



SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 2

Respondent, but recommends that the permits be renewed and issued. Because Respondent violated Sections 11.61(b)(2) and (7) of the Texas Alcoholic Beverage Code (the Code), the Administrative Law Judge (ALJ) recommends that its permits be suspended for a period of 30 days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$30,000.<sup>3</sup>

### I. PROCEDURAL HISTORY

Respondent applied for a renewal of its Mixed Beverage Permit, MB 542239, and Mixed Beverage Late Hours Permit, LB 542240, for its licensed premises located at 2525 Rodeo Plaza, Fort Worth, Tarrant County, Texas. The Commission Staff and Protestant assert Respondent's application should be denied because Respondent failed to adequately staff and control the premises resulting in traffic safety concerns, criminal activity, and the presence of minors. Additionally, Respondent's failure to properly supervise its premises has resulted in numerous calls for service to the Fort Worth Police Department (FWPD). Multiple arrests made on the licensed premises have resulted in a depletion of police resources and increased costs. Commission Staff and Protestant contend that renewal of these permits would allow Respondent to continue to detrimentally effect on the welfare, morals, and public safety.

Commission Staff issued a notice of hearing on July 28, 2005, informing all parties that a hearing would be held on Respondent's application for renewal. The hearing was held on April 6, 2006, in Fort Worth, Texas, before ALJ Tanya Cooper. Commission Staff appeared and was represented by Diane Brown, Commission Staff Attorney. Respondent appeared and was

---

and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and (7).

All provisions of the Code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit. TEX. ALCO. BEV. CODE ANN. § 29.03.

<sup>3</sup> When the Texas Alcoholic Beverage Commission is authorized to cancel or suspend a permit, a civil penalty may be authorized to be not less than \$150 or more than \$25,000 for each day the permit was to have been suspended. TEX. ALCO. BEV. CODE ANN. § 11.64(a)

SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 3

represented by John Gamboa, attorney at law Protestant was represented at the hearing by Louis Fierros, an Assistant City Attorney for Fort Worth. There were no challenges to the notice of hearing, jurisdiction, or venue. The hearing concluded on April 6, 2006. The record remained open until May 5, 2006, to allow the parties to submit written argument.

## II. JURISDICTION

The Commission has jurisdiction and authority over this matter pursuant to Chapter 5 and §§ 6.01, and 11.61 of the Code. TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.* The State Office of Administrative Hearings has authority to conduct a hearing in this matter and make recommendations to the Commission, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003 and § 5.43 of the Code.

## III. DISCUSSION

### A. Evidence

1. **Physical Setting.** This licensed premises is located in an entertainment area, often collectively referred to as "the Stockyards," where there are a 15 to 20 other licensed premises. Respondent's licensed premises is across the street from Billy Bob's Texas, a large bar. There are several public parking lots in close proximity, which are utilized by all Stockyards' patrons. Respondent's business is open on the weekends and varies its closing time from Billy Bob's to avoid patrons leaving from both establishments at the same time. The Stockyards is accessible to traffic via one main thoroughfare, N. Main Street. Respondent's patrons, however, enter its licensed premises from a side street, Rodeo Plaza. The building in which Respondent's licensed premises is located has an occupancy load designation of 833 persons

Respondent's permits were issued on August 21, 2003. Initially, Respondent's licensed premises was geared toward older, Hispanic customers, and offered Tejano-influenced music.

During that time, there were no reported problems with Respondent's operations. Upon changing formats to hip/hop entertainment, Respondent's business began to attract a younger crowd and numerous problems, which are the subject of this proceeding, developed. Respondent has since returned to its original Tejano format. Commission Staff presented no evidence to show that Respondent has committed any prior violations of the Code or Commission rules.

2. **The Commission Staff and Protestant's Evidence.** The Commission Staff and Protestant presented testimony from E.B. Adcock and W. Watkins, FWPD officers, and Agent Tana Travis, Commission Staff. Documentary evidence presented related to police calls for service, criminal activity on the licensed premises, and costs associated with keeping the peace. This evidence is summarized below.

a. Officer Adcock

Officer Adcock testified that he has been employed by the FWPD for 25 years and he is currently assigned to the Special Operations Division. The Special Operations Division analyzes businesses possessing Commission-issued permits and licenses to determine if protests concerning their business practices are warranted. Officer Adcock stated that he performed an analysis of Respondent's licensed premises from June 2004 through February 2005. Officer Adcock said that following his review of FWPD records, a decision was made to protest the renewal of Respondent's permits. Commission Staff joined FWPD's protest in February 2005.

During Officer Adcock's review of Respondent's business practices, the FWPD received 158 calls for service linked to the licensed premises. Of these calls, 72 arrests were made for offenses including public intoxication, minor in possession of alcohol, disorderly conduct, and making alcohol available to a minor. One death has occurred on the licensed premises.

FWPD's cost in responding to calls regarding the licensed premises during the nine-month period of analysis was \$27,036. This cost includes overtime pay to off-duty officers and regularly assigned patrol units needed to maintain safety in the area.

SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 5

In efforts to eliminate the problems and abate costs, police supervisors met with Respondent's management on two occasions. Officer Adcock testified that the calls for service to Respondent's licensed premises were greater than for similar businesses in the area and demonstrated a lack of appropriate control over Respondent's licensed premises. Officer Adcock acknowledged that occasionally other bar operators would report infractions at competitors' premises. However, Officer Adcock said that police officials investigated all reports to properly assess if criminal conduct was ongoing and to which licensed premises any criminal activity was attributable.

Officer Adcock discussed some specific occurrences at the licensed premises that were particularly serious in his opinion and demonstrated Respondent's failure to control its premises. There was a firearm discharged outside the licensed premises, during which a passerby shot at bar patrons. Officer Adcock acknowledged, however, during cross examination that this was not the only instance of a drive-by shooting in the Stockyards area. Additionally, a case investigation concerning a death that occurred on Respondent's licensed premises remains pending. Toxicology reports show that the victim had both alcohol and a drug in her system.

Officer Adcock also explained that some service calls to police were "self-generated," by Respondent's employees who needed help removing problematic patrons from the premises. According to Officer Adcock, Respondent also hired additional security personnel, but the problems continued.

Officer Adcock stated that by allowing continued criminal conduct at its establishment, Respondent created a dangerous environment that was contrary to the public's safety. He opined that it was Respondent's duty, as a permit-holder, to exercise control over the licensed premises. Officer Adcock noted that once Respondent returned to its previous Tejano format style, the problems on the premises subsided. However, Officer Adcock said that this change in format did not occur until approximately one year after the pretest was initiated, therefore, it should not be considered in mitigation of the alleged violations.

SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 6

b. Officer Watkins

Officer Watkins, FWPD, testified that he worked as a patrol officer in the Stockyards area and was at Respondent's premises several times between May 2004 and August 2004, before he transferred to another division. On May 30, 2004, Officer Watkins was dispatched to the licensed premises in reference to an assault that occurred when one intoxicated person from the licensed premises attempted to break into another's car because the intoxicated person did not know which car was his. Officer Watkins also performed a bar check at Respondent's business on June 13, 2004, during which he and other officers made nine arrests, including seven for public intoxication and two for minor in possession.

c. Agent Travis

Agent Travis testified that Commission Staff determined a protest of Respondent's renewal application was warranted after a stabbing occurred during a fight in a parking lot on July 25, 2004. Agent Travis arrived at the scene of the stabbing shortly after it occurred and observed two ambulances and eight FWPD patrol units. The incident reportedly began as a fight inside Respondent's licensed premises. An off-duty FWPD officer working as security for Respondent intervened and escorted the combatants outside. The parties crossed the street into a parking lot where the fight resumed. Agent Travis said that she spoke to Cedric Williams, Respondent's manager on duty that day, about failing to control the licensed premises. Mr. Williams advised Agent Travis that 16 bouncers and three off-duty officers were employed to control the crowds at the licensed premises. According to Agent Travis, Respondent's occupancy load was approximately 800 people, but crowds at the licensed premises typically ranged from 1000 to 1200 people.

Agent Travis agreed that problems began at the licensed premises when it changed from Club Arcadia to Club Fusion, which attracted a different crowd. Gang activity rose and traffic congestion on N. Main Street became problematic. Persons loitering along the street threw items at passing vehicles. In Agent Travis' opinion, Respondent did little to curb these problems.

SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 7

Agent Travis was present at Respondent's licensed premises on June 12, 2004, when nine arrests were made. She spoke with Mr. Williams again. He acknowledged that problems existed and wanted to hire off-duty Commission agents to assist with controlling the premises. According to Agent Travis, she advised Mr. Williams that Commission Staff did not engaged in that type of off-duty employment. On June 27, 2004, Agent Travis was at the licensed premises when other arrests were made there. She met with Mr. Williams on July 29, 2004, and Respondent agreed to hire more security staff. Although Respondent hired additional security staff, problems with crowd control continued. As a result of Respondent's inability to control the licensed premises, all FWPD personnel in that area were required to be at the licensed premises from midnight until 3:00 a.m., leaving fewer officers available to respond to other needs.

According to Agent Travis, a pattern of fights and intoxicated persons in the licensed premises showed Respondent failure to maintain adequate control of the licensed premises. Further, Respondent did not have sufficient staff to prevent minors from possessing or consuming alcoholic beverages, and becoming intoxicated. Agent Travis opined that Respondent's operations were a drain on the FWPD's resources, and that additional costs to the police department were \$16,102.93 from July 31, 2004 to September 25, 2004.

### 3. Respondent's Evidence.

Kenneth Pace was Respondent's head of security when the licensed premises reopened as Club Fusion on May 19, 2004. He hired the initial security staff (2 off-duty police officer and 10 others), and began increasing the security personnel prior to July 2004. He stated that at times there were six uniformed officers patrolling inside to make the licensed premises safe.

According to Mr. Pace, the following policies were put in place to properly control the premises and protect both patrons and Respondent's employees:

1. A doorman checked the identification of all persons entering the licensed premises:

2. Anyone under 21 years of age was marked with an "X" on their hand;
3. Patrons over 21 were given a wristband to signify that they were of legal age to purchase, possess and consume alcoholic beverages;
4. The doorman kept a count of persons entering and leaving the premises to prevent overcrowding;
5. No alcoholic beverages were sold to persons waiting outside to enter the licensed premises;
6. No containers of alcoholic beverage were allowed to leave the licensed premises; and
7. Patrons were searched for weapons or contraband before they were allowed to enter the premises.

Mr. Pace acknowledged that fights did occur on occasion, but combatants were dealt with by separating the parties and escorting them out of the premises. Intoxicated persons were identified by bartenders, who called taxi cabs to take them home. No alcohol was sold to minors. Minors who persisted in trying to purchase alcohol were removed from the premises. Any minor with an alcoholic beverage was detained and turned over to police.

Mr. Pace said that he did not agree that Respondent's licensed premises was as rough as it was being portrayed. He suggested that competitors had been the source of complaints about Respondent's operations.

Mr. Pace addressed several incidents discussed by Commission Staff. He said that "cruising" had been an ongoing problem in the area, but was not solely attributable to Respondent's operations. He indicated that this activity was mostly engaged in by kids and unrelated to Respondent's business. He acknowledged that there was one instance where a firearm was discharged by a person driving down Main Street but he did not feel that this person's actions were related to Respondent's licensed premises.

Mr. Pace said he was aware of the death that had occurred on the licensed premises, and that he was present when the incident occurred. According to Mr. Pace, three young women came into the bar, got drinks, and within approximately about ten minutes, one of them collapsed. An off-duty police officer employed by Respondent administered CPR until EMS personnel arrived, but the

woman did not survive. Mr. Pace said that he suspected the women had taken some type of drug, but the victim's companions would not say what they had taken before the incident occurred.

Mr. Pace testified he was aware of only two injuries that had occurred on the licensed premises. One person had slipped off the sidewalk outside the premises and suffered a broken ankle. Another person had been injured in an assault that occurred inside the bar.

Mr. Pace stated that in his opinion, Respondent and its employees made a bonafide attempt to improve operations at Respondent's licensed premises. Respondent's managers had met with Commission Staff and representatives of the FWPD, and had implemented any suggestions that were made. Mr. Pace said that Respondent's employees had actually gone beyond the licensed premises assisted the FWPD in disbursing crowds from a parking area not owned by Respondent. According to Mr. Pace, Respondent's staff had been commended in meetings with Commission Staff and the FWPD for doing a good job with crowd control.

In completing his testimony, Mr. Pace said that the issues complained of in this proceeding no longer existed because Respondent had returned to a Tejano format featuring live bands. Further, Respondent had adopted a policy to admit no one under 21 years of age. Mr. Pace opined that Respondent's permits should, therefore, be renewed.

#### **B. Analysis, Conclusion, and Recommendation**

Commission Staff and Protestants seek denial of Respondent's renewal application. While the evidence presented shows that Respondent's operations between June 1, 2004 and February 7, 2005, were contrary to the Code, the ALJ finds that Respondent's misconduct does not rise to the level necessary to conclude that it cannot operate within the bounds of conduct outlined in the Code and Commission Rules.

Respondent's permit history shows that Commission Staff has not initiated any other enforcement actions against it. The testimony of both Officer Adcock and Agent Travis revealed

SOAH DOCKET NO. 458-05-7564

PROPOSAL FOR DECISION

PAGE 10

that when Respondent's operations have used a Tejano format, there have been no problems at the licensed premises. Respondent is currently operating in the Tejano format and has abandoned the hip/hop style that resulted in the Code violations alleged herein.

Further, Respondent demonstrated a willingness to work with FWPD officials and Commission Staff. Respondent's managers attended meetings with the police personnel and Commission Staff, solicited advice on how to adequately control the licensed premises, and employed additional security staff, including off-duty uniformed police officers. Unfortunately, these measures fell short of curbing the misconduct of some of Respondent's patrons.

Additionally, the ALJ also finds that some of the reported misconduct in the area is not the sole result of Respondent's operations. The Stockyards area, where Respondent's business is located, is a popular entertainment district in Fort Worth. It was estimated that between 15 and 20 licensed premises operate in this area on or near N. Main Street. Problems related to traffic, intoxicated individuals, and violence cannot be attributed to Respondent's business activities alone in the ALJ's opinion. For the above reasons, the ALJ recommends that Respondent's permits be renewed.

Notwithstanding this recommendation, the evidence established that Respondent's operations between June 1, 2004 and February 7, 2005, were contrary to the general welfare, peace, morals, and safety of the general public. Commission Staff and Protestant demonstrated that numerous arrests were made on the licensed premises during that period for criminal offenses, and many of these arrests were associated with intoxicated persons and minors attempting to acquire or acquiring alcoholic beverages. Respondent has a duty to control its premises, and failed to adequately do so during this period. Critical in this failure was Respondent's lack of sufficient staff to properly manage its patrons, which caused the FWPD to use its resources to protect the public's safety. For those reasons, the ALJ recommends that Respondent's permits be suspended for a period of 30 days, or that Respondent be allowed to pay a civil penalty in the amount of \$30,000, in lieu of any suspension.

**IV. FINDINGS OF FACT**

1. Reina M. Ticas d/b/a Club Fusion (Respondent) holds Texas Alcoholic Beverage Commission (Commission) permits, Mixed Beverage Permit, MB 542239, and Mixed Beverage Late Hours Permit, LB 542240, issued on August 21, 2003, for its licensed premises located at 2525 Rodeo Plaza, Fort Worth, Tarrant County, Texas.
2. Protests to Respondent's renewal application for permits listed in Finding of Fact No. 1 were filed by the Fort Worth Police Department (Protestant) on February 14, 2005, and later joined by the Commission Staff.
3. Commission Staff and Protestant asserted that the renewal application should be denied due to Respondent's failure to control its premises; and that as a result of Respondent's failure to properly control activities on the licensed premises, the place and manner in which Respondent's business has been conducted has created a detrimental effect on the general welfare, morals, and public safety in the area.
4. On July 6, 2005, Commission's Staff issued a notice of hearing informing all parties of the time, place, and nature of the hearing.
5. The hearing was held on April 6, 2006, in Fort Worth, Tarrant County, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Commission's Staff appeared and was represented by Diane Brown, Commission Staff Attorney. Respondent appeared and was represented by John L. Gamboa, attorney at law. Protestant appeared and was represented by Louis Fierros, Assistant City Attorney, of Fort Worth, Texas. The hearing concluded on that same date; and the record closed on May 5, 2006.
6. Respondent's licensing history maintained by Commission Staff reveals that Respondent has committed no prior violations of the Texas Alcoholic Beverage Code (the Code) or Commission rules.
7. Respondent's licensed premises is located in "the Stockyards," an entertainment district in Fort Worth, Texas, which includes approximately 15 to 20 other Commission-licensed premises.
8. At times, this area is generally subject to traffic problems and intoxication-related criminal conduct.
9. Not all problems in the area of Respondent's licensed premises are solely attributable to Respondent's business operations.
10. Respondent's licensed premises has operated under two business formats: Tejano and hip-hop.

11. The hip/hop format was utilized from June 1, 2004, through February 7, 2005.
12. During this time, numerous arrests were made by the Fort Worth Police Department and Commission Staff on the licensed premises relating to misconduct of intoxicated persons and minors.
13. Respondent attempted to improve control over its premises by meeting with Fort Worth police officials and Commission Staff to solicit advice for crowd management.
14. Respondent hired additional security personnel, including off-duty, uniformed Fort Worth Police Department officers.
15. Despite the additional security staff, criminal conduct, including fights, public intoxication, and thefts, continued at Respondent's licensed premises.
16. In order to protect the public, the Fort Worth Police Department deployed numerous police officers to maintain the peace in the area.
17. The use of additional officers resulted in overtime costs to the Fort Worth Police Department of \$27,036 from June 1, 2004, through February 7, 2005.
18. Respondent has subsequently abandoned the hip/hop format in favor of returning to its original Tejano format.
19. No problems have been noted in Respondent's business operations at the licensed premises since returning to the Tejano format.

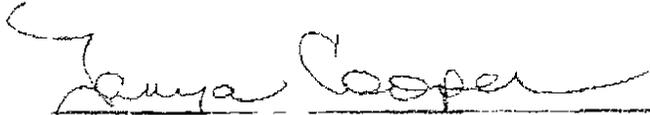
#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapter 5 and §§ 6.01, 11.46(a)(8), and 11.61. TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
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, pursuant to TEX. GOV'T CODE ANN. Chapters 2001 and 2003, and 1 TEX. ADMIN. CODE §155.1 *et seq.*
3. No objections to the notice of hearing, jurisdiction, or venue were raised by the parties.
4. Based on the foregoing findings, a preponderance of the evidence does not show that renewal of Respondent's permits will adversely affect the safety of the public, nor will it adversely affect the general welfare, peace, or morals of the people or violate the public sense of

decency, pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).

5. Based on the foregoing findings and conclusions, Respondent's permits, Mixed Beverage Permit, MB 542239, and Mixed Beverage Late Hours Permit, LB 542240, should be renewed by the Commission. TEX. ALCO. BEV. CODE ANN. chs. 11. 28, and 29.
6. Based upon Findings of Fact Nos. 1 and 9 - 14, Respondent violated provisions of the Code because the place and manner in which Respondent conducted its business was contrary to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and (7).
7. Based on Conclusion of Law No. 6, Respondent's permits should be suspended for a period of 30 days, or in lieu of any suspension. Respondent may pay a civil penalty in the amount of \$30,000. TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) and 11.64(a).

SIGNED June 21, 2006

  
\_\_\_\_\_  
**TANYA COOPER**  
**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: Reina M Tiras, Inc. d/b/a Club Fusion

DOCKET NUMBER: 458-05-7584

AGENCY CASE NO: 814324

---

Diana Brown  
Staff Attorney  
Texas Alcoholic Beverage Commission  
Fax: 214/678-4001  
Ph. 214/678-4000

AGENCY COUNSEL  
BY FAX

John Gamboa  
Fax: 817/885-8504

RESPONDENT'S ATTORNEY  
BY FAX

Officer Ed Adcock  
Fort Worth Police Department  
Fax: 817/877-8270

BY FAX

Updated as of March 29, 2006

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 21, 2006

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

RE: Docket No. 438-05-7564; Texas Alcoholic Beverage Commission vs Reina M. Ticas  
d/b/a Club Fusion, (TABC Case No. 614324)

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 Diane Brown, attorney for Texas Alcoholic Beverage Commission, to John Gamboa, attorney for the Respondent, and the Protestant, Officer Ed Adcock of the Fort Worth Police Department. Reina M. Ticas d/b/a Club Fusion (Respondent) seeks renewal of its Mixed Beverage and Mixed Beverage Late Hours Permits for a premises located at 2525 Rodeo Plaza, Fort Worth, Tarrant County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Commission Staff and Fort Worth Police Department (Protestant), assert that the renewal of Respondent's permits should be denied due to general welfare, health, peace, morals, and safety concerns. This proposal for decision recommends that disciplinary action be taken against Respondent, but recommends that the permits be renewed and issued. Because Respondent violated Sections 11.61(b)(2) and (7) of the Texas Alcoholic Beverage Code (the Code), the Administrative Law Judge (ALJ) recommends that its permits be suspended for a period of 30 days, or in lieu of any suspension, that Respondent pay a civil penalty in the amount of \$30,000.

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,



Tanya Cooper  
Administrative Law Judge

TC/ed  
Diane Brown, TABC Staff Attorney, Via Facsimile 214/678-4050  
John Gamboa, Attorney for Respondent, Via Facsimile 817/395-8504  
Officer Ed Adcock, Protestant for Fort Worth Police Department, Via Facsimile 817/877-8270