

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Green Dolphin, Inc. )  
Sam Menetti, President )  
Refusal to Renew )  
for the premises located at )  
2200 North Ashland Avenue ) Case No. 11 LA 18  
)  
v. )  
)  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

OPINION OF CHAIRMAN FLEMING IN DISSENT

On April 19, 2011, Gregory Steadman in his role as the Local Liquor Control Commissioner of the City of Chicago advised Green Dolphin, Inc. that the Local Liquor Control Commission was refusing to allow the renewal of its liquor licenses. This denial was based on Section 6-1 of the Illinois Liquor Control Act, which states the renewal of liquor licenses is conditioned upon whether the premises for which such renewal licenses are sought are suitable for such purpose. Licensee operates a large nightclub with a tavern, late hour and outdoor patio licenses. Due to a building inspection on April 7, 2011, which revealed multiple building and fire code violations that present a danger to the public, the Local Liquor Control Commission found that the premises are not suitable for the purpose of a tavern, late hour and outdoor patio license. On April 20, 2011, the licensee filed an appeal with this Commission alleging the City did not proceed in the manner provided by law, that the wrongful refusal to renew licensee's liquor licenses is

against the manifest weight of the evidence, unlawful, unreasonable, and the City has acted in an arbitrary and capricious manner in refusing to renew said liquor licenses.

A review of the evidence presented at the hearing will aid in understanding this decision.

Thomas O'Donnell has been a building inspector for the City of Chicago for about eighteen years and is currently a supervising building inspector. He has been an inspector in what was formerly known as the Institutions Public Place of Assembly and Licensing Unit which conducted inspections of public places of assembly. He conducted food and liquor licensing inspections. He has also been an inspector and supervisor in the strategic task force which is concerned with properties that have criminal activity.

He is familiar with the Green Dolphin at 2200 N. Ashland Avenue which he described as a large nightclub. His most recent inspection was June 21, 2011, the date before the hearing. He had also done prior inspections at that location. Those earlier inspections revealed issues with egress throughout the building. There was potential danger in the event of an emergency there was not an adequate number of doors and the exit doors were not the proper width. There was not a proper or adequate means of egress. The building's firewall separation exceeded the maximum allowable square footage which meant sprinklers were needed or the business needed to be compartmentalized with firewalls. Inadequate firewall separation would not stop the spread of fire and smoke. These inspections also revealed that a number of alterations

had been made to the property which affected egress where the exits were located without permits or plans. There was a large single story masonry addition added to the northwest corner of the building. There was a small outdoor beer garden enclosed without a permit and a large patio area that had plans and permits but was not built according to plans submitted to the City. The rough approximation of the size of these additions would be 25 x 75 for the masonry addition; 30 x 40 for the beer garden and 50 x 75 for the large patio. These additions without permits or not being done according to plans are dangerous because they could affect egress because the previous egress was altered and improper materials could be used that were not flame retardant.

O'Donnell met with the owner, the owner's son, a new architect, and an electrical contractor at the inspection that took place the day before the hearing. They received a new set of plans and a demolition permit to remove a wood-framed garage, a wood deck, and some stairs on the river bank which they did.

Most of the violations O'Donnell was concerned with had been corrected. A number of those things were included on the new set of plans. There had been some small or minor interior improvements but the more serious things have not been corrected. The first inspection on the ongoing building court case was in May of 2010. O'Donnell has never recommended to the judge to increase occupancy at this location and the building department has not recommended increased occupancy. He would like to see the business obtain new occupancy cards based on an approved new set plans. The new plans he observed at the inspection had not been approved by buildings department.

Those plans needed to be approved by zoning review before the submittal process at the Department of Buildings begins. 2200 North Ashland Avenue is not in full compliance with the buildings department at this time.

O'Donnell testified he was working off an amended complaint at this inspection. That complaint alleged 51 or 53 violations. From his perspective only a couple of minor smaller improvements and changes have been addressed. The electrical and plumbing counts on the complaint are not in his area. O'Donnell did not know if 48 of the 51 violations had been completed. Over the City's objection, Respondent's Exhibit 1, the First Amended Complaint for Equitable and Other Relief, was allowed in evidence.

O'Donnell agreed that various allegations in the First Amended Complaint dealt with specific areas in the Jazz Room, the Dolphin Room (that is the West and East Room) that have been corrected since the initial complaint. He also agreed additional doors were installed that solved some of the egress problems but they were installed without a permit. O'Donnell referred to Count 36, subparagraph 3, which asked that the licensee "rework east exit door at Webster Street entrance vestibule so it does not drag on the sidewalk." That was not done as of the inspection the day before the hearing. Paragraph 6, asking the licensee to remove a coiled overhead shutter in the west room also had not been done at the time of this last inspection. While O'Donnell admitted he had never been at the premise at night, he opined this is a primary entrance point for the licensee's business. He also opined this was a relatively simple item to correct. As to the coiled overhead shutter door, O'Donnell explained that work could not be done in

minutes but could be done during hours the business is not open. The licensee would need plans and permit for this work and this work is included on the new plans that will be submitted.

O'Donnell testified that he believed Judge Pileggi, by court order, had closed the area of the tent beer garden and the outside beer garden pending new plans and a new permit being issued. He further stated he has been at some of the status hearings on the building court case but not all the status hearings. He agreed there has been some compliance but has not seen significant compliance with the items he identified as potentially dangerous. There has been some compliance with regards to egress but not with respect to the firewall. The permits needed to do the firewall work have not been issued. There is a count in the amended complaint with respect to the fact that the second egress from the second floor office was removed when one of the additions was done. This would raise the same concern with regard to people leaving the establishment. O'Donnell never recommended that Judge Pileggi increase occupancy and he has concerns about occupancy relating to the danger this building presented to the public.

Patrick Haran has been a plumbing inspector for the City of Chicago for nine years. He inspects plumbing systems to verify it is up to code, verify it has proper water service, and verify it has the proper water heater. With respect to commercial buildings that need additional fixtures he ensures the fixtures are installed properly, that they be handicap accessible and verify there are the proper amount of toilets and sinks. He has participated in inspections for the Green Dolphin bar at 2200 N. Ashland Avenue, the last

inspection being performed the date before the hearing. He inspected as early as May of 2010. He found several violations such as inadequate amount of toilet sinks, hand sinks and mop sink. There were additional fixtures that had been installed without a permit. There were no handicap facilities and an inadequate number of lavatories with improper water service. There was also a problem with the mop sink which was potentially dangerous and hazardous.

The inspection the day before the hearing revealed that a plumbing permit was pulled earlier this year. Some of the violations had been addressed, but the main violations concerning adding sufficient plumbing fixtures, upgrading the water service and adding handicapped accessibility to the bathroom remained. With the permit the licensee did install hand sinks behind the bar but they were installed improperly. The drain was tied into the downspout underneath the floor when it should have been connected to the sewer. This could cause the release of sewer gas in the room after it rains. The bathrooms have not come into compliance and he discussed with the architect at the inspection the number of fixtures that would be needed. At present the corrected violations would be service work, not major corrections and the plumbing counts left open are more important than what has been done.

Haran acknowledged being present for some of the status conferences in building court but could not recall a status on May 30, 2011, and did not recall Judge Hughes asking if he had concerns about dangerous conditions on the premises. He added there is nothing dangerous now but added if the traps are sucked out of the sink it could cause

sewer gas which would be a dangerous condition. That is in the tainted area and the main bar area.

Over the City's objections Respondent's Group Exhibit 2, consisting of orders from the building court case entered on November 16, 22 and December 10 were allowed in evidence.

Ron Gardner has been an architect since 1976 and was Deputy Commissioner of the Department of Buildings for six years under Mayor Harold Washington and Eugene Sawyer. He is now President of Group Design Associates, Incorporated, which consists of architects, engineers, planners and construction managers. He has been working with Green Dolphin, Incorporated, since the summer of 2010. He has been present at a few of the inspections and is working through zoning, as well as, the building department to ensure the proper permits are issued. They are presently working for approval from zoning and landscape. Revised plans were submitted to zoning and they are in the process of working on correction with landscape review. He hoped that landscape review would be approved as early as the next week, and then they could address the zoning issue. Based on his experience it could be a couple of months before permits would issue.

Mr. Gardner was present for the testimony of Mr. O'Donnell and the plumbing inspection. He agrees there are code violations but does not agree that they are dangerous or hazardous to the public.

The witness admits he has not worked for the City of Chicago since 1990. He explained you first need zoning approval and then building department approval for occupancy. He has not applied for a building permit for the firewall separation but has applied to Zoning for a permit for the expanded area inside the location. No application for the expanded area has been filed with the building department. He attended a meeting last December with the building department at which corrections for the plans were given. Plans were submitted to Zoning in May of 2011 for the second time. Gardner stated this location also needs plan development permits and those have not yet been applied for with respect to this location.

Louie Menetti is currently the supervisor running day to day operations at the Green Dolphin for Mr. Sam Menetti. He has attended inspections conducted by the City of Chicago including the inspection the day before the hearing. One of the individuals present was Preston Fossett who is the head architect on the work at the Green Dolphin. He is in charge of plans and submitting those plans in the permit process. At the time of the hearing Mr. Fossett was at Zoning.

The relevant State Statute includes 235 5/6-1, which describes the license as a personal privilege, good for not to exceed one year after issuance. It allows for renewal of his license at its expiration provided he is then qualified to receive a license for the premises and the premises for which such renewal license is sought is suitable for such purpose. There is no definition in the state statute for the term “suitable for such purpose.”



Article 4 of the State of Illinois Liquor Control Act is entitled “Local Control” and it enumerates the powers given to a city, village, incorporated town, and a county board with respect to control of alcohol and it also designates who is the local liquor control commissioner of each such government body for the purpose of administering this rule. 235 ILCS 5/4-1 does indicate that issuance of licenses shall not be prohibited except for the reasons listed in Section 6-2, 6-11, 6-12, and 6-25 of the Liquor Control Act.

235 ILCS 5/7-9 of the Liquor Control Act gives jurisdiction to this Commission of cases involving the granting or refusing to grant a license and that matter is tried de novo by this Commission.

Counsel for the licensee has made a legal argument that states in essence that Section 6-1 of the Act dealing with refusal to renew deals only with the State of Illinois liquor license. The argument is that this section does not empower a local liquor control commissioner to refuse to renew based on suitability of the premises. This seems in essence to an argument on the jurisdiction of this Commission. If the local does not have the authority to refuse to renew a license for suitability grounds, then how does this Commission have jurisdiction. That argument is not reflected on the appeal filed by the licensee. In fact it was the licensee’s appeal that brought this case before this Commission. If the licensee felt there was no jurisdiction before this Commission it could have gone directly to the Circuit Court. Since jurisdiction may be raised at any

time and particularly since jurisdiction of this Commission is set up by State Statute it is necessary to address whether this matter is properly before this Commission.

235 ILCS 5/7-9 allows for the appeal of any order or action of a local liquor control commissioner “granting or refusing to grant a license or revoking or suspending a license.” This language delineates granting or refusing to grant a license from revoking or suspending a license. The action in this case is entitled Refusal to Renew which would be encompassed in the clause refusing to grant a license. This section goes on to give this jurisdiction to determine the propriety of this refusal de novo.

Case law from state and federal court support the position that this Commission would have jurisdiction. The case of City of Wyoming vs. Local Liquor Control Commission of Illinois, dealt with the refusal of the Mayor of the City of Wyoming as the local liquor control commissioner to renew the local liquor license of Wyoming Super Value, Inc. This decision was appealed to the State of Illinois Liquor Control Commission which reversed the failure to renew. The Appellate Court commented that “while the state statute did not expressly require compliance with procedural requirements when a local liquor control commissioner refuses to renew it could not have been the legislative intent that a local liquor control commissioner be able to easily avoid the application of the statutory procedural requirements to license revocation by waiting for the license to expire and then refuse to issue a renewal license.” For that reason the court interpreted the term “revocation” to include the refusal to issue a renewal license.

The Federal Court in Reed vs. Village of Shorewood, (704 F.2d 943) determined that while liquor licenses in Illinois are not property in the conventional sense, they are “property” in a due process clause sense. Since the criteria for non-renewal in sections are undemanding, it suggested to the court that the Illinois legislature expected most licenses to be renewed as a matter of course. From that point the court adopted the reasoning from the Wyoming Court and equated non-renewal with revocation and requiring the same safeguards against arbitrary non-renewals, as the statute provides against arbitrary revocation (704 F.2d at 949). The case also dealt with a non-renewal by a local liquor control commissioner.

Since this order of non-renewal is within the power of the Local Liquor Control Commission the review of this Commission is to determine, de novo, the propriety of that decision.

The evidence of the building inspectors established building code violations that could present a potential danger to the public or do present a danger to the public. The evidence presented by the licensee from its architect does not dispute violations exist but is really a mitigation argument that the licensee is trying to get permits.

A second argument raised by the licensee is that Judge Pileggi has heard evidence in Circuit Court Case 10 M1 42018, on the issue of whether allowing the licensee to remain open would present an imminent threat to the health, safety and welfare of the occupants and public. Judge Pileggi entered an order on December 7, 2010, which

allowed the licensee to continue operation under the occupancy limits set out in that order.

This Commission is concerned that it may appear that the License Appeal Commission is being used by the City to get a ruling giving it the relief it did not get in the Circuit Court. Questions of collateral estoppel and/or res judicata might be properly argued. The fact is that it was the licensee that filed this appeal conveying jurisdiction on this Commission. Neither party has objected to the jurisdiction of this Commission or to how this Commission has proceeded in this case.

It is the decision of this Commissioner that the issue of non-renewal for suitability is not the same as the issue of whether the conditions of the property provide an imminent threat to the health, safety and welfare of the occupants and the public. The evidence presented by the City meets its burden that the premises are not suitable for renewal. The decision of the Local Liquor Control Commissioner to Refuse to Renew the liquor licenses for 2200 N. Ashland Avenue LLC is affirmed.

Dennis M. Fleming  
Chairman

OPINION OF COMMISSIONER O'CONNELL JOINED BY COMMISSIONER  
SCHNORF

I agree with the facts as set out in Chairman Fleming's opinion. I respectfully disagree with his interpretation of the statute at issue in this case.

235 ILCS 5/6-1 states in relevant part, "Any licensee may renew his license at the expiration thereof, provided he is then qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose. (Emphasis added) There is nothing in the statute which defines the term "suitable for such purpose."

The Liquor License Refusal to Renew Form sets forth the City's position that the premises are not suitable for a tavern, late hour and outdoor patio license because the premises contains multiple building and fire code violations that present a danger to the public. It states these building and fire code violations include, but are not limited to the following:

- construction/expansion of various areas of the premises without first obtaining approved architectural plans and necessary permits and inspections
- lack of required secondary means of egress from the second floor office space
- inadequate firewall separation of interconnected areas
- inadequate toilets and sinks for patrons
- bar sink not connected to sanitary sewer
- inadequate water service
- improper erection and use of tent/temporary structure on a permanent basis

Prior to the failure to renew the City filed a complaint for equitable and other relief. This complaint alleged violations of several provisions of the Municipal Code including some of the matters specifically listed in the Refusal to Renew. As part of

its prayer for relief the City of Chicago requested a temporary and permanent injunction issue to serve the abatement of the violations and the public nuisance arising from said violations. It should be noted this case was filed by Assistant Corporation Counsel Steven Q. McKenzie and that evidence was presented by the testimony of Thomas O'Donnell and Pat Haran. These are the same city witnesses who testified at this hearing.

The record in this case contains orders from Case 10 M1 402018, The City of Chicago v. 2200 N. Ashland. The first order was issued by Judge James McGing on November 16, 2010. That order states the City did prove a number of violations of the Municipal Code and the Court found plaintiff demonstrated competent evidence that an imminent threat to the health, safety and welfare of the occupants and public exists at 1610 W. Webster/2200 N. Ashland in the bar known as "The Green Dolphin Street Bar and Restaurant." The Court then entered a preliminary injunction prohibiting access to certain areas and limiting occupancy in other areas.

On November 22, 2010, Judge William E. Pileggi heard arguments on a Motion for Reconsideration of the Defendant's Emergency Motion to Vacate and issued an order modifying occupancy in certain areas and barring any occupancy of the East Room Dolphin Room and other areas.

On December 7, 2010, Judge Pileggi found substantial compliance in seven items listed in Paragraph 2 of the November 22, 2010, order. It further modified occupancy

as to specific areas of the premises. It noted this order was made after taking testimony and was entered over objection of the City.

There is nothing in the record before this Commission that shows this order has ever been modified or that the City has even attempted to modify it or to appeal it.

A Judge of the Circuit Court of Cook County has heard testimony and evidence in what seems to be the same issue that is before this Commission. That judge has entered an order which was not appealed and there has been no request to modify. That order suggests the premises are suitable for the purpose of a tavern, late hour license and outdoor patio with the occupancy limits set out in that order.

The decision of the Local Liquor Control Commissioner to not renew the liquor licenses for these premises is reversed. The licenses should issue subject to the order of Judge Pileggi of December 7, 2010.

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: January 13, 2012

Donald O'Connell  
Member

Stephen Schnorf  
Member