

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Bohica Bar & Grill, Inc.)
Applicant (COP-IA))
for the premises located at)
5518 South Archer Avenue)
) Case No. 13 LA 13
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

Bohica Bar and Grill, Inc.'s application for a City of Chicago Consumption on Premises - Incidental Activity license for the premises located at 5518 S. Archer was denied by the Local Liquor Control Commissioner on July 26, 2012. The basis of the denial was that the issuance of this license would cause a deleterious impact on the health, safety and welfare of the surrounding community. Within the 20 days allowed by ordinance, the applicant proposed a plan of operation that would provide reasonable assurance that the issuance of this liquor license would not have a deleterious impact on the surrounding community. On November 29, 2013, after reviewing the proposed plan of operation, the Local Liquor Control Commissioner issued a Final Denial Letter denying the license because the plan of operation did not provide reasonable assurance that the issuance of a liquor license would not have a deleterious impact on the surrounding community.

This final denial letter noted that the current applicant is the spouse of the current licensee/owner at this location. It also noted that the applicant's spouse (the current owner) has a

direct beneficial interest in the new business and that it is the opinion of the Commission that the current owner is using his spouse as a sham to apply for a new liquor license entity in an attempt to circumvent and remove the conditions of the 2008 plan of operation that was made part of the existing license.

The applicant filed a timely Notice of Appeal with this Commission and a de novo hearing was held to review the propriety of the denial of this license.

SUMMARY OF THE PROCEEDINGS:

In order to accommodate witness scheduling, evidence in this case was taken out of order. This summary will present the relevant portions of the evidence as if the witnesses testified in the normal course of hearing.

Sophia Carey is a Business Consultant Supervisor for the City of Chicago's Department of Business Affairs and Consumer Protection. She is familiar with this application because she reviewed the paperwork along with the consultant who worked with the applicant. Also, she was testifying as a representative of Local Liquor Control Commissioner Gregory Steadman.

Ms. Carey stated she is also familiar with the current licensee Bohica, Incorporated and its owner Tom Bubaris. The current applicant for Bohica Bar and Grill, Incorporated is owned by Mia Bubaris. They are husband and wife. Bohica Incorporated first received a liquor license for this location in 2008. That application was originally denied for deleterious impact but the license later did issue subject to the liquor license plan of operation signed by Tom Bubaris, as

President of Bohica, Inc., and Mary Lou Eisenhower who was the then Acting Director of Business Affairs and Licensing/Local Liquor Control Commission. It was dated May 13, 2008. The first clause stated the business would be a family owned restaurant whose primary business would be the sale and service of food where alcohol will be incidental to that food service. At no time would the business be operated as a tavern/bar. Clause 3 stated the licensee agreed to not apply for a Public Place of Amusement license, and further agrees to not have any live entertainment. Bohica Inc. did open an application for a Public Place of Amusement license but that application was not completed.

Prior to this application in 2012, Ms. Carey spoke with Tom Bubaris about the procedure to be followed if he removed the terms of the plan of operation and if they could come up with a new legal entity. She told Mr. Bubaris he would need to speak to Commissioner Steadman but she is not aware if they ever did speak. A new application was filed and the witness realized this was a brand new entity for the existing location that was under a plan of operation.

As part of this application process, all registered voters within 250 feet of the establishment were notified and advised they could voice objections. The witness identified City's Exhibit 3, as petitions sent to the Local Liquor Control Commission opposing the granting for an Outdoor Patio license, as well as the transfer of any existing licenses. Based on these petitions, this application was denied and this applicant was given twenty days to complete a plan of operation. Ms. Carey identified City's Exhibit 4, in evidence, as the plan of operation submitted by Bohica Bar and Grill, Inc. The plan of operation was reviewed by the witness and Commissioner Steadman, and it was not approved. The concerns were that this plan did not state

the licensee would not apply for a Public Place of Amusement license and did not state it was to remain a family operated restaurant. Those provisions are in the existing plan of operation attached to the present license.

The financial disclosure forms on this application showed the building owner is Chicago Title Land Trust, No. 8002348527, and that Tom Bubaris is the beneficiary of the land trust. He is also listed as the contact for the landlord or building owner. Funds for the new application were coming from the operation of the business and \$500 a week from Tom Bubaris from his employment as an attorney.

If a licensee wants to have a plan of operation removed from an existing license, the initial step is to meet with the local liquor control commissioner. Generally, there is a meeting held with the community and the Commissioner decides. Revisions can be requested two years after the plan of operation commences.

Bohica Inc. did not operate under that plan of operation since 2008, and no disciplinary action was ever initiated against it for violating the plan of operation. Ms. Carey stated she had evidence that Bohica has operated in violation of the plan from pictures on the internet but she did not have that evidence with her at the hearing. Bohica, Inc. has never been subjected to a deleterious impact remediation-style hearing. Ms. Carey's office did not undertake an independent investigation to ascertain whether the signatures on the petitions opposing the license were true. The office accepted the allegations as being true for the purposes of reviewing the application. To the Commission, this petition opposed all the licenses but the Commission

did not investigate what the original drafter of the petition actually opposed. Ms. Carey acknowledged letters of support from present Alderman Burke and the previous Alderman, Michael Zalewski. Ms. Carey could not remember any police-related objections and there was no law enforcement basis alleged for denial.

Ms. Carey agreed the denial letter specifically referenced that the issues raised included parking problems, safety concern for pedestrians, noise, public intoxication, and unruly behavior for patrons of the establishment. She admitted the City did not allege there was false testimony on the applicant's Financial Disclosure Form or the landlord information. There is no ordinance that precludes a husband from assisting his wife on a license application. The witness admitted Mrs. Bubaris indicated on the application her business activity would include an incidental liquor consumption license with live entertainment, and with an outdoor patio. The original denial letter did not raise an issue about the applicant's desire to have live entertainment.

With respect to the applicant's proposed plan of operation, Ms. Carey stated the key concern was that the location be operated as a restaurant. If granted an incidental license, the applicant would be required to serve liquor as an incidental use to the primary activity.

The witness also admitted there is no ordinance that prohibits a husband and wife from co-owning real estate, from having a joint checking account, or for one spouse to benefit economically from the other spouse's liquor license. She also admitted there was nothing in the application that Mr. Steadman reviewed that shows pictures of karaoke, a dancing party, or other

attributes that showed Mr. Bubaris was not operating the restaurant in a manner consistent with the original plan of operation.

John Charles Pufpaf has lived at 5140 S. LaPorte for his entire life of 53 years. He lives there with his 84 year old mother and his brother Joseph who is a Chicago Police Officer. He lives six houses away from Bohica, and is very familiar with Bohica from his work there for the first four set of owners; from his work previously as a precinct captain, and from his acting as a community representative between the neighborhood, the school, and the businesses. The area is residential and he can see the back of Bohica from his house which is about 200 feet away. He worked as a security guard for 30 years. The new owner took over in 2008 and the witness has not worked for that ownership.

Since 2008, there have been issues with the beer garden because it never closes on time. It stays open until 2 or 3 in the morning. The evening before he testified, Mr. Pufpaf observed half the beer garden filled up at 11:30 p.m. As he walked to the rear of Bohica, he noticed the fire exit was blocked by a car and then he saw three gentlemen exit the rear with three 12-packs of beer. The establishment does not have a carryout license. He could also hear music coming from the inside. This type of activity was constant last year with the police being called every single night. Last year, there was karaoke activity once a week but the witness did not know if it is still going on. There is permit parking in the area and people would park in the area without a permit sticker or a temporary guest pass. They would then walk to Bohica. This happened constantly on weekends last summer. It has not been as bad this year because of weather and a loss of business. There is gang graffiti on Bohica every other week. The witness has personally

called the police more than fifty times in the past year. Sometimes the police respond and sometimes they do not respond.

Mr. Pufpaf circulated a petition in opposition to this license. He identified Pages 13 through 16 in City's Exhibit 2, as the petitions residents within the immediate vicinity of Bohica signed in opposition to this license. He personally hand delivered those petitions to Sophia Carey at the Department of Business Affairs.

Mr. Pufpaf is a community representative of the East Garfield Ridge Park area but is not an elected representative. He attempted to work out problems with Tom Bubaris as a neighbor. He has only met Mr. Bubaris once or twice in the last five years. Mr. Bubaris threatened to have the witness arrested for being in his business. This was in 2008 and happened after Mr. Pufpaf confronted Mr. Bubaris about garbage being dropped in the alley and illegally parked cars in the alley. He called the police 50 times last summer because of illegal operation of the outdoor patio, people fighting on his lawn, and cars blocking the alley. He saw the police respond twenty times by going into Bohica or talking to the bouncer. The witness was not surprised to learn that Bohica has never been cited for illegal operation of the outdoor patio because Bohica hired a former police officer as the bouncer.

Mr. Pufpaf asserted he circulated the petition with a voter's registration list but he did not check any identification to verify the signer's identity. He does not remember specifically speaking to a Raul Flores and is not aware Mr. Flores has denied signing the petition. Janet

Rodriguez was there at the time she signed the petition but may not live there now. The witness stated he is not a handwriting expert and would not comment on Ms. Rodriguez's signature.

The witness stated there is gang activity and gang members in the bar but he could not say if the licensee or the applicant condones it. He has called the police about gang activity and has seen patrons of the bar throwing gang signs. Gang members left Bohica and beat up a man on his block.

The applicant presented thirty-three witnesses who testified in support of the issuance of this license. Some of these witnesses were longtime friends of the Bubaris Family; some lived in the immediate area around the applicant location, and some worked in the immediate area. All of the witnesses were effusive in their praise of the applicant. None of them admitted to seeing any criminal activity, littering, parking problems, or other such activities that would cause a deleterious impact on the surrounding area. Many of the witnesses testified to having attended karaoke night put on by the present licensee. This testimony suggested there had been one karaoke night per week but that had ended over a year ago.

Tom Bubaris has been an attorney in general practice in Chicago since 2000. He opened Bohica, Inc. in 2007 as a 50% owner with his brother Paul. When they purchased the property, it was with the hope that the property would go up in value. Bohica, Inc.'s liquor license was issued subject to an agreed plan of operation which is in evidence as City's Exhibit 2. Since it began operation in 2008, Bohica, Inc. has never been subject to any proceedings alleging it operated outside the scope of its plan of operation and has never been called to the Department

of Business Affairs to participate in deleterious impact meetings. With the exception of Mr. Pufpaf, no one has ever alleged that the manner in which Bohica, Inc. operated was disruptive in any way. He spoke with Sophia Carey about the process of changing or amending the existing plan of operation, but Ms. Carey's response was not clear and she suggested he talk to Greg Steadman.

At a certain point, he decided he did not want to be involved in the daily operation of a restaurant and bar. When he and his brother had discussions with the accountant about the best way to divest themselves, his wife showed interest in taking over the business. He and his brother decided to shut down their corporation to take a tax write off and his wife would form a new corporation. He notified Greg Steadman of this plan at the end of 2010, by leaving a voicemail. Mr. Steadman called him back and after having advised of the plans, made no complaints.

Mr. Bubaris testified he knows John Pufpaf as a result of complaints from customers in the fall of 2010, that Pufpaf was taking pictures of the female customers and a female staff member; Pufpaf was taking pictures of their breasts. The witness told Mr. Pufpaf his presence was no longer allowed on the premises and Pufpaf responded by threatening to close down the restaurant. Mr. Pufpaf lives about 200 to 250 feet away from Bohica. It is not possible to see any aspect of Mr. Pufpaf's property from the back door of Bohica. Customers are not allowed to exit Bohica through the backdoor. Bubaris denied his wife's application was a sham to evade the current plan of operation and denied any intention of acting as restaurateur or having any day to day control of the restaurant. He admitted \$16,000 of his personal funds is being used to finance

the new corporation. He also admitted he hoped to derive some economic benefit by the restaurant providing funds to pay the taxes and mortgage on the property. Mr. Bubaris identified Applicant's Exhibit 1, in evidence without objection, as a letter from a Raul Flores denying he had objected to the issuance of the license.

Mr. Bubaris was aware that the agreements he made in his original plan of operation about not applying for a PPA license and running a family restaurant are not in the plan of operation proposed in this case. The last time he had karaoke was over two years ago and it was not for gain or profit. He never hired a DJ.

Mia Bubaris first became involved in her husband's business operation after he opened the business with her brother in law. She is not a shareholder of that corporation and received no salary. Her involvement since 2008 has not been consistent because she has been pregnant or nursing since 2010. Her reasons for wanting her own license are because she wants to do her own thing. She submitted an application to the City specifying what type of business she would operate and she was completely truthful. She drafted a plan of operation to address the reasons set out in the denial letter. The concept of her having entertainment was not mentioned in the denial letter and, as such, she did mention entertainment issues in her plan of operation. She did address the specific issues listed in the denial on her proposed plan of operation. If granted a license, she will operate a restaurant and not a nightclub.

The initial issue to be decided is what are the specific grounds alleged by the Local Liquor Control Commission to be the reason or reasons why it denied this license. The initial denial letter listed deleterious impact as the only reason for denial. It did retain the right to amend the initial denial letter. The final denial letter upheld the denial based on deleterious impact and stated the plan of operation presented by the licensee did not adequately establish it would abate the deleterious impact. This letter also contained language that the Local Liquor Control Commission considered this application a sham. The City now asserts this “sham” is a separate basis to deny the license and it is appropriate for this Commission to consider that theory since the City had a right to amend the original denial.

This Commission is a creature of state statute and is guided by the State Liquor Control Act and the Chicago Municipal Code in reaching its decision. A liquor license can be denied only for one of the reasons set out in the Liquor Control Act or the Chicago Municipal Code. There is no provision in either piece of legislation that list “sham” on behalf of the applicant as a basis to deny a liquor license application. For the sake of judicial economy, this decision will address whether the alleged “sham” is an appropriate reason to deny this license.

Deleterious impact is defined by the Chicago Municipal Code as activity that has a substantial impact on the health, safety and welfare of the surrounding community. The original denial letter references activities alleged to be occurring by neighbors that form the basis for the deleterious impact. The only evidence presented by the City on this issue came from John Pufpaf. A single witness, if credible, is sufficient for the City to meet its burden of proof. Mr. Pufpaf was not a credible witness. His demeanor suggested a strong hostility to the applicant

and the current licensee. His testimony that he had called the police himself 50 times about problems with the current operators, if true, could easily have been substantiated by records from the police department. Such a persistent problem would, in all likelihood, have led to police objecting.

The City failed to meet its burden of proof that the issuance of this license would cause a deleterious impact on the health, safety and welfare of the surrounding community. Since the City has not met its burden, there is no need to address the issue of whether the plan of operation would abate any deleterious impact.

While this Commissioner does feel deleterious impact is the sole basis for the denial listed in the original denial letter and there were no additional bases alleged in an amended denial letter, as stated earlier, for judicial economy the City's agreement that this application is a "sham" will be addressed. From a review of the record and the arguments of Assistant Corporation Counsel, this argument as stated in terms comparable to the Vino Fino case, is that this current application is a "sham" because it was filed to avoid the terms of the plan of operation currently imposed on the present licensee. There are two problems with this argument. The first is that there is nothing in the Municipal Code that prevented Mia Bubaris from proceeding in this manner. She, as part of the public, applied, paid her fee, and listed openly her relationship to Tom Bubaris. Those are not the actions of a "sham." The second problem with this argument is that Vino Fino does not stand for a general proposition that a licensee shall not rearrange a corporation to escape liability as alleged by the Assistant Corporation Counsel. In Vino Fino, the Appellate Court interpreted the term law enforcement problem to include a

review of an applicant's past practice of complying with the law in general and liquor laws specifically. There was concern in that case that the new applicant corporation was formed to avoid the past criminal history of the existing corporation, but the primary focus in Vino Fino was the definition of law enforcement. In this case, there has been no evidence presented as to dispositions of the three disciplinary matters set out in the denial letter and no evidence that the present owner "has clearly shown that he had not operated this "restaurant" in a manner consistent with the original plan of operation."

The City has failed to prove that this application was a "sham" to circumvent and remove the conditions of the current 2008 Plan of Operation.

The denial of the license application of Bohica Bar and Grill, Inc. for the premises located at 5518 S. Archer Avenue is reversed on the basis the City did not meet its burden of proof that the issuance of this license would cause a deleterious impact on the health, safety and welfare of the surrounding community.

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: November 20, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member