

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Move N Pick Convenience, Inc. )  
d/b/a Red Apple Convenience )  
Applicant (Packaged Goods) )  
for the premises located at )  
2000 West Chicago Avenue ) Case No. 12 LA 25  
)  
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

Move N Pick's application for a Packaged Goods liquor license was denied by the Local Liquor Control Commissioner because the issuance of the liquor license would create a law enforcement problem. The City of Chicago Municipal Code, 4-60-040 states that "The local liquor control commissioner may deny an application if the applicant fails to satisfy the requirements of this chapter and may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem." The applicant filed a timely appeal of that decision and this matter proceeded to a hearing before the License Appeal Commission.

Since this case deals with its denial of an application for a liquor license, it is the role of this Commission to review de novo the propriety of that decision.

A synopsis of the evidence will aid in determining that issue.

Frank Gross has been a Chicago Police Officer for twenty-six years and has been the Commander of the 13<sup>th</sup> District for about a year and a half. He is in charge of over 200 sworn officers and civilians. He addresses crime issues and works with local community groups, legislative leaders, and the alderman to try to make the 13<sup>th</sup> District a safe place to live and work.

The location of 2000 West Chicago Avenue is in the 13<sup>th</sup> District. It is at the northwest corner of Chicago and Damen. Chicago Avenue is a busy commercial street and Damen is residential. Move N Pick Convenience, Inc. is a small retail store. The Commander is aware Move N Pick Convenience, Inc. applied for a Packaged Goods license for 2000 W. Chicago Avenue, and he has objected to another packaged goods liquor store on Chicago Avenue.

The Commander explained he is not opposed to the issuance of all liquor licenses but opposes this license because of the crime conditions that are associated with a packaged goods liquor store. Those include an influx of loitering, gang activity, and fights associated with drinking packaged goods outside in the public way. In addition, people complain at beat meetings and community meetings about package liquor retail establishment selling single serve liquors.

The Police department maintains a system known as Caboodle that sets out requests for police incident calls for service for a particular location. Caboodle incorporates police reports entered when an arrest is made, calls for service are entered from the 911 OEMC database,

contact cards are entered manually, and case reports are either hand entered or entered automatically by computers. These records are kept in the ordinary course of business.

The Commander reviewed City's Group Exhibit 9, in evidence. The first page is the letter he wrote objecting this license. Pages 2 through 9, consist of crime statistics for an area a few blocks north and south of Chicago Avenue, and then east and west of Damen. Pages 1 through 7, list 121 incidents between March 31 and December 31 of 2010. There are different types of crime such as shoplifting from Dominick's, thefts, and gang disturbances. All of these incidents required a police report.

The next group is eight pages of reports from January 1 through December 21 of 2011. It lists 140 incidents of similar type crimes. It documents each time a police officer is called to that area. The next section reflects 19 incidents from January 1 through March 12 of 2012.

The next group of documents reflects arrests made in that same area. There were 65 arrests from March 13 through December 31, 2010, 67 arrests from January 1 through December 31, 2011, and 7 arrests from January 1 through March 12, 2012. The witness explained each time an arrest is made you need to process the arrestee. Since the 13<sup>th</sup> District does not have a lock up, prisoners must be taken to the 18<sup>th</sup> District. That can take up to four hours.

The next grouping lists ANOV's or Administrative Notices of Ordinance Violation. There is a citation for an administrative hearing that does not take as much time as an arrest. It

shows 12 ANOV's from March 13 through December 31, 2010, and 12 ANOV's for January 1 through March 12, 2012.

Commander Gross identified City's Group Exhibit 10, in evidence, as an updated group of similar documents for the time frame of March 8 through August 8, 2012, for the same geographical area. Using those same boundaries in that time period, there were 54 calls for service of which 23 were for gang violence or related services. The witness explained that just adjacent to this particular area, there is a problem with the Insane Disciple gang bangers who are fighting with everyone that comes along.

Commander Gross summarized his objections to this license by referring complaints of citizens about litter from packaged goods liquor products, as well as, fights on the public way associated with people drinking. Based on his 26 year career, his opinion is that calls for service related to liquor are substantial, and that if this license is issued he will have increased calls for service which will tie up officers who he would prefer to have working on robberies and gang conditions.

The Commander admitted he could not specify how many of the 65 shoplifting matters were related to liquor. He also could not specifically testify as to whether any of the 19 incidents from January 1 through March 12, 2012, were liquor related. Without reviewing each report, he could not state how many people were inebriated at the time of the crime. The Commander did feel shoplifting at this location would increase with a liquor license. The witness is familiar with

the applicant's gas station in the area and he is not familiar with any calls for case reports at the gas station.

There were a number of witnesses that testified in opposition to and in favor of this application.

The applicant, Irar Sweiss, has lived in Palos Heights for eight years. He attended Marist High School. He has never been arrested or convicted of a crime. His family has a business with a liquor license at 317 East 51<sup>st</sup> Street. That liquor license has been in existence since 1985. In that time there may have been one or two minor violations, but that liquor license has never been revoked or suspended. He also has operated a gas station about two blocks from the applicant's location since 2003. There have been no violations at that address. When he took that location there was littering and panhandling. He rehabbed the property and invested almost 2.5 million dollars to put up a brand new building with new pumps and tanks. Since he opened the Red Apple in 2011, he remodeled the entire interior. It is a convenience store that sells various items. He did reach out to the Alderman and the community. He met with a group from East Village. He installed bullet proof glass for security when they are working between 10:00 p.m. and 6:00 a.m. He did have curbside service but discontinued it five months ago.

He knows he cannot sell liquor to minors. As part of his POS, everyone must show a valid identification. The liquor button on the register will not work without a valid ID being scanned into the system. He is not planning to sell malt liquors, highly fortified wines, and high gravity beers. They did this with their location on the south side voluntarily.

Applicant's Exhibit 1, which is a petition in favor of the issuance of this license signed by 750 people, was allowed in evidence comparable to the letters sent to Mr. Steadman in opposition to this license.

Under the definition of law enforcement problem set out by the Illinois Appellate Court in the Vino Fino case, a license may be denied if the applicant has a history of violating liquor laws or the law in general. That theory does not apply to the facts in this case since the applicant has no history of disciplinary problems with the operation of the gas station or the liquor store on the south side.

The Court in M.J. Ontario upheld a denial of a license for law enforcement problems on a different theory. The M.J. Ontario analysis did not focus on whether the issuance of a liquor license to the particular applicant would tend to create a law enforcement problem, it upheld the denial of the license because its issuance would aggravate the existing conditions that were already causing quality of life issues that cause law enforcement problems.

The testimony in this case from the Commander is that there is criminal activity presently occurring in the area of the applicant's premises. Included in those problems is gang activity that has increased over the last year. Based on his 26 years of experience, it is the Commander's opinion that the issuance of this license will tend to create a law enforcement problem. This testimony was not rebutted by the applicant, and is sufficient to find the City has met its burden of proof.

The denial of the packaged goods liquor license for Move N Pick Convenience, Inc. for the premises located at 2000 West Chicago Avenue is affirmed.

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 AFFIRMED.

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: December 5, 2012

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member