

DOCKET NO. 591769

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| TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner | § | BEFORE THE TEXAS |
| | § | |
| | § | |
| VS. | § | |
| | § | |
| BLACK BOOK LLC D/B/A PANDORA, Respondent | § | ALCOHOLIC |
| | § | |
| PERMITS NO. MB679730, LB & PE | § | |
| | § | |
| HARRIS COUNTY, TEXAS (SOAH DOCKET NO. 458-10-5232) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 16th day of June, 2011, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Stephen J. Burger presiding. The hearing convened on October 29, 2010 and the SOAH record closed the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on December 21, 2010. The 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.

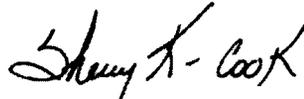
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

IT IS THEREFORE ORDERED that the application of Black Book LLC d/b/a Pandora for renewal of its Mixed Beverage Permit (No. MB679730), its Mixed Beverage Late Hours Permit and its Beverage Cartage Permit is **DENIED**.

This Order will become final and enforceable on the **11th** day of **July**, 2011, unless a Motion for Rehearing is filed **before** that date.

The record as of today (see TABC Exhibit 6) reflects that Respondent is not represented by an Attorney. If Mr. Levine (or another attorney) files a Motion for Rehearing (or any other pleading in this proceeding) with the Commission on behalf of the Respondent, the Motion must be accompanied by a Letter of Representation from Respondent authorizing the attorney's appearance in this proceeding on Respondent's behalf. If the authorization is for limited purposes, those limitations shall be specified in the Letter.

SIGNED this the **16th** day of **June**, 2011, at Austin, Texas.



Sherry K-Cook, Assistant Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the **16th** day of **June**, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Stephen J. Burger
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West Suite 111
Houston, TX 77018
VIA FACSIMILE: (512) 322-0474

Black Book LLC
d/b/a Pandora
RESPONDENT
10998 S Wilcrest Drive Suite 212
Houston, TX 77099

and

2800 Kirby Dr. #C-719
Houston, TX 77098

and

1815 Washington Avenue
Houston, TX 77007

VIA FIRST CLASS MAIL TO EACH ADDRESS

Robert Levine
ATTORNEY FOR RESPONDENT
146 Westcott Street, Suite 200
Houston, TX 77007
VIA FIRST CLASS MAIL
AND VIA FACSIMILE: (713) 861-7982

Brian Baker
Neighbors of the Old Sixth Ward
PROTESTANT
1820 Decatur
Houston, TX 77007
VIA FIRST CLASS MAIL

Martin Medina
PROTESTANT
1908 Decatur
Houston, TX 77007
VIA FIRST CLASS MAIL

Shelia Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Division

TABC Licensing Division

Captain James Debrow III
TABC Houston District Office

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

RECEIVED

DEC 23 2010

**FABC HOUSTON
LEGAL**

December 21, 2010

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

VIA REGULAR MAIL

RE: Docket No. 458-10-5232; Texas Alcoholic Beverage Commission vs. Black Book LLC d/b/a Pandora

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 "S. Burger".

Stephen Burger
Administrative Law Judge

SJB/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Shelia Lindsey, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL** (with Certified Evidentiary Record and __1__ hearing CD)
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
Robert Levine, Attorney for Respondent, 146 Westcott Street, Suite 200, Houston, TX 77007 -**VIA REGULAR MAIL**
Black Book LLC d/b/a Pandora, 10998 S. Wilcrest Drive Suite 212, Houston, TX 77099 - **VIA REGULAR MAIL**

2020 North Loop West Suite 111 Houston, Texas 77018
713.957.0010 (Telephone) 713.812.1001 (Fax)
www.soah.state.tx.us

Brian Baker, Neighbors of the Old Sixth Ward, Protestant, 1820 Decatur, Houston, TX 77007 - **VIA REGULAR MAIL**

Martin Medina, Protestant, 1908 Decatur, Houston, TX 77007 - **VIA REGULAR MAIL**

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On October 29, 2010, a public hearing was held before Stephen J. Burger, ALJ, in Houston, Harris County, Texas. The record closed at the conclusion of the hearing. Protestants appeared and were represented by Mr. Medina and Mr. Baker. Shelia Lindsey, attorney, represented the TABC. Respondent failed to appear. Because the Notice of Hearing contained insufficient factual allegations, the TABC and Protestants presented evidence.

II. DISCUSSION

A. Applicable Law

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his 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).

B. Evidence

Mr. Medina resides at 1908 Decatur St., Houston, about two blocks from Respondent's club, Pandora. He complains of the loud music coming from Pandora, and that Pandora has caused problems with increased traffic and trash in the neighborhood. He has also observed Pandora patrons urinating in public. He has talked to representatives of Pandora, but he and other residents are still having the same problems.

Mr. Baker has resided for the past 10 years at 906 Silver, Houston, Texas, about two lots from Pandora. He complains of the loud music coming from Pandora, and has measured it at 70

decibels at his property at 1:00 a.m. on a Saturday. He has observed people urinating and fighting near Pandora, and trash being thrown by club patrons. He notes there were no problems with the four prior clubs located at Pandora's location.

C. Analysis

The uncontested evidence presented shows that Respondent's establishment creates loud music and increased traffic, as well as patrons fighting and urinating near the premises. These problems as presented by Protestants warrant the denial of Respondent's permits being renewed 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. RECOMMENDATION

The ALJ agrees with Protestants' request that Respondent's renewal permit be denied.

IV. FINDINGS OF FACT

1. Black Book L.L.C., d/b/a Pandora (Respondent) filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises located at 1815 Washington Ave, Houston, Harris County, Texas.
2. Martin Medina and Brian Baker, on behalf of the Neighbors of the Old Sixth Ward (Protestants) filed a protest against Respondent's renewal application, asserting that the application should be denied 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 September 9, 2010, was issued notifying the parties that a hearing would be held on the renewal application and informing the parties of the time, place, and nature of the hearing.
4. On October 29, 2010, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Shelia Lindsey, attorney. Protestants were represented by Brian Baker and Martin Medina. Respondent did not appear. Evidence was received and the record closed on the same date.

5. Patrons of Respondent's club Pandora urinate, fight, and throw trash near the club.
6. Respondent's club is the source of loud music heard by adjacent homeowners in the early hours of the morning.

V. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. § 5.31.
2. The State Office of Administrative Hearings (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 and TEX. ALCO. BEV. CODE ANN. § 5.43.
3. Proper and timely notice of the hearing was effected on all parties pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The place or manner in which Respondent conducts its business warrants the denial of Respondent's permit renewals 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).
5. Respondent's renewal application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for the premises known as Pandora located at 1815 Washington Ave., Houston, Harris County, Texas, should be denied.

SIGNED December 21, 2010.



STEPHEN J. BURGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS