

DOCKET NO. 582155

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, **Petitioner and Protestant**

§ TEXAS ALCOHOLIC

VS.

ORIGINAL APPLICATION OF  
LAS RAICES GARCIA INC.  
D/B/A EL PUMA CLUB,  
(MB, LB & PE), **Respondent**

§ BEVERAGE

DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-09-3353)

§ COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 6<sup>th</sup> day of October, 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on May 22, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on August 28, 2009. 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.

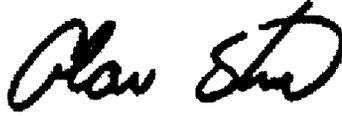
The Administrator of the Texas Alcoholic Beverage Commission after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal for Decision and incorporates those Findings of Fact and 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 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 ORIGINAL APPLICATION IS HEREBY DENIED.**

This Order will become final and enforceable on October 30<sup>th</sup>, 2009 unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** this the 6th day of October, 2009, at  
Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
633 Forest Park Road, Suite 150-A  
Dallas, Texas 75235  
**VIA FACSIMILE: (214) 956-8611**

Timothy Griffith  
**ATTORNEY FOR RESPONDENT**  
111 East Park Blvd., Suite 600  
Plano, Texas 75074  
**VIA FACSIMILE: (469) 742-9521**

Las Raices Garcia Inc.  
d/b/a El Puma Club  
**RESPONDENT**  
8416 Denton Drive  
Dallas, Texas 75235  
**VIA U.S. FIRST CLASS MAIL**

Shelia A. Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas Enforcement Office

SAL/aa

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 28, 2009

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

**VIA FACSIMILE 512/206-3203**

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS.  
ORIGINAL APPLICATION OF LAS RAICES GARCIA INC.  
D/B/A EL PUMA CLUB  
SOAH DOCKET NO. 458-09-3353**

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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "KJG", with a long horizontal flourish extending to the right.

Kyle J. Groves  
Administrative Law Judge

KJG/lan  
Enclosure

Xc: Shelia A. Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**  
Timothy Griffith, Attorney for Respondent, **VIA FACSIMILE 469/742-9521**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**

6333 Forest Park Road, Suite 150A ♦ Dallas, Texas 75235  
(214) 956-8616 Fax (214) 956-8611  
<http://www.soah.state.tx.us>

**DOCKET NO. 458-09-3353**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner/Protctant</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>ORIGINAL APPLICATION OF LAS RAICES GARCIA INC. D/B/A EL PUMA CLUB, Respondent</b>	§	
	§	
	§	
<b>TABC CASE NO. 582155</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Las Raices Garcia, Inc. (Respondent) filed an application with the Texas Alcoholic Beverage Commission (Commission) for a mixed beverage permit, mixed beverage late hours permit and a beverage cartage permit for the premises known as El Puma Club, located at 8416 Denton Drive, Dallas, Dallas County Texas. The Commission alleges that Respondent has engaged in conduct that shows the place or manner in which Respondent may conduct its business warrants the refusal of the permits based on the general welfare, health, peace, morals and safety to the people and on the public sense of decency based on the history of violations at other licensed locations owned by Respondent. The Administrative Law Judge (ALJ) recommends that the requested permits be denied by the Commission.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No contested issues of notice, jurisdiction, or venue were raised in this proceeding.

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Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On May 22, 2009, a public hearing was held before Kyle J. Groves, ALJ, at the State Office of Administrative Hearings in Dallas, Texas. Staff was represented by attorney Shelia Lindsey, and Respondent was represented by attorney Timothy Griffith. The record remained open until June 30, 2009 so the parties could file written closing arguments.

## II. APPLICABLE LAW

The Commission may refuse to issue an original permit if it has reasonable grounds to believe that the place or manner in which Respondent may conduct its business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

## III. EVIDENCE

The permit histories of other establishments operated by Respondent were admitted into evidence. The history for La Pantera shows that the license was granted September 6, 2006. From May 3, 2008 to February 7, 2009, there have been 13 administrative violations. Four of these violations have resulted in a written warning and one resulted in a civil penalty. The history for El Gato shows that the license was granted October 8, 2005. From November 12, 2005 to February 21, 2009, there were 10 administrative violations. Nine violations resulted in a civil penalty, and one resulted in a written warning. The history of the establishment El Capri shows that the license was granted May 25, 2005. There is one administrative violation, dated January 6, 2007, that resulted in a civil penalty.

The history of El Jaguar shows the license was granted November 18, 1998. There were 15 administrative violations from October 16, 1999 to July 31, 2008, 10 of which resulted in written

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warnings and five resulted in a civil penalty. The history of El Granero shows the license was granted May 10, 2007, and there was one administrative violation, dated March 8, 2008, that resulted in a written warning. The history of El Palacio shows the license was granted May 10, 2001, and from October 27, 2001 to February 8, 2002, there were two administrative violations resulting in a civil penalty. This license expired May 9, 2003. The history of El Mariachi shows the license was granted July 27, 2000, and there was one violation dated September 23, 2000. This license expired July 26, 2001.

Victor Bulos testified on behalf of Petitioner. He is an investigator for Petitioner. Mr. Bulos said that he is familiar with Respondent's establishments. Specifically, he has investigated La Pantera and El Gato. Mr. Bulos testified that there have been ongoing problems with these establishments, including sales after hours, sales to intoxicated persons, sales to a minor and solicitation of drinks by employees.

Carlos Garcia is the sole shareholder of Respondent. Mr. Bulos said he has spoken with Mr. Garcia concerning the alleged violations at his establishments. Mr. Bulos testified that he repeatedly told Mr. Garcia what the violations were and what needed to be done to correct them. He said the purpose of giving warnings is to educate the license holder on how to comply with Petitioner's rules and regulations. Mr. Bulos said that Mr. Garcia seemed receptive to his advice, but the violations have continued. Mr. Bulos believes Mr. Garcia refuses to follow TABC rules and simply operates his establishments the way he wants.

On cross-examination, Mr. Bulos said that he does not know the preventative measures Mr. Garcia has taken in an effort to comply with TABC rules. Mr. Bulos testified that Petitioner only looks at the past 12 months of a license history when considering cancellation or suspension. However, the entire history of a licensee is taken into consideration when the application is under protest.

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TABC agent Chris Hamilton testified on behalf of Petitioner. He said that he has witnessed after hour violations in four of Respondent's establishments. Mr. Hamilton testified that, on these occasions, the alcohol was poured into cups in an effort to hide after hours service. He said that he has also observed employees of the establishments solicit alcoholic beverages from patrons. He has spoken with Mr. Garcia about the violations, but he has seen no change in the way the establishments are operated. It is his opinion that El Puma will be operated like Mr. Garcia's other establishments.

Alfred Nunez testified for Petitioner. Mr. Nunez is a sergeant with the Dallas Police Department Vice Squad. He said that he has observed after-hours alcoholic beverage service and drink solicitation by employees at La Pantera, El Gato and El Jaguar. Mr. Nunez said that he also believes El Puma would be operated in the manner Respondent's other establishments have been operated.

Patricia Van Winkle testified on behalf of the Love Field Crime Watch Association. Ms. Van Winkle has lived in the neighborhood since 1946, and she currently lives across the street from the proposed location of El Puma. She protests the granting of a license because of the history of bars at the proposed location of El Puma. She said the other bars caused numerous problems in this residential area. Among the problems cited by Ms. Van Winkle were prostitution, drunk drivers causing accidents, drug deals and drug paraphernalia in the parking lot, gun fire, illegal parking on the side of the road and a general devaluation of houses because of the increased crime.

Ms. Van Winkle said that she did not know Mr. Garcia and had not been to any of his other establishments. She does know that since the last bar at the location closed, the problems have disappeared. Furthermore, she said that there are two other bars in the neighborhood, but she has had no problems with them. Her contention is that there is a high likelihood that El Puma would have the same patrons as previous bars at that location, resulting in many of the same problems for the neighborhood.

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Carlos Garcia testified on his own behalf as the lone shareholder of Respondent. He said that he has had seven or eight alcoholic beverage licenses since 1997, and this is the first time that his application has been protested. He testified that his brother was in business with him until he passed away in 2007. Mr. Garcia said that his brother was responsible for the day-to-day operation of El Capri, El Jaguar and El Mariachi. Mr. Garcia only helped his brother at these establishments during the day.

Mr. Garcia said that he has taken numerous preventative measures to ensure his establishments abide by Petitioner's rules and regulations. He said he tells his employees not to serve minors or intoxicated persons and not to sell alcoholic beverages after hours. Mr. Garcia said that, if employees violate these rules, they are terminated.

Mr. Garcia denies that any of his establishments sell alcohol after hours. He said the Petitioner's investigators have been in error when they have accused him of this because his establishments only serve non-alcoholic beer after hours. Mr. Garcia further testified that minors are not allowed in his establishments, and intoxicated persons are not served.

Mr. Garcia said that he paid civil penalties in response to the allegations of Petitioner because it was cheaper to pay a fine than it would have been to hire an attorney and have a hearing. He said that many of the warnings and fines were based on incorrect assumptions by Petitioner's agents. Specifically, he said that an allegation on February 21, 2009, for solicitation of alcohol was for a non-employee getting a beer for herself and an undercover TABC investigator. Apparently, the agent thought the female worked at the establishment. Mr. Garcia also said the incident on January 18, 2009 for sale after hours resulted from the TABC agent repeatedly demanding an alcoholic beverage after hours. According to Mr. Garcia, the waitress finally gave the agent the drink after she had told him "no" several times.

Mr. Garcia said he feels that he has been treated unfairly by Petitioner and its agents. He is frustrated with the warnings and penalties. It is his position that the alleged violations have accrued

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over many years at many different establishments. Considering the number of licenses and the number of years he has been in business, Mr. Garcia believes his administrative history is not unlike that of other establishments. He thinks that the activities of the previous bars at the location should not be imputed on him. According to Mr. Garcia, others have told him that Agent Bulos is "out to shut him down."

Mr. Garcia said that El Puma will have signs posted saying there will be no sale of alcohol after hours, and minors will not be served. His employees will follow the steps he has set out for the sale of alcohol. In addition, the parking lot will be closely monitored, so there will be no overcrowding or illegal activity.

#### IV. ANALYSIS

Protestants challenged Respondent's application arguing that it should be denied on the basis of the general welfare, health, peace, morals, safety of the people, and the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8). The four establishments where Mr. Garcia has run day-to-day operations have had 26 warnings or civil penalties since October 2001. More troubling is that 23 of these warnings or civil penalties have taken place since November 2005. While it is true that a warning does not prove that a particular violation has occurred, the number of warnings given to Respondent shows a pattern of non-compliance with Petitioner's rules and regulations. It appears that Mr. Garcia is either unwilling or unable to stop violations from occurring.

The administrative history of Mr. Garcia's establishments, and the problems that have occurred with other bars at this location, warrant a denial of this application. Ms. Van Winkle's testimony about problems with other bars shows that there is a probability that the same clientele that went to the prior bars will go to El Puma. Therefore, there is a high likelihood that many of the problems that were present will reappear with the granting of this application. Mr. Garcia's administrative history indicates that his establishments continue to violate Petitioner's rules and

regulations despite numerous warnings and penalties. He seems unable to control the actions of his own employees. It seems unlikely that he would be able to control the people who frequent El Puma and prevent the problems that they may cause the neighborhood.

#### V. RECOMMENDATION

The ALJ recommends that Respondent's application for a mixed beverage permit, beverage cartage permit and mixed beverages late hours permit for El Puma Club, 8416 Denton Drive, Dallas, Dallas County Texas be denied.

#### VI. FINDINGS OF FACT

1. Las Raices Garcia, Inc., d/b/a El Puma Club, 8416 Denton Drive, Dallas, Dallas County Texas, filed an original application for a mixed beverage permit, beverage cartage permit and mixed beverages late hours permit with the Texas Alcoholic Beverage Commission (Petitioner).
2. A protest to Respondent's application was filed by Petitioner and individual residents of the neighborhood near Respondent's premises. The protest was based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency.
3. A notice of hearing, dated April 15, 2009, was issued by Petitioner notifying Respondent of the protest and informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
4. An order setting the hearing and establishing requirements for participation was issued by SOAH on May 13, 2009, informing the parties of the time and place of the hearing.
5. On May 22, 2009, a public hearing was held before Kyle J. Groves, ALJ, at the State Office of Administrative Hearings in Dallas, Texas. Petitioner was represented by attorney Shelia Lindsey, and Respondent was represented by attorney Timothy Griffith. The record remained open until June 30, 2009, so the parties could file written closing arguments.
6. Mr. Garcia, sole shareholder of Respondent, has held licenses issued by Petitioner since 1997 and has run the day-to-day operations of four establishments.
7. Since November 2005, Mr. Garcia has received 23 warnings or civil penalties at other TABC-licensed locations that he owns.

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8. The proposed location of El Puma has a history of establishments interfering with the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency.

#### VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings 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. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001, and 1 TEX. ADMIN. CODE §155.55.
3. Granting Respondent's request for a mixed beverage permit, beverage cartage permit and mixed beverages late hours permit for El Puma Club, 8416 Denton Drive, Dallas, Dallas County Texas will adversely affect the general welfare, health, peace, morals, safety of the people, and the public sense of decency. TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
4. Respondent's application for a mixed beverage permit, beverage cartage permit and mixed beverages late hours permit should be denied.

SIGNED August 28, 2009

  
\_\_\_\_\_  
KYLE J. GROVES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DALLAS OFFICE**  
6333 Forest Park Road Suite 150a  
Dallas, Texas 75235  
Phone: (214) 956-8616  
Fax: (214) 956-8611

*DN 582155*

DATE: **08/28/2009**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **10**

REGARDING: **PROPOSAL FOR DECISION**

DOCKET NUMBER: **458-09-3353**

**JUDGE KYLE GROVES**

**FAX TO:**

**FAX TO:**

TIMOTHY E. GRIFFITH (GRIFFITH & RICH, PLLC)

(469) 742-9521

SHELIA A. LINDSEY (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(713) 426-7965

ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE COMMISSION)

(512) 206-3203

LOU BRIGHT GENERAL COUNSEL (Alcoholic Beverage Commission, Texas)

(512) 206-3498

**NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(lda) (214) 956-8616**

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