

LICENSE APPEAL COMMISSION

CITY OF CHICAGO

6251 N. McCormick, LLC)	
d/b/a Café Pure)	
Applicant (Late Hour))	
6251 North McCormick)	
)	Case No. 11 LA 59
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

On September 23, 2011, Gregory Steadman in his position as the Commissioner of the Local Liquor Control Commission denied this application for a Late Hour license. This letter stated that the 17th District Police Commander had objected to the issuance of the Late Hour liquor license on grounds it will cause a law enforcement problem in the area. After considering that fact, the Commission found that the public interest would be best served by denying this applicant the requested license at this location. The letter cited the Chicago Municipal Code (4-60-040) which allows the Local Liquor Control Commissioner to deny an application for a city liquor dealer's license if the issuance of the license would tend to create a law enforcement problem. The applicant filed a timely appeal with this Commission.

As this case deals with a denial of a license, this Commission is charged with the responsibility of determining *de novo* the propriety of that denial.

The City of Chicago has prosecuted denials of licenses based on law enforcement concerns in different manners. On one scenario, it presents evidence that the particular applicant has had a history of not following liquor laws or the law in general. Since that particular applicant has shown this tendency in the past, it is reasonable to believe that applicant would not follow the law if granted a new or additional liquor license. This is the type of factual setting in the Vino Fino case.

A second approach to law enforcement cases is to show not that the individual applicant would violate liquor laws or the law in general, but that the location of the applicant's premises is such that the issuance of a liquor license of any type to any individual or corporation would tend to create a law enforcement problem or to aggravate existing law enforcement problems. Evidence in these type cases usually comes with the police department's records of the number of calls for service and the number of crimes in the area of the applicant premises. Evidence can also come from personal observations of community residents and elected officials as to what the present conditions are and how a new or additional license would tend to aggravate existing law enforcement problems. This is the type of evidence presented in the M.J. Ontario case.

Whether the City proceeds to hearing on either of those scenarios or any other such theory the laws require the City to prove its case on some evidence. Pure speculation that there will be a law enforcement problem in the future cannot support a denial for a liquor license.

The record in this case contains the testimony of the 17th District Commander Melissa Staples. Her live testimony is that there have been no law enforcement problems with the applicant since they have had their liquor license, as there was only one call for service from that location and that call was made by the applicant. The Commander did not present any statistical evidence to support the denial. The letter she wrote to Gregory Steadman was allowed in evidence. That letter states that it was her opinion, on the date she wrote the letter, that extending the sale of alcohol at this premise would have a deleterious impact on the health, safety and welfare of surrounding community by increasing the risk of violations of the law. A letter with an opinion not supported by evidence and with an opinion not stated at this hearing cannot support the denial of this license.

Ms. Patel from Alderman Silverstein's office did testify that the Alderman was opposed to the issuance of this license. While this Commission respects the opinion of Aldermen with respect to issuance of liquor licenses, Aldermanic opposition alone without supporting evidence such as was presented on the M.J. Ontario case is not sufficient to uphold the denial of this license.

While not specifically mentioned at the hearing, it appears that subsequent to the filing of this application the Municipal Code was amended to impose a moratorium on late hour licenses in the 50th Ward. Since this application predated the passage of the moratorium, the moratorium does not apply to this application.

The City has failed to meet its burden of proof that the issuance of this late hour license would tend to create a law enforcement problem. The denial of the late hour license is reversed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: July 2, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member