817/885-8504

ATTORNEY FOR RESPONDENT  
BY FAX

As of March 22, 2006

### STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd., Suite 400  
Ft. Worth, Texas 76116  
Phone (817) 731-1733  
Fax (817) 377-3706

#### FACSIMILE TRANSMISSION

DATE: March 22, 2006

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TABC vs. Laser Magic, Inc.  
d/b/a Laser Magic

FROM: Diana Dupre', Administrative Tech

NUMBER OF PAGES: 9  
(Including cover sheet)

FAX TO:	FAX NO.:	Transaction No./Time:
Timothy Griffith	214/678-4001	
John Gamboa	817/885-8504	
Alan Steen	512/206-3498	

Message: Attached is the Proposal for Decision in the above referred to cause number.

Note: If all pages are not received, please contact Diana Dupre' at 817/731-1733

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