

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Broadway Food Group, Inc.	)	
Ahmad Y. Obali, President	)	
Applicant (COP-IA)	)	
for the premises located at	)	
2833-35 North Broadway	)	Case No. 09 LA 51
	)	
v.	)	
	)	
Department of Business Affairs and Consumer Protection	)	
Local Liquor Control Commission	)	
Norma I. Reyes, Commissioner	)	
	)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

Broadway Food Group, Inc., filed an application for a Consumption on Premises - Incidental Activity license for the premises located at 2833-2835 N. Broadway. There is currently a restaurant operating at this location. Mr. Ahmad Y. Obali is listed as the President and 50% owner of the applicant corporation and Arif Yalcin is listed as the Secretary and 50% owner of the applicant corporation.

On May 14, 2009, Norma Reyes in her position as the Local Liquor Control Commissioner, sent the applicant corporation a letter stating the application for a Consumption on Premises-Incidental Activity liquor license was disapproved because the issuance of this liquor license would tend to create a law enforcement problem and/or have a deleterious impact by increasing the risk of violation of law. Pursuant to ordinance the applicant was advised that it

had twenty days from the date of denial to devise and submit a plan of operation that would provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact or law enforcement problem on the surrounding community. On June 3, 2009, a plan was submitted to the Local Liquor Control Commission. On June 29, 2009, Greg Steadman in his position as the Executive Director of the Local Liquor Control Commission issued a final denial letter. That final denial letter stated the plan of operation was denied because it did not provide reasonable assurance that the approval of the license would not have a deleterious impact on the surrounding community. It listed the following specific deficiencies:

1. The community has addressed concerns through objections that the issuance of the license would have a negative effect on the community;
2. The plan does not address law enforcement concerns of approving a liquor license to a business owner who previously owned a liquor establishment with extensive disciplinary history at 2833 N. Broadway;
3. The plan devised does not provide reasonable assurances that the issuance of the liquor license would not increase the risk of violations of the law, create a law enforcement problem or risk a substantial increase in noise or vehicular congestion; and
4. The plan does not provide reasonable assurances that the approval of the license would not have a deleterious impact on the community.

A timely notice of appeal was filed and this matter proceeded to a de novo hearing on August 26, 2009. Pursuant to the Liquor Control Act the matter to be decided before this Commission is to determine the propriety of the denial of the application for a Consumption on Premises - Incidental Activity liquor license by the Local Liquor Control Commission.

Section 4-60-040(h) of the Municipal Code of the City of Chicago allows the local liquor

control commissioner to deny an application if the issuance of this license would tend to create a law enforcement problem or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located. Section 4-60-010 defines “deleterious impact” as an adverse effect on the value of any property, an increased risk of violations of law or a risk of a substantial increase in noise, litter or vehicular congestion. The ordinance gives an applicant the right to file a plan of operation that provides reasonable assurance that the issuance of the license will not have a deleterious impact.

The City called Alethea Cotton as its witness. She testified she is the Assistant Director of the Department of Business Affairs and Consumer Protection. In her position she is responsible for the day to day issuance of liquor and non-liquor licenses. Records of licenses are stored in a computer system called IRIS as part of the ordinary course of business. She is familiar with the application for a Consumption on Premises - Incidental Activity liquor license applied for by Broadway Food Group, Inc. for 2833-35 North Broadway. In the course of reviewing this application information on previous licensees for that address became available. Mr. Ahmad Obali, the President of the applicant corporation, was the President of Cousin’s Express Catering, Incorporated, from 1998 until 2007. Cousin’s Express Catering, Incorporated, operated at these premises during that time period.

During this time Mr. Obali was operating Cousin’s Express Catering and there were four

incidents of sales to minors and one incident of expired insurance. The penalties imposed for these incidents were:

- a. \$500.00 fine for sale of alcohol to a minor on June 28, 2000
- b. \$1,000.00 fine for sale of alcohol to a minor on February 20, 2001
- c. A 28 day closing from October 7, 2002, through November 4, 2002, and canceled dramshop insurance on February 10, 2002.
- d. A 30 day closing from September 11, 2006, through October 11, 2006, for sale of alcohol to a minor on July 26, 2006.

Deniz and Demir, Incorporated, had a liquor license for these premises from January 10, 2007, through February of 2009. The application for this license was filed in February of 2009.

Ms. Cotton stated the original denial letter was dated May 14, 2009. The proposed plan of operation submitted by the applicant is in evidence as City's Exhibit 7. The reason it was considered insufficient was a concern that it did not spell out how to avoid the issues of deleterious impact and selling alcohol to a minor. Ms. Cotton also stated another concern was that Mr. Obali did not sign to the plan of operation but that reason was not listed in the final denial letter and it was not a consideration in the denial.

On cross, Ms. Cotton testified that of the over 400 people notified about this application the Local Liquor Control Commission received only two postcards back that opposed the issuance of this license. Ms. Cotton did not respond to a question from applicant's counsel asking if his requiring all servers and management to be certified to serve liquor would be an element in trying to stop sales to minors. Ms. Cotton indicated she was not sure she was at

liberty to answer that question. Ms. Cotton did indicate she was aware of the specific matters set out in the applicant's proposal.

Ahmad Obali is the President and 50% owner of Broadway Food Group, Inc. and Arif Yalcin is the owner of the other 50% of the company and is the Secretary-Treasurer. Mr. Yalcin is also the manager of the business which is a restaurant known as Efes Café. Mr. Yalcin opens and closes the restaurant and does the hiring and writes out payroll checks. Mr. Obali does not take a salary but shares in any profit. Mr. Obali identified City's Exhibit 7, as the plan of operation submitted after the original denial. The original application was filed in February 2009. A license fee of \$4,500.00 was paid and an additional \$300.00 was paid for liquor license insurance. Mr. Yalcin has the TIP certificate and the sanitation certificate. Mr. Obali helped Mr. Yalcin prepare the plan of operation and he witnessed Mr. Yalcin sign the document. After the plan was submitted nothing was heard from the City until the final denial was issued. Mr. Obali never had a liquor license revoked or been a member of a corporation whose liquor license was revoked. He has not been convicted of a felony and has never filed false or incomplete information on a liquor application. He has never filed fraudulent signatures on petitions to obtain a license. He is a resident of Chicago. They will now keep the two lights on to make the area well lit. Mr. Obali is willing to do whatever the City wants.

On cross, Mr. Obali stated he was president and sole shareholder of Cousin's in June of 2000, when he received the first violation of sale of alcohol to a minor. The person responsible

for this sale left on his own and he believed his other servers were responsible. He told the servers to make certain that they card hard. Mr. Obali described the second violation was questionable but he chose not to fight the allegation. After the second sale to minor he asked the servers to card. When he was present he made sure that the servers ask for ID's. But when he was present the servers were carders. None of these events occurred when he was present. He then tried to find a partner but was unsuccessful. He again asked servers to card hard but some were embarrassed to ask for identification of customers that they thought were old enough. Mr. Obali admits he could have and should have done more. He is now thinking of sending all servers to the Alcohol Awareness Program on the date of hire. That will be done now. He prepared this plan of operation but Mr. Yalcin signed it because Yalcin will operate the business. He is the co-applicant and will sign it if needed.

The first issue to be decided is whether the City proved by a preponderance of the evidence either of the two grounds set forth as the reasons for the denial. Would the issuance of this license tend to create a law enforcement problem or have a deleterious impact on health, safety or welfare of the community.

It is the City's position that they have met its burden of proof on the issue of whether the issuance of the license would tend to create a law enforcement problem through the undisputed evidence that Mr. Obali, while president and sole shareholder of Cousin's had a violation history which included four sales to minors. The Municipal Code does not define the phrase "tend to create a law enforcement problem" but that issue recently addressed this question in the case of

Vino Fino Liquors, Inc. v. License Appeal Commission, 1-07-3269, First District Appellate Court - Second Division.

This case dealt with a factual situation where a Nilsa Gonzalez purchased Paco's Liquor, Inc., which was a licensed packaged goods liquor store at 2558 W. Division. She became president and sole shareholder. At the time of purchase the corporation had a history of two sales to a minor and received two more such violations after Nilsa Gonzalez purchased the stock of the corporation. Ms. Gonzalez filed an application for a new packaged goods liquor store for a new corporation Vino Fino. This new corporation was to conduct its business at the same address as Paco's Liquors. This application was denied by the Local Liquor Control Commission since the issuance of this license would create a law enforcement problem. The reason for this opinion was the fact that Ms. Gonzalez has not prevented the sale of alcohol to minors while operating Paco's Liquors, Inc. The License Appeal Commission upheld this decision. (This Commissioner is aware that there was a previous denial which was revised and remanded by the Circuit Court to the LLCC and LAC to only consider the two violations that occurred after Ms. Gonzalez purchased Paco's Liquors.)

After a review of purpose and intent of the ordinance the Appellate Court stated generally that:

...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 laws. Vino Fino Liquors p.14 (sheet opinion)

Applying that definition to the facts the Appellate Court specifically stated that "Gonzalez's prior

history of disobeying the liquor laws was sufficient evidence to deny Vino Fino a license on the grounds that it would “tend to create a law enforcement problem.”

While the reasons why Mr. Obali is seeking a license under a new corporation differ from those in the Vino Fino case the principle set forth in Vino Fino applies to the facts of this case. Mr. Obali has stated he will take steps to prevent sales to minors but the fact remains that the history of four sales to minors in the past suggest that any steps taken by Mr. Obali will be insufficient and that the prior evidence of violating the liquor laws is sufficient for the City to have met its burden of proof that the issuance of this license would tend to create law enforcement problem.

This decision should not read as precedent for the proposition that any application for a liquor license which has been denied by the Local Liquor Control Commission on the grounds that the issuance of such license would tend to create a law enforcement problem because of the past liquor violations will automatically be upheld by this Commission. In the Vino Fino case there was evidence the applicant was respected in the community and had installed age-verification software but the LAC resolved the conflict against the applicant. In this case there was testimony from several community members supporting this application but the evidence of support did not address the law enforcement concern. Faced with this conflict this Commissioner feels the proper resolution under these facts is to uphold the denial of the license on the law enforcement problem basis.

This Commissioner's reading of the ordinance is that this finding would be sufficient to uphold the denial of the license. Since the Local Liquor Control Commission also denied on the issue of deleterious impact, for purposes of judicial economy, this issue will also be discussed.

The definition of deleterious impact under the Municipal Code includes the provision for "an increased risk of violations of the law." While it may seem that denial on this basis duplicates a denial for "tending to create a law enforcement problem" that is not the case. The distinction lies in the fact that if a licensee is denied on the grounds of deleterious impact it has twenty days to submit a plan of operation to provide reasonable assurance that the issuance of the license will not cause a deleterious impact.

The discussion of the evidence on the issue of "an increased risk of violation of law" is applicable to the issue of whether the issuance of this liquor license would cause a deleterious impact since it would "tend to create a law enforcement problem." The fact is that Mr. Obali's record of running an establishment with a liquor license contains four separate violations for sale of alcohol to a minor. Sale of alcohol to a minor is a Class A misdemeanor in the City of Chicago. It is a criminal act. The four sales of alcohol to minors discloses a history that suggest such sales might occur in the future and is sufficient evidence to prove by a preponderance of the evidence that the issuance of this license would tend to create a law enforcement problem and cause a deleterious impact to the community.

Since this Commission has upheld the decision of the Local Liquor Control Commission

on the deleterious impact issue, it must address whether the plan of operation presented by the applicant provided reasonable assurance that the approval of this license will not have a deleterious impact on the community. It is the opinion of this Commissioner that the proper approval to this question is for the Commissioner to decide de novo whether the evidence presented at this hearing established by a preponderance of the evidence that the proposed plan of operation provided reasonable assurance that the issuance of this license will not have a deleterious impact. The burden of proof on this issue would be on the applicant.

The applicant provided a plan of operation which is in evidence as City's Exhibit 7. The City reviewed this plan and specified four matters that it considered deficiencies. These are listed in City's Exhibit 8. The first deficiency dealt with community concern. There was no evidence introduced at the hearing on this issue and it will not be considered a valid reason to say that the plan of operation was deficient. The second deficiency deals with the law enforcement concerns. As mentioned earlier, a law enforcement problem is a separate basis to deny a license under the Municipal Code and the plan of operation does not deal with a denial on the basis that issuance of the license would create a law enforcement problem. The last two deficiencies are the same reason using different language. The issue with those two deficiencies is whether the plan provides reasonable assurance.

Alethea Cotton testified the City's concern was that the plan of operation did not really spell out how you were to avoid some of the issues of concern such as deleterious impact and selling alcohol to a minor. Mr. Obali identified the proposed plan, in evidence as City's Exhibit

7, but gave no direct testimony on how the plan was to be implemented. On cross Mr. Obali stated he would require everyone that would serve liquor to have a TIP or alcohol awareness card. It was also brought out on Mr. Obali's testimony that while he is the president, the actual operation of the business was done by Mr. Yalcin. Mr. Yalcin opens and closes, and runs the restaurant and Mr. Yalcin will be at the restaurant everyday. There was no evidence presented by the applicant from Mr. Yalcin. Since his is the person who was to have the day to day responsibility of ensuring that the proposed terms of the plan of operation were to be followed it seems reasonable to want direct testimony from Mr. Yalcin. There is no evidence on this record that Mr. Yalcin understands what he promised to do in the plan of operation.

When one combines the lack of evidence concerning how Mr. Yalcin was to implement this proposed plan of operation and how he would run the restaurant in a manner to prevent minor drinking and Mr. Obali's past history of four sales to minor it has not been established by a preponderance of the evidence that the plan of operation did provide reasonable assurance that the issuance of this license to this applicant at this location would not cause a deleterious impact in the area.

The decision of the Local Liquor Control Commission 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: October 23, 2009

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member