

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Tolgano, Inc. )  
d/b/a Wolcott's )  
Applicant (COP-IA) )  
for the premises located at )  
1834 West Montrose Avenue )  
 ) Case No. 10 LA 05  
v. )  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Norma I. Reyes, Commissioner )

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

Applicant Tolgano, Inc. d/b/a Wolcott's applied for a Consumption on Premises -  
Incidental Activity liquor license for the premises located at 1834 W. Montrose Avenue. The  
alcohol was to be an incidental activity to the operation of a full-service restaurant.  
Commissioner Norma Reyes sent the applicant a letter dated January 22, 2010, denying this  
application based on the proposition that the issuance of this license would tend to create a law  
enforcement problem. The basis of this decision referenced in this letter were the facts that in  
the last year there had been nineteen (19) calls for service at a bar owned by Applicant Mucahit  
Gundogdu located at 2812 N. Lincoln Avenue and named the Ole Lounge and that the 19<sup>th</sup>  
District Commander objected to this application due to Mucahit Gundogdu's failure to cooperate  
with a police investigation (Investigative Alert 299961929) of battery and sexual assault at the  
Ole Lounge.

On March 24, 2010, Local Liquor Control Commissioner Gregory Steadman issued an amended denial letter. That amended denial letter incorporated the original law enforcement basis for denial and also alleged the application was denied because the applicant has been charged with committing a battery, with failure to cooperate with the police on November 29, 2009, concerning the battery investigation and with a happy hour violation committed on February 10, 2010. These charges are pending before the Local Liquor Control Commission in case 10 LR 13.

Since this is a denial of an application the issue before this Commission is to determine de novo the propriety of the denial of this incidental activity application for a license at this address. In order to better understand this decision, a summary of the proceedings which consists of over 378 pages of transcript and over 27 exhibits is appropriate.

Prior to the start of evidence the City was given leave to amend the amended denial letter to reflect that the date of the alleged battery was September 7, 2009. This document is in evidence as City's Exhibit 8. City's Exhibits 1 through 7 were allowed in evidence as the documents relied on by Norma Reyes and Gregory Steadman when they made their decision to deny this application.

Mr. Maragos made a request that this Commission enter a pre-hearing order striking portions of the amended denial letter referencing the Commission of a battery by the applicant as a basis for denial. This request was made on the basis that the criminal charges were disposed of

favorably in Circuit Court. The request was denied.

Also, prior to the start of evidence the parties entered into a stipulation that the Ole Lounge at 2812 N. Lincoln Avenue has no prior disciplinary history since its inception in 2006, aside from the charges pending under Case 10 LR 13.

Thomas Jenkins has been a Chicago Police Officer for eleven years and is presently a tactical officer in the 19<sup>th</sup> District. In late 2009, District Commander Kenny assigned him to conduct a liquor license investigation regarding Tolgano, Inc., at 1834 West Montrose Avenue. At the end of his investigation he recommended that Commander Kenny not authorize the liquor license. As part of his investigation he did a name check on Mitch Gundogdu and became aware there was an investigative alert with probable to arrest for a battery sexual criminal assault. An investigative alert is issued by a detective and if the alert is with probable cause to arrest it means a complaint has issued and the person will be arrested. Jenkins called Mitch personally and scheduled an appointment at the 19<sup>th</sup> District for November 28, 2009, at noon. Mitch did not appear for this meeting. Jenkins called Mitch on November 29, and told him he needed to come in. Mitch replied he could not. Jenkins told Mitch the liquor license application would not be approved and Mitch said he did not care. Mitch did say he wanted to send in a lawyer or a friend but Jenkins insisted Mitch appear. There were two conversations between Jenkins and Mitch which Jenkins described as friendly, not hostile. Jenkins felt that Mitch did not cooperate with the investigation. Jenkins was not involved in the eventual arrest of Mitch.

On cross Officer Jenkins stated he was assigned this investigation by Commander Kenny about November 25 or 26. After Jenkins became aware of the investigative alert he contacted Michele Wood who was the detective on the case who confirmed the investigative alert with probable cause to arrest was still valid. Jenkins did not know the investigative report was initiated on September 26, 2009. Detective Wood did not tell Jenkins what happened after the investigative alert was issued and Jenkins was not aware if he was the first officer to speak to Mitch. He called Mitch on November 27 from a phone at the 19<sup>th</sup> District. The number he called from was (312) 744-5983. Jenkins recalled Mitch said he would send a friend or lawyer in but was not sure if Mitch said he had a partner. Jenkins never contacted Mitch's attorney prior to writing his report that Mitch was uncooperative. Jenkins acknowledged he had been trained in the proper legal procedures involving criminal investigative alerts. Jenkins also stated Mitch did speak to him despite his Fifth Amendment rights. Jenkins had done liquor license application investigations for two years. Jenkins initially went to the location of the applicant at 1834 W. Montrose but it was papered up. He did not ask anyone to open the door. Jenkins stated he is not aware of standard operating procedures for liquor license applications performed by the Department of Revenue. His investigation was an investigation for the district commander and not done for the liquor commission. He does not need to follow the Department of Revenue procedures. His was informal and he had Mitch pick the date and time for him to come in. He was doing a liquor license investigation for the district commander pursuant to the district commander's receipt of a letter from DBA about this application. He is not involved in any police investigation relative to revenue. His investigations deal with calls for service and doing name checks. He deals only with police issues. He is not aware of the rules and regulations of

investigations before the DBA or the Department of Revenue.

Witnesses were taken out of order to expedite the proceedings. This decision will review the City's case and then the defense witnesses.

John Kenny has been the 19<sup>th</sup> District Commander since March of 2008. That district includes 1834 W. Montrose Avenue. His role in liquor license applications is to make a recommendation of whether the license be approved or disapproved after he reviews the findings of a member of his staff who has conducted a preliminary investigation. He assigned Officer Jenkins and Philbin to investigate the application for 1834 W. Montrose Avenue. They submitted a summary of their investigation to him on November 29, 2009. Kenny reviewed that summary and recommended the application be denied because the applicant failed to cooperate in the preliminary investigation. He identified City's Exhibit 10, as a copy of his report created on December 7, 2009. Kenny is familiar with the Ole Lounge which is located within his district at 2812 N. Lincoln. He is aware Mr. Gundogdu is also the president of the Ole Lounge. Kenny is aware there had been an investigative alert issued regarding an incident that occurred at the Ole Lounge. Kenny is aware from Officer Jenkins' report the Mr. Gundogdu did not appear at a scheduled meeting with Officer Jenkins. Kenny stated in his opinion the applicant did not cooperate with the liquor license application process. This lack of cooperation influenced his decision to disapprove the application because it prevented his officers from doing a complete investigation of the premises and the applicant. Commander Kenny identified City's Exhibit 11, as a printout of calls to or from the address of 2812 N. Lincoln from January 1, 2009, and

January 12, 2010. It reflects 19 calls for service. This includes five calls for batteries and two calls for criminal sexual assault.

On cross Commander Kenny stated that his December 7, 2009, objection set out that “at this time,” December 7, 2009, he disapproved of the application “due to the fact that the owner has an investigation No. 299961929.” Kenny repeated that his disapproval was based on the applicant’s refusal to come in to be interviewed. The 19 calls for service was not a point of his decision. Kenny never stated in writing to anyone that Mitch Gundogdu “failed to cooperate with the police on this investigation alert.” This was not his investigation. His liquor license report states either approve or denial and he attached the investigating officer’s report. After reviewing police reports Commander Kenny explained Police Officer Traci Tokarz wrote the initial report but that the detectives from Area 3 would have done the investigation. Kenny never discussed this report with Officer Tocarz or Detective Wood. The report from Officer Jenkins indicated the applicant failed to come in for an investigative interview and that constituted failure to cooperate. Kenny indicated again the basis of his recommendation to disapprove was a failure to cooperate with the liquor license investigation. Kenny did not consult with either Officer Jenkins or Philbin and did not consult with anyone as to what constituted failure to cooperate. Kenny was not aware that Mitch voluntarily submitted himself with his attorney to be arrested and booked at the 19<sup>th</sup> District. He is not aware of the disposition of that case.

The City rested its case.

Thomas Kamykowski is the Executive Director of the Ravenswood Chamber of Commerce. That organization is located at 1756 W. Wilson which is about four blocks from the applicant's location. The chamber has about 125 members and its purpose is to support businesses in the Ravenswood community, to foster a reliable business environment in the area and to try to contribute back to community. It sponsors movies and concerts in the Chase Park and holiday parties at local schools and parks. The area around 1844 Wilson has gone through hard times over the last couple of years. The Brown Line "L" station was closed for rehab for an entire year and then there was a huge sinkhole. There has also been street repair and seven projects going on. In the last six months their area has started to become very viable. A business like Wolcott's would adhere to the changing character of that stretch of Montrose. The witness knows Mitch and Wolcott's from stopping by to view the work going on. The previous site of Wolcott's was an eyesore with employees getting into disputes with neighbors. It was a pizza place that disposed of grease improperly. After the pizza business vacated the premises it was vacant and attracted homeless people and marked by graffiti. Wolcott's would be an asset to the community. It would prevent crime in the neighborhood because it would conform to the changing character of Montrose and would not be attracting the type of folks typically associated with crime. The witness identified Licensee's Exhibit 1, as a letter he wrote in support of this license.

On cross the witness stated he lives a couple of miles away but works in the neighborhood and has worked in the neighborhood since January of 2000. He does not know

Mitch personally and had not met him before the date of testimony. He met others who were present at and working at the site. He is not familiar with Mr. Gundogdu's other establishment known as the Ole Lounge at 2812 N. Lincoln. He has not had contact with the commander or any other officer with respect to the application. The Ole Lounge is not within the boundaries of the Ravenswood Chamber of Commerce.

Gene Schuler has been a member of the Chicago City Council for 35 years and has been the Chairman of the City Council Committee on License and Consumer Protection for twenty years. That committee writes the city's liquor ordinances. The witness is very familiar with liquor license applications and after twenty years in his position considers himself an expert on the procedures. As an Alderman he is aware of the inspectional services conducted by the City to guarantee an applicant is worthy. The Alderman explained that the police protocol for license applications includes review of fingerprints and a check of the premises. Anyone involved with the corporation could be present for this investigation and it is not necessary that a particular shareholder be at the location.

The Alderman stated he is particularly concerned with liquor license applications in the 47<sup>th</sup> Ward and is familiar with the standards of what constitutes a law enforcement problem in his ward. He works with the Local Liquor Commissioner and his staff and with community and business groups to ensure applicants meet the standards articulated in the code. The Alderman has known Mitch since about 1997 when Mitch opened a restaurant at the corner of Cullom and Western. The prior owner had been a bad operator and the prior establishment was a problem to



the community. Mitch brought in the kind of services in terms of food and beverage that the community desired at that location and he has a history of being a good operator in the community. The Alderman is aware of the Ole Lounge from his own investigation he conducted after this license was denied. From that independent investigation he learned that Mitch has not been cited for any violations of the law for his operation of the Ole Lounge since 2006. That is an encouraging sign. To the best of his knowledge Mitch had no violations issued against his liquor license for the restaurant at Cullom and Western. Mitch's reputation in the community is that he has worked with the neighbors and the community to design a restaurant that would fit the dining needs of the community. The Alderman believes issuance of this license will not create a law enforcement problem and will prevent crime. Having a presence at this location and a person known to the community will be another pair of eyes and ears to help combat the occasional gang bangers who come back to the neighborhood. The Alderman was aware that Mitch was alleged to have committed a criminal violation. He learned this by talking with the Liquor Commissioner and the commander and learned also that the case was dismissed after a significant amount of time when the victim did not appear in court. The Alderman is aware of the level of monetary investment made by Mitch and he has spoken with Ravenswood Community Council and Chamber of Commerce. The Alderman identified Licensee's Exhibit 2, in evidence, as petitions he received in support of this license. It consists of 128 signatures. As part of his own investigation, the Alderman is aware the 19 calls for service at the Ole Lounge, is aware of an allegation that Mitch was uncooperative with the police investigation, and is aware of an alleged happy hour violation at the Ole Lounge. The Alderman explained he feels these are two separate issues and that the City should proceed with the merits of this application. The

City should proceed separately against the Ole Lounge for those allegations. If in the future something happens in the Ole Lounge that would make the applicant ineligible for a liquor license then both licenses would be lost. The Alderman also stated the opinion of the City Council would be that an allegation of a violation of city ordinance or a misdemeanor should not in itself bar a person from receiving a license.

On cross Alderman Schuler stated he found out about the pending charges after he learned the Liquor Commissioner denied this license. The Alderman indicated he is familiar with Section 4-60-141 of the Municipal Code which imposes an affirmative duty on a liquor licensee to cooperate with the police on an investigation and 4-60-040 (h) which allows a denial to be based on law enforcement reasons.

Thomas O'Donnell has lived in the neighborhood of the applicant's location since 1993 and has been president of the Ravenswood Community Council for eight years. That council has been in existence for 50 years and has a little over 200 dues-paying members. O'Donnell considers the council to be a voice of the community. Liquor license applications are reviewed by the council's public safety committee. The location previously housed a "head-banger" bar with loud music and drug traffic with two shootings. It then became a pizza delivery place that had folks going in and out. This restaurant would be upscale and an asset to the community in an area that has faced problems business wise over the last couple years. The Brown Line stop was closed for over a year and then there was a cave-in on Montrose. O'Donnell identified Applicant's Exhibit 3, as a letter he wrote and sent to Norma Reyes indicating strong support for

the issuance of this license. A new restaurant will create jobs and a good restaurant is always an asset to a community. He was aware that there was an alleged criminal allegation against Mitch Gundogdu from conversation with Alderman Schuler. The Alderman also said the allegation was cleared.

O'Donnell on cross stated he has been at Mitch's other establishment on Lincoln two or three times and that his daughters have gone there. He was not aware there were pending violations against the Ole Lounge that directly involve Mitch. He was aware the charge against Mitch was a sexual assault that occurred at the Ole Lounge.

Olaywola Soyebola lives at 1216 W. Diversey Parkway which is on the same block as the Ole Lounge. He graduated from De Paul University last year and is now an officer at Chase Bank. He knows Mitch from running the Ole Lounge and was testifying as a neighborhood resident for a year and a half to two years. His opinion is that the Ole Lounge is well run and he and his neighbors have no complaints about how it is run. He does not feel there are any law enforcement problems at the Ole Lounge and that it is an asset to the community. He did hear there were criminal allegations against Mitch but heard he was discharged and acquitted of a misdemeanor. He is not paid by Mitch and is not receiving any monetary benefit for his testimony.

On cross the witness stated he knows Mitch from going to the Ole Lounge. He would go there about once a month in the past but not lately. He feels he would have heard about any law

enforcement problems at the Ole Lounge from neighbors or his roommates. He is not aware of pending charges against the Ole Lounge and only knows a case against Mitch was discharged. He did not know the details or the specific disposition.

Enrique Cortes lives at 2812 N. Lincoln in Chicago above the Ole Lounge. He has known Mitch for two to three years and was the chef at the Ole Lounge for over a year. He is now a chef for doctors in the city at various hospitals. The Ole Lounge is a neighborhood establishment populated by regulars during the week. During his year as the chef, he was aware Mitch would cook food for benefits for no charge. He feels Mitch was a good manager of the Ole Lounge. Cortes was not aware of law enforcement problems while he worked at the Ole Lounge and he was not aware of any problems with the community. He feels Mitch also manages Wolcott's well.

On cross the witness stated he worked at the Ole Lounge last year and was working there in September of 2009. He was not aware of pending licensing charges against the Ole Lounge arising out of an alleged battery in September of 2009, and was not aware that criminal charges were brought against Mitch for an alleged battery in the Ole Lounge.

Leonel Chavez has lived at 2817 N. Racine Avenue for five years and has worked in this area as a personal trainer for ten years. His residence is across the street from the Ole Lounge. He has been to the Ole Lounge for food and his relationship with Mitch is that of a neighbor. He has never heard any problems about the Ole Lounge and has never seen noisy cars. He has no

complaints about the Ole Lounge and feels Mitch is a good manager and the lounge is good for the community. Based on his knowledge about the operation of the Ole Lounge he feels Mitch would run a good establishment at the new place.

On cross the witness stated he went to the Ole Lounge about once a month. Mitch told him about charges pending against the Ole Lounge and also told him of allegations of a battery that occurred at the Ole Lounge.

Ronald Neville has been a licensed attorney since January of 1971 and has been practicing civil and criminal litigation in private practice since 1976. He first met Mitch in 2008 when he represented Mitch in a civil matter with an insurance company. That matter was settled in August of 2009 but final procedures went on until October of 2009. In September of 2009 Mitch told him a Chicago Police Officer called and wanted to speak with him. The officer had not told Mitch why the officer wanted to meet him. Neville advised Mitch not to talk to the police officer until they found out what the issue was. He further told Mitch under the Illinois United States Constitutions he was not obligated to speak to a police officer about anything. Mitch was told to tell any police officers that called him that Neville represented him and they wanted to know what the subject matter was. On October 2, 2009, Neville called an Officer Torres at 312-744-0570, which was the number for the 19<sup>th</sup> District. Officer Torres was not available and Neville left a message on an answering machine for Officer Torres. In that message Neville told Torres that he was calling in response to Torres' call to Mitch and further told Torres he was Mitch's attorney and they needed to talk about subject matter of Torres'

inquiry. Neville left his phone number on the answering machine. After he left this message for Officer Torres, Neville called Mitch and told him that he had called Officer Torres and that Mitch should not speak to any police officers outside of Neville's presence. Neville first spoke with a Chicago Police Officer on December 7, 2009. From September 26 until December 7, 2009, Neville had continually advised Mitch not to speak with a police officer. On December 7, 2009, an Officer Vargas called Mitch and after Mitch told Vargas he was represented by Mr. Neville, Officer Vargas told Mitch to have Mr. Neville call him. The witness called Officer Vargas on December 7, and Vargas told Neville Mitch was the target of a misdemeanor battery in which a criminal complaint had been assigned. Vargas did not know the specifics of the complaint but told Neville Mitch was to be arrested. Neville and Officer Vargas agreed Mitch would surrender in the late afternoon on December 14, 2009. Neville stated he would have surrendered Mitch earlier if the police had contacted him. Neville knew the police had contacted Mitch several times through conversations with Mitch. He heard one conversation over a speaker phone in his office. The police officer in that conversation would not tell Mitch why he wanted to talk with Mitch. Neville was aware an Officer Jenkins was involved somewhere in this time frame but Jenkins never notified him. The witness identified Applicant's Exhibit 4, as a copy of the disposition in the criminal case and exhibit was identified as a transcript of the proceedings. The case was stricken with leave to reinstate (SOL). Mr. Neville was told by Mitch that he had applied for a liquor license for an establishment called Wolcott's. He was also aware police were asking him to come to the 19<sup>th</sup> District as a part of the license investigation. No Chicago Police Officer called him about the liquor license investigation. Neville's instructions to not talk with the police involved both the liquor license investigation and the

investigative alert. Mr. Neville's opinion is that Mitch did fully cooperate with the criminal investigation.

On cross Mr. Neville stated he became aware of the liquor license application sometime between September and December of 2009, but it was after he advised Mitch of his Fifth Amendment Rights Neville repeated his advice was not to speak to any police officer unless he was present and they both understood what the questions were going to be about. If someone had called him and asked to be able to speak with Mitch about the liquor license application that might have led to a different result. He was not going to allow Mitch to speak with the police when there was a criminal investigation ongoing. Neville does not know how many times Mitch was contacted by the police between September and December but it was many times. Neville made the one phone call to Officer Torres from September to December of 2009 and then spoke to Officer Vargas on December 7, 8, and 14. Neville could not state when he became aware Mitch had an appointment with Officer Jenkins on November 28, 2009. He knew there was an investigation going on about the liquor license but his focus was on the criminal case in which he was representing Mitch. Mitch did not specifically seek his advice about the license investigation. Mitch did not ask him to attend the November 28 meeting with Officer Jenkins in his stead and he never called Officer Jenkins on behalf of Mitch regarding the November 28 meeting.

Mitch Gundogdu has been in the restaurant business since 1997. He owned Figuero Bar and Grill located at 4256 N. Western Avenue in 1997 and has owned the Ole lounge at 2812 N. Lincoln since 2000. He applied for and received liquor licenses for both establishments and did

not receive a single city or state law violation against those liquor licenses. On September 28, 2009, Officer Jenkins called and told him they needed to talk about an investigative alert. He told Jenkins he was unavailable and that Jenkins should call him on his personal cell phone. Jenkins did not call back on his cell phone. Jenkins had refused to tell the witness what the investigation was about. After this conversation he contacted his lawyer Neville. Mr. Neville told him not to speak with the police and to tell the police he had a criminal defense attorney and the police should call him. The witness followed this advice each time the police called him. Officer Torres called him October 2, 2009. The witness told Torres his attorney had instructed him not to speak about any investigation and he then asked Torres for details of the investigation. Torres refused to give the details of the investigation. The witness then called Ron Neville and gave him the number of the police for him to contact. Ron told him he had called the number and left a message with Officer Torres. From October 18 through November he received eight calls from the Chicago Police. In each call he asked the police for details of the investigation and each time the police refused to tell the nature of the investigation. In April, 2009, he began to invest in Wolcott's and has made a substantial investment in the property. The property was being rehabilitated throughout 2009. Metin Gundogdu is another shareholder in the corporation. After payment for the licenses was made on November 20, 2009, they were advised the City of Chicago taskforce inspections including a police investigation would occur on December 18, 2009, between 8:30 a.m. and 3:00 p.m. He had been required to be present when similar type inspections had been done for Figuero or Ole. Officer Jenkins called him on November 27, 2009, at 1:10 p.m. and indicated he needed to go to the 19<sup>th</sup> District at Belmont and Western with his I.D. They agreed to meet on November 28, 2009, to review the liquor



license application. The witness did not go to that meeting because his past experience with Ole Lounge and Figuero gave him the knowledge he did not need to be present for task force investigations and he already had a December 18<sup>th</sup> date for inspections. The final reason he did not go was the advice from Mr. Neville not to go to the police station or talk to the police without him. He also had an appointment to show a real estate listing. Officer Jenkins called on November 29 and asked why he had not appeared for their meeting. He told Jenkins he could not come in but that he could send his attorney or fellow shareholder but Jenkins said that was not acceptable. Officer Jenkins did not ask for Ron Neville's name or phone number but did ask him to come in alone. He told Jenkins his attorney had instructed him not to come in and that Jenkins should contact Mr. Neville directly. He never told Jenkins he did not care if the license was not issued. He has spent a lot of money beautifying Wolcott's and has paid \$2,678.00 a month in rent since March, 2010, even though he is not open. Officer Vargas called the witness on December 7, 2009, at 11:27 a.m. Vargas explained there was an ongoing investigative alert and they needed to speak in person. He told Vargas what Mr. Neville's instructions were and Vargas called Mr. Neville, seven days later he voluntarily went to Belmont and Western and surrendered himself. Had the previous officer done this he would have surrendered earlier. All charges for alleged battery were dismissed on May 18, 2010. No liquor license violations were ever issued to the Ole Lounge with respect to the calls for service. He feels he fully complied with the police in the investigative alert because he followed his lawyer's instructions.

On cross the witness admitted being contacted by Officer Jenkins on November 27, 2009, and freely talking to Officer Jenkins and setting up a meeting. Jenkins said he was calling about

the liquor license application and the witness did refuse that meeting based on attorney Neville's advice. In that conversation Jenkins did not ask if he had an attorney and he did not refuse the meeting because he had an attorney. He freely agreed to meet Jenkins at the 19<sup>th</sup> District on November 28, 2009. He did not appear for that meeting and he did not contact Jenkins. He failed to appear based on his attorney's advice. He did not send his partner or his lawyer to the meeting. He did tell Officer Jenkins that he was appearing based on attorney Neville's advice but he could not recall if he contacted Mr. Neville after the November 27<sup>th</sup> meeting was made. On November 27, Officer Jenkins stated there was an ongoing investigation pertaining to the application for Wolcott's. The witness admitted he knew in September, 2009, of the investigative alert but he was not given specifics. The first time he went to the police station concerning this investigative alert was on December 14, 2009.

On redirect the witness stated that Officer Jenkins did not state he was conducting a criminal investigation when he called on November 27 to set up a meeting at the 19<sup>th</sup> District.

Section 4-60-040 of the Chicago Municipal Code states in relevant part that "the local liquor control commissioner...many deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem." This is the only basis for denial of this license set out in the original denial letter of January 22, 2010, and the amended denial letter of March 24, 2010. Taking into account both denial letters the issue before this Commission is to determine de novo the propriety of the determination of the Local Liquor Control Commissioner that the following matters establish that the issuance of a liquor license to

this applicant at this location would tend to create a law enforcement problem:

- a. During the last year 19 calls for service were made to the Chicago Police regarding the Ole Lounge located at 2812 N. Lincoln and owned by applicant Mucahit Gundogdu.
- b. An objection from the 19<sup>th</sup> District Commander due to Mucahit Gundogdu's failure to cooperate with a police investigation (Investigative Alert 299961929) of battery and sexual assault at the Ole Lounge.
- c. The applicant has been charged with committing a battery on September 26, 2009, on Elizabeth Barrera.
- d. The applicant failed to cooperate with police on November 29, 2009, during an investigation in violation of Title 4, Chapter 60, Section 141 of the Municipal Code.
- e. The licensee has been charged with committing a happy hour violation on February 19, 2009, at the Ole Lounge.

The last three bases are charges pending against the Ole Lounge at the Local Liquor Control Commission.

Commander Kenny did identify City's Exhibit 11, in evidence, which is the printout of 19 calls for service at the Ole Lounge at 2812 N. Lincoln for the time period of January 1, 2009, through January 12, 2010. This document did show five calls were for batteries and two calls for sexual assault. No evidence was introduced that any of the 19 calls for service including the five batteries and two sexual assaults were connected to the operation of the Ole Lounge, any of its employees or its patrons. Commander Kenny did not testify this number of calls for service impacted his police resources so as to cause a law enforcement problem. The evidence from Commander Kenny is that his decision to oppose this license for strictly based on failure to

cooperate. With this testimony the fact that there were 19 calls for service to the Ole Lounge from January 1, 2009, through January 12, 2010, is not sufficient in itself to establish the issuance of this license at 1834 W. Montrose would tend to cause a law enforcement problem.

The Local Liquor Control Commissioner also alleges the fact that three charges are pending before the Local in case number 10 LR 13 is proof that the issuance of this license at this location would tend to cause a law enforcement problem. This argument seems to try to adopt the findings in the case of Vino Fino Liquors v. License Appeal Commission to the facts of this case. In that case the applicant for a new liquor license had a past disciplinary history as a liquor licensee for sales to minors. Sale of alcohol to minors is a Class A misdemeanor and a city ordinance violation. Since the applicant had violated these laws designed to control liquor this prior history of disobeying those laws was sufficient evidence to deny Vino Fino on the grounds that "it would tend to create a law enforcement problem."

The applicant in this case has no history of any liquor violations at either of his previous establishments. The District Commander did not opine that the operation of the Ole Lounge was such that one could infer there would be a law enforcement problem at another license. The witnesses for the licensee who live by the Ole Lounge testified there were no law enforcement problems.

The Local Liquor Control Commission seems to be saying that since there might in the future be a finding adverse to the applicant on the matters before the Local Liquor Control

Commission in case 10 LR 13, the issuance of this license would tend to create a law enforcement problem. Vino Fino does not support that position. This argument is based on speculation since the outcome of that case cannot be predetermined.

As part of his testimony Alderman Schuler, the Chairman of the City Council's License Committee for twenty years, and an expert on the liquor license provisions of the Municipal Code expressed his opinion that in situations such as this case presents, the decision on whether to issue the license at Wolcott's is a separate issue from the disciplinary matters relative to the Ole Lounge. The facts that there are charges pending for operation of another liquor establishment is not a bar to the issuance of license at Wolcott's. Should something happen in the disciplinary case at the Ole Lounge that would make this applicant ineligible, the ineligibility would apply to all the applicant's liquor licenses. An allegation of a Municipal Ordinance or a misdemeanor should not in and of itself bar a person from receiving a license.

While the issuance of a liquor license is considered a privilege and not a property right an applicant is entitled to at least minimum due process. That minimum due process would be denied if the City could deny an applicant based solely on the facts other alleged matters are pending before the Local Liquor Control Commission. The fact that these three charges are pending before the Local does not prove that the issuance of this license at this location would tend to create a law enforcement problem.

The final issue comes down to an analysis of whether the finding of Mucahit Gundogdu

to cooperate with a police investigation (Investigative Alert 299961929) of battery and sexual assault would tend to create a law enforcement sufficient to deny this license application. The Appellate Court in the *Vino Fino Liquors, Inc.* case reviewed intent and purpose of the Chicago Municipal Code requirements for applicants for liquor licenses and arrived at the definition of the term “tend to create a law enforcement problem.” The Appellate Court stated “To deny a license to an applicant “who would tend to create a law enforcement problem” is to deny a license to an applicant who would not obey liquor control laws and the law generally or who would impede enforcement of those laws.” Before needing to address the question of whether the evidence in this case proves that Mucahit Gundogdu failed to cooperate with the police in the preliminary matter is would such failure to cooperate establish that the issuance of this license would tend to create a law enforcement problem. Commander Kenny stated that he felt that the applicant did not cooperate regarding the liquor license application by not appearing for the meeting with Officer Jenkins. The Commander then explained that those events influenced his decision to disapprove the liquor license application for 1834 W. Montrose because the police could not do a thorough and complete investigation of the applicant. There is no evidence from Commander Kenny that the failure to cooperate suggested the applicant would not obey liquor control laws and the law generally or would impede enforcement of those laws. Commander Kenny did not testify that the failure to cooperate by the applicant would “tend to create a law enforcement problem.” The City failed to prove that the alleged lack of cooperation would tend to create a law enforcement problem. Without such evidence a failure to cooperate cannot be used as a basis for denial of this application on the law enforcement ground.

This decision is unique to the facts and evidence presented in this case and should not be considered as precedent in other such cases.

The decision to deny the application of Tolgano, Inc., d/b/a Wolcott's for a Consumption on Premises - Incidental Activity license for the premises located at 1834 West Montrose was not proper and 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: August 2, 2010

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member

Donald O'Connell  
Member