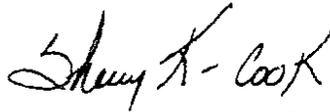


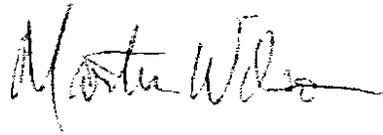
SIGNED this the 4th day of May, 2011, at Austin, Texas.



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 4th day of May, 2011.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Honorable Kyle Groves
Administrative Law Judge
State Office of Administrative Hearings
Dallas, Texas
VIA FACSIMILE: (512) 322-0471

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**VIA FACSIMILE: (469) 742-9521 AND
VIA REGULAR MAIL**

Triple D's Enterprises LLC
d/b/a Siglo XXI
RESPONDENT
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Dallas, TX 75235

Mr. David Perez
PROTESTANT
2403 Gilford St.
Dallas, TX 75235
VIA REGULAR MAIL

Wilma Avalos
Love Field Neighborhood Crime Watch Association
PROTESTANT
P.O. Box 35141
Dallas, TX 75235
VIA REGULAR MAIL

TABC Licensing Division

Matthew M. Clark
ATTORNEY FOR PETITIONER
TABC Legal Division

Lt. Jeff Gladden
Dallas Enforcement District Office

DOCKET NO. 458-10-5306

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,**

Petitioner

DAVID PEREZ and WILMA AVALOS

Protestants

v.

TRIPLE D's ENTERPRISES, LLC.

d/b/a SIGLO XXI,

Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Triple D's Enterprises, d/b/a Siglo XXI (Applicant), has applied to the Texas Alcoholic Beverage Commission (Petitioner) for a mixed beverage permit, a mixed beverage late hours permit and a beverage cartage permit for premises to be known as Siglo XXI, located at 8410 Harry Hines Blvd., Dallas, Dallas County Texas.

Petitioner protests the issuance alleging Applicant failed to answer or falsely or incorrectly answered a question in its application, and the place or manner in which the applicant may conduct its 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.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is a sufficient basis for denying the application and recommends that the permits be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

On November 9, 2010, a hearing convened at the State Office of Administrative Hearings (SOAH) in Dallas, Texas, before ALJ Kyle J. Groves. The applicant was represented by attorney Jerry McClain. Staff was represented by attorney Matthew Clark. Protestants Perez and Avalos did not appear. The record was to remain open until November 23, 2010, so the parties could file written closing arguments. However, both parties filed additional arguments after that date, and these were taken under consideration in this proposal for decision. The final argument was received December 1, 2010.

II. APPLICABLE LAW

TEX. ALCO. BEV. CODE § 11.46. GENERAL GROUNDS FOR REFUSAL. (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists: (4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application (8) the 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

This hearing pertains to the original application filed by Blanca Ramirez for an establishment to be known as Siglo XXI. Ms. Ramirez is the current license holder for an establishment known as El Indomable, located at 4430 Main Street, Dallas, Dallas County Texas. Blanca Ramirez' son, Dennis Ramirez, is the manager of El Indomable.

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Staff presented the testimony of Dallas Police Department Corporal Edward King. Mr. King testified that on February 12, 2009, he stopped a vehicle operated by Dennis Ramirez for an expired vehicle registration. At the time, Mr. Ramirez also had several outstanding warrants. A search of the vehicle found 800 to 900 grams of marijuana. Mr. King arrested Dennis Ramirez for possession of marijuana. Mr. King testified that this amount of marijuana indicated to him that Mr. Ramirez was selling drugs. On cross examination, Mr. King said charges related to the marijuana possession were later reduced to a misdemeanor, and Mr. Ramirez was granted a deferred adjudication. Mr. King further testified that El Indomable has the reputation of a bar that traffics women and narcotics. According to Mr. King, Mr. Ramirez would not be able to obtain his own license because of his criminal history.

Staff presented the testimony of TABC Agent Joe Garcia. Mr. Garcia testified that he believes Mr. Ramirez is the person who actually controls El Indomable, not the license holder, Ms. Ramirez. Mr. Garcia said that he bases this belief on a meeting that he had with Ms. Ramirez on December 15, 2009. During the meeting, Ms. Ramirez signed an affidavit stating that Dennis Ramirez actually controls El Indomable. The affidavit states that Ms. Ramirez does not know how much money the establishment makes or the amount of taxes that are paid. The affidavit further states that Ms. Ramirez only signs the checks for the business and that she is employed full-time at G.P. Plastics. Ms. Ramirez' W-2 and income tax return were admitted into evidence. They show her sole source of income was from G.P. Plastics.

Agent Garcia also testified and exhibits were admitted showing that Mr. Ramirez is listed as the lessee on the El Indomable lease. The electric bill for El Indomable is in the name of Mr. Ramirez' girlfriend, Karla Romero. Mr. Garcia said that he also believes that Mr. Ramirez forges his mother's name on checks drawn on the El Indomable account. Numerous checks were admitted into evidence. Check number 236 contains the purported signature of Ms. Ramirez, but the driver's license number of Mr. Ramirez is written at the top of the check.

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The certificate of occupancy filed with the City of Dallas for Siglo XXI states that less than 75 percent of the establishment's gross quarterly revenue will come from the on-premise sale of alcoholic beverages. This document was signed by Ms. Ramirez in July 2009. However, the original application for Siglo XXI shows that annual alcoholic beverage sales will be \$325,000 and food sales will be \$10,000. According to this document, alcoholic beverage sales will be approximately 97 percent of the establishment's total revenue. The original application was signed by Mr. Ramirez on August 22, 2009.

Agent Garcia testified that the City of Dallas would not have issued the certificate of occupancy if the percentage of alcoholic beverage sales was over 75 percent. According to Mr. Garcia, TABC would have rejected the application if a certificate of occupancy was not issued.

Applicant presented the testimony of four employees of El Indomable. America Alvarez, Karla Romero, Vicente Ornalas and Joseph Palomo all said that Blanca Ramirez controls El Indomable. They said she conducts regular business meetings and generally comes to the establishment after she gets off work from her other job. The witnesses said that Dennis Ramirez is merely the manager of the establishment.

IV. DISCUSSION

Staff argues that the applicant failed to answer or falsely or incorrectly answered a question in its original application. The evidence shows there is a discrepancy in the information provided to the City of Dallas and the information contained on the original application. It appears from the documents that Applicant understated the percentage of alcohol that would be sold in order to obtain the certificate of occupancy. However, the information contained in the original application showing that alcoholic beverage sales would be approximately 97 percent of the establishment's total revenue does not seem to be false or misleading. Therefore, the ALJ concludes that Applicant did not violate TEX. ALCO. BEV. CODE § 11.46 (a) (4).

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Staff also argues that the application should be denied because the place or manner that the proposed establishment would be operated would be a detriment to the general welfare, health, peace, morals, safety of the people and the public sense of decency. It is Staff's position that Ms. Ramirez and Mr. Ramirez have conspired to allow Mr. Ramirez to control El Indomable without a license. Staff further believes that Mr. Ramirez will control Siglo XXI.

The preponderance of the evidence supports this position. Other than the testimony of the four employees from El Indomable, there is very little evidence that Ms. Ramirez actually controls the establishment. Ms. Ramirez admitted to Mr. Garcia that her son controls El Indomable. Furthermore, her sole source of income is from G.P. Plastics. According to her tax information, she derives no income or loss from El Indomable.

It is concluded that El Indomable is controlled by Mr. Ramirez and Siglo XXI would also be controlled by Mr. Ramirez. Having a non-license holder in control of a licensed premise would be detrimental to the general welfare, health, peace, morals, safety of the people and the public sense of decency. Therefore the application should be denied.

V. PROPOSED FINDINGS OF FACT

1. Blanca Ramirez (Applicant) filed an original application for a mixed beverage permit, a mixed beverage late hours permit and a beverage cartage permit for an establishment to be known as Siglo XXI.
2. The Staff of the Texas Alcoholic Beverage Commission (TABAC/Staff) opposes the issuance of the permits, asserting Applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application, and the place or manner in which the applicant may conduct her 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.
3. On July 20, 2010, Staff issued a notice of hearing that included a statement regarding the time, place, and nature of the hearing; referenced the legal authority upon which the hearing would be held; cited the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
4. The hearing was held November 9, 2010, in Dallas, Dallas County, Texas, before ALJ Kyle

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Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The record was to remain open until November 23, 2010, so the parties could file written closing arguments. However, both parties filed additional arguments after that date, and these arguments were taken under consideration in this proposal for decision. The final argument was received December 1, 2010.

5. Siglo XXI would be located at 8410 Harry Hines Blvd., Dallas, Dallas County Texas.
6. Ms. Ramirez is the current license holder of El Indomable, located at 4430 Main Street, Dallas, Dallas County Texas.
7. Ms. Ramirez' sole income is from her employer, G.P. Plastics.
8. Ms. Ramirez admitted that her son, Dennis Ramirez, controls El Indomable.
9. Based on the fact that fact that Ms. Ramirez holds the license for El Indomable but Mr. Ramirez controls that establishment, it is reasonable to conclude that if Siglo XXI were licensed, Mr. Ramirez would control Siglo XXI.
10. Having someone other than the license holder in control of an establishment would be detrimental to the general welfare, health, peace, morals, safety of the people and the public sense of decency.
11. Applicant did not fail to answer or incorrectly answer a question in its original TABC application.

VI. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01 and 11.46 (the Code).
 2. The State Office of Administrative Hearings has jurisdiction over all matters relating 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. Chapter 2003.
 3. The parties received proper and timely notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
 4. The place or manner in which Applicant may conduct her business warrants the refusal of the permits based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE § 11.46 (a) (8).
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5. Based on the foregoing Findings of Fact and Conclusions of Law, Applicant's permits should be denied.

Issued January 26, 2011



Kyle J. Groves
Administrative Law Judge
State Office of Administrative Hearings