

DOCKET NO. 593547

TEXAS ALCOHOLIC BEVERAGE	§	
COMMISSION, Petitioner	§	
	§	
WILMA B. AVALOS	§	
and ROXAN STAFF,	§	
Protestants	§	BEFORE THE TEXAS
	§	
VS.	§	ALCOHOLIC BEVERAGE
	§	
RJLL ENTERPRISES, INC.	§	COMMISSION
D/B/A CLUB PULSE,	§	
Respondent	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-10-4761)	§	

**ORDER**

**CAME ON FOR CONSIDERATION** this 13th day of January, 2011, the above-styled and numbered cause.

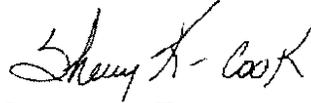
After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Kyle J. Groves presiding. The hearing convened on August 17, 2010 and the SOAH record closed on August 24, 2010. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 19, 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.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All other motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party that are not specifically adopted herein, are denied.

**IT IS THEREFORE ORDERED** that the Original Application of RJLL Enterprises, Inc. d/b/a Club Pulse for the issuance of a Mixed Beverage Permit and a Late Hours Mixed Beverage Permit be **DENIED**.

This Order will become final and enforceable on the 8<sup>th</sup> day of February, 2011, unless a Motion for Rehearing is filed **before** that date.

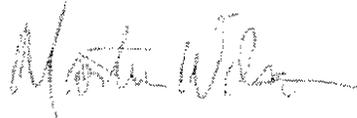
**SIGNED** this the 13<sup>th</sup> day of January, 2011, at Austin, Texas.



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 13<sup>th</sup> day of January, 2011.



Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

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

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**ATTORNEY FOR APPLICANT**  
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RJLL Enterprises Inc.  
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**APPLICANT**  
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Dallas, TX 75220-7101  
**VIA REGULAR MAIL**

Wilma B. Avalos  
**PROTESTANT**  
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***VIA REGULAR MAIL***

Roxan Staff  
**PROTESTANT**  
2707 W. Northwest Hwy.  
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Matthew M. Clark  
**ATTORNEY FOR PETITIONER**

TABC Licensing Division

Lt. Jeff Gladden  
Dallas District Office

**DOCKET NO. 458-10-4761**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>                                  Petitioner</b>	§	
	§	
<b>WILMA B. AVALOS &amp;</b>	§	
<b>ROXAN STAFF,</b>	§	
<b>                                  Protestants</b>	§	
	§	<b>OF</b>
<b>V.</b>	§	
	§	
<b>ORIGINAL APPLICATION OF</b>	§	
<b>RJLL ENTERPRISES, INC,</b>	§	
<b>D/B/A CLUB PULSE,</b>	§	
<b>                                  Applicant</b>	§	
	§	
<b>TABC DOCKET 593547</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

RJLL Enterprises, Inc., d/b/a/ Club Pulse, (Applicant), has applied to the Texas Alcoholic Beverage Commission (Commission, Staff or TABC) for a mixed beverage permit and a late hours mixed beverage permit for premises located at 10733 Spangler Road, Dallas, Texas. The Protestants contest the issuance of the permits based on general welfare, health, peace, moral, and safety concerns of the neighborhood.

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**

The hearing in this matter convened August 17, 2010. Attorney Matthew Clark represented

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the Commission's staff. Applicant was represented by Attorney Timothy Griffith. Administrative Law Judge (ALJ) Kyle J. Groves presided. The record remained open until August 24, 2010, so the parties could file closing arguments. No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

## II. EVIDENCE

### A. Staff's Evidence

Staff offered documentary evidence showing Applicant has filed an original application for a mixed beverage permit and a mixed beverage late hours permit for the premises known as Club Pulse, located at 10733 Spangler Road, Dallas, Texas.

Staff presented the testimony of TABC Agent Laramie Mercerson. Mr. Mercerson testified that he has been an enforcement agent for 18 years. He identified three incident reports showing Dallas Police Department calls for service at 10733 Spangler Road, Dallas, Texas. During the time period reflected in the reports, Club DMX (later known as Level 5) occupied the premises that are the subject of this application. One report shows that from January 1, 2009 to January 27, 2010, there were 206 calls for service at 10733 Spangler Road. A second report shows that from January 27, 2009 through January 27, 2010, there were 304 calls for service on the block where 10733 Spangler Road is located. The final report shows that from January 28, 2010 through August 16, 2010, there were eight calls for service on the block. According to Mr. Mercerson, Club DMX went out of business on January 27, 2010.

TABC Agent Robert Holloway testified that he did a visual inspection of Applicant's premises. Mr. Holloway said that the premises are located in an industrial area. During his inspection, he saw the office of Beverly Bray. TABC's Exhibit 8 is a September 19, 2009 application for an officer of the Dallas Police Department to work as an off-duty officer at Club DMX. This application shows that Beverly Bray was the office manager of Club DMX. In addition,

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TABC's Exhibit 7, an application for a dance hall license submitted to the City of Dallas, shows that Cesar Torres will be the supervisor of Applicant's club. Applicant testified that Mr. Torres was the floor manager of Club DMX.

Lieutenant Jeffery Gladden testified that he supervises Dallas and surrounding areas for TABC. He said that Club DMX had numerous calls for service. These calls included assaults, burglaries and shootings. Mr. Gladden testified that in 2003, an off-duty Dallas police officer was shot and killed while working security at Club DMX. Mr. Gladden testified that he is concerned that there is a linkage between the current applicant and Club DMX.

Dallas Police Department Sergeant John O'Brien testified that he is familiar with Club DMX. Mr. O'Brien said that the location of the proposed club is a problem. He said it is in a warehouse district that is difficult to get to. Mr. O'Brien said that when Club DMX was operating, there were so many cars in the area that the flow of traffic required the utilization of additional police resources. Mr. O'Brien said that over 70 percent of his patrol resources were used in the area. At closing time, there was a spillover of people into a nearby Race Trac gas station where assaults and other crimes occurred. Mr. O'Brien also testified that the building itself is a problem. He said there was insufficient lighting in Club DMX, and it tended to get overcrowded. He believes that this caused many of the problems in the club because people bumped into each other and then got into altercations.

Mr. O'Brien also believes that the clientele that went to Club DMX was another part of the problem. He said that many of the people were gang members. According to Mr. O'Brien, there were times when the gang members were so brazen that they would assault others in the presence of off-duty officers. He also said drug use was prevalent both inside the club and in the parking lot.

#### **B. Protestant's Evidence**

Protestants Wilma Avalos and Roxan Staff both testified that their problem with the application is the location of the building and the building itself. They testified that the lack of lighting surrounding the building and the traffic congestion tend to exacerbate the problem with

crime. They believe that the precipitous drop in crime since the closure of Club DMX shows that another club should not be allowed.

### C. Applicant's Evidence

Rudy Neria is the president of RJLL Enterprises. He testified that he has no connection with Club DMX. He currently owns an independent video production company that created videos for clubs, including Club DMX. He testified that Beverly Bray informed him that Club DMX was going to close, and he should look into opening a club at the same location.

Mr. Neria said that he has never owned a club before. However, he has done extensive research into the problems with Club DMX, and he intends to operate a club that does not have those same problems. Mr. Neria believes the type of music that was played at Club DMX attracted the wrong type of clientele. He said that Club DMX played "hard rap." He said he will not play that type of music.

In addition to playing a different type of music, Mr. Neria plans to do many other things to alleviate the prior problems. He intends to implement a dress code, swipe licenses of the clientele, add lighting both inside and out, install metal detectors, increase the number of security officers and stagger the removal of the club-goers at closing time to lessen the amount of traffic.

Mr. Neria said that he wants a club with "up-scale" clientele. He will not tolerate gangs, drugs or intoxicated patrons. If anyone is found to be in violation of the club's rules, their picture will be taken, they will be escorted out of the club, and they will not be allowed to come back. In addition, Mr. Neria said that he has attended crime watch meetings and met with Dallas Police Department members in an effort to cooperate with law enforcement and educate himself about the problems with the previous club.

Mr. Neria said that he would like to hire Beverly Bray as a bookkeeper for the club. However, she would only work during the day when the club is not open. He also said that he may hire Cesar Torres, the former floor manager of Club DMX, as his club manager.

### III. STATUTORY AUTHORITY

TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8) states:

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: 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.

### IV. ANALYSIS

Mr. Neria presented evidence that he plans on making many changes to the building and the parking lot of the proposed club. He believes that these changes will alleviate the problems incurred by Club DMX. He also testified that he will implement many security enhancements that will do away with the gang-related activities that plagued Club DMX. He believes that additional lighting in the parking lot and not allowing reentry will greatly diminish the problems in the surrounding area.

However, the proposed plans of Mr. Neria must be weighed against the problems that Club DMX had at the same location. The location of the building remains the same as do the streets allowing access and departure from the premises. When Club DMX was operating, there were so many cars in the area that the flow of traffic required additional police resources. It is not clear how Mr. Neria's plan of staggering the removal of the club-goers at closing time will work. It seems that it would be problematic to require some patrons of the club to leave while others remain. Getting these patrons out of the parking lot before ordering other patrons to leave the club would also seem to be a difficult task.

The prior criminal activity at the location must also be considered. When Club DMX was operating there were approximately 25 calls for service per month. Since it closed, there has been approximately one call per month. It is not only the number of service calls, but also the type of calls previously received that bears consideration. There were carjackings, aggravated assaults, shootings and a police officer was killed.

Another concern with the application is the lack of experience possessed by Mr. Neria. He has never operated a club before. He is experienced in creating videos and marketing. This lack of experience has caused Mr. Neria to rely on Ms. Bray and Mr. Torres. Ms. Bray's involvement with the new club is less troublesome than Mr. Torres. Mr. Neria said that Ms. Bray would only serve as his bookkeeper. However, Mr. Torres was directly involved in the operation of Club DMX. Mr. Torres was either not able or not willing to rid Club DMX of its criminal element.

Mr. Neria seems to be sincere in his effort to open a new club that will not serve the criminal element that patronized Club DMX. Nevertheless, his inexperience, his reliance on the floor manager of Club DMX to manage his new club, and the location of the building lead to the conclusion that the new club will have many of the problems associated with Club DMX. For these reasons, Mr. Neria's application should be denied.

#### V. PROPOSED FINDINGS OF FACT

1. On February 3, 2010, RJLL Enterprises, Inc., d/b/a Club Pulse, filed an original application with the Texas Alcoholic Beverage Commission for a mixed beverage permit and a late hours mixed beverage permit for premises located at 10733 Spangler Road, Dallas, Texas.
2. The Commission's Staff, Wilma Avalos and Roxan Staff protested the application.
3. The Commission issued a notice of hearing on August 2, 2010.
4. The notice of hearing 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.
5. The hearing was held August 17, 2010, in Dallas, Texas before ALJ Kyle Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The record remained open until August 24, 2010, so the parties could file written closing arguments.
6. Applicant seeks to open a club at the same location of Club DMX.
7. The location of Applicant's proposed club is in a warehouse area that is difficult to access.
8. Cars exiting Club DMX at closing would create such a large flow of traffic that additional

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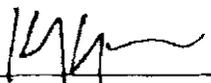
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- police resources had to be used.
9. Patrons of Club DMX contained a criminal element resulting in violent crimes in the neighborhood.
  10. Club DMX had numerous calls for service including assaults, burglaries and shootings.
  11. An off-duty Dallas police officer was shot and killed while working security at Club DMX.
  12. Applicant has no experience operating a club.
  13. Applicant intends to hire the former floor manager of Club DMX as his manager.

#### VI. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § § 6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. § § 2001.051 and 2001.052.
4. The place or manner in which 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. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
5. Based on the foregoing Findings of Fact and Conclusions of Law, applicant's permits should be denied.

Signed October 19, 2010

  
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**KYLE J. GROVES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**