

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

3808 W. Belmont Corporation )  
d/b/a Edelweiss )  
Applicant (Tavern) )  
for the premises located at )  
3808 W. Belmont )  
 ) Case No. 10 LA 29  
v. )  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

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

3808 West Belmont Corporation's application for a Tavern license in a moratorium zone was denied by the Local Liquor Control Commission on May 20, 2010, due to its failure to provide the required number of valid petition signatures pursuant to City of Chicago Municipal Code 4-60-021 (c). Based on its review of documents the Local found 103 valid signatures were needed and that the total number of approved signatures submitted was 50. The applicant filed a timely appeal with this Commission and this matter proceeded to a de novo hearing. Assistant Corporation Counsel Noel Quanbeck represented the City and Robert Egan represented the applicant corporation.

A summary of the evidence in the record will make it easier to understand this decision.

Barbra Parker testified she has been employed as a Senior Business Consultant for the Department of Business Affairs and Consumer Protection for a little over four years.

In August 2009, she was assigned to assist 3808 West Belmont Corporation with a tavern license application for the location at 3808 W. Belmont which was in a moratorium area. That moratorium prohibited new tavern licenses in that area unless specific guidelines are followed. The Department provides the applicant with a list of registered voters within 500 feet of the premises. That list is compiled by the Department of Innovation and Technology. She identified City's Exhibit 2, in evidence, as the list of voters generated on August 24, 2009, and provided to the applicant. It lists 247 voters. Parker identified City's Exhibit 3, in evidence, as the Liquor Moratorium Petition provided by the applicant. The markings on the left-side of that document are for some sort of disqualification. City's Exhibit 4, in evidence, was described by Ms. Parker as the Petition Analysis Form relative to this application. She and another employee Florence Hardy prepared this form.

City's Exhibit 4 indicates that the voters list was issued to the applicant on August 24, 2009. It shows required notifications were sent to the voters by mail on September 4, 2009. It also shows the date of the first signature was September 10, 2009, and the date of the last signature was October 10, 2009.

Parker then explained the process by which she came to the number of required signatures as set out on City's Exhibit 4. From the total number of 247 voters, she deducted twelve as duplicates. She then deducted 33 names of persons who had moved or died. Those names came from a list provided by the applicant's attorney. Those lists

are City Exhibits 5 and 6, in evidence. That left a total number of individuals available to sign the petition of 202 and made the required number of signatures 103.

Parker then explained the numbers on page 2 of the exhibit. The Department's review of the submitted petitions showed three signatures were removed as illegible. Those are marked in green. Fifteen signatures were removed as being incomplete signatures. These are marked orange. Eighty-one signatures were removed as not being on the voters list. These were marked in blue. The total number of approved signatures submitted was 50 and the applicant needed 103. Even if the 19 signatures removed for being illegible or incomplete were added, the total signatures would have been 69 which is still short of the 103. ( It appears there was a math error since the total of unapproved signatures would total 99 with 81 being ineligible as not on the voters list and 18 ineligible as illegible or incomplete signatures)

Ms. Parker then identified City's Exhibit 7, in evidence as the Liquor Moratorium License Application Instructions which are provided to applicants at the start of the application process. It provides the applicant with a detailed list of instructions to assist the applicant. It discusses that the maximum time frame to begin and complete a moratorium application is 150 days from the date on which the voter registration list is generated. The applicant must finalize the petition within 60 days after the first signature on the petition is obtained. This is a policy of the Department and is not part of the Municipal Code. Ms. Parker admitted she did make a list of the 12 duplicate voters she found and that number could be off by one.

Oksana Shimanskiy is the President of the applicant corporation. She and her husband were involved in obtaining signatures for this application. She went door to door to obtain signatures but did not look at the names on the list provided by the City. Only three people refused to sign.

She identified Applicant's Exhibit 1, in evidence, as the petition containing the signatures she obtained herself by people who signed in front of her. The first signature was by a 30 year old known as "Casey." He and his father signed. As she circulated the petition she kept charts with notes as to what people signed or did not sign and people not present at the address. Exhibit 2 (b), in evidence, is a copy of the eligible voter list provided by the City in which the witness color coded each listed voter. Exhibit 2 (a), in evidence, compiles the numbers for each group calculated from the voter list. From those charts she determined who had moved, who had died and matters like that. She then sought other evidence to corroborate whether those people had died or moved. As a result of that investigation she prepared a third chart which is in evidence as Applicant's Exhibit 3. This grid contains certain numbers and codes. Section D contains documents marked D1 through D7, showing those people were dead. Exhibit M contains documents M1 through 41 reflecting those 41 voters had moved. Exhibit P contains documents P1 through P74 which are returns from the post office of letters sent to those 74 people by certified mail. Page 10 of this exhibit totals her list of people who signed, moved or died from the list provided by the City. Her totals indicated 71 signatures, 100 people moved and 9 deceased. She found 13 duplicates and 54 people did not sign. These figures do

total 247. The witness believes these numbers reflect the most accurate information as to the status of the 247 voters on the list provided to the applicant by the City.

Mr. Egan argues that 13 duplicate voters should be deducted from 247 total which leaves 234. An additional 107 should be removed which leaves a total of 127. If they have 69 signatures and it is the applicant's position that they have 71 signatures they are over 50 percent.

The issue before this Commission is whether its review by de novo hearing on the propriety of the denial is limited to the facts and documents that were before the Local Liquor Control Commission when that decision was made. Can the scope of this hearing be expanded to allow this Commission to reverse the decision of the LLCC based on evidence not provided to the LLCC within the 150 day period as required by the policy of the LLCC set out in City's Exhibit 7. While it may be inequitable, this Commissioner believes that the review de novo by this Commission must be limited to facts in the possession of the LLCC when it made its decision to deny. While the 150 day time period is not mandated by the Municipal Code it seems appropriate for the Local to be able to set a time-frame in which the application must be completed. The applicant has not argued that it attempted to provide this additional information and the LLCC refused to review it. It is admitted the additional information in the applicant's exhibits was not provided to the LLCC within the 150 day period.

It was based on information provided by the applicant that the LLCC agreed to remove from the eligibility list 33 voters identified as having moved or died. The

information compiled by the applicant that this figure should have been 109 voters was not provided to the LLCC in a timely manner. To remove these additional voters after this hearing without requiring notice to the LLCC would not be equitable to the LLCC. It is also a remedy this Commissioner does not believe is within the power of this Commission. If equity requires that those additional voters be removed from the total of eligible voters, that order must come from the Circuit Court.

Based on the evidence in its possession pursuant to the rules of procedure of the LLCC which has been presented de novo to this Commission the decision of the LLCC denying the application for the liquor license in a moratorium area 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: January 19, 2011

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member

Donald O'Connell  
Member