

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Boby G, Inc.)	
Roberta Goldberg, President)	
Applicant (Late Hour))	
for the premises located at)	Case No. 14 LA 45
5637-5639 West Grand Avenue)	
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O’CONNELL

Boby G, Inc. applied for a late hour license for the premises located at 5637-5639 W. Grand Avenue. This application was denied by the Commissioner of the Local Liquor Control Commission because the applicant failed to secure a majority of voter signatures needed. Section 4-60-130, Section E, of the Municipal Code requires that “the applicant shall obtain and file with the department of business affairs and consumer protection the written consent of a majority of the legal voters registered within the affected area.” According to the calculations of the Department of Business Affairs, there were a total of 97 voters in the affected area and the applicant needed 50 signatures. Thirty-eight signatures were filed and the Department of Business Affairs did not approve 21 of those signatures; the department approved 17 signatures.

The applicant filed a timely appeal of the denial with the License Appeal Commission.

A review of the relevant portions of the testimony of the witnesses will help in understanding the bases of this decision.

Bryan Knipper has been a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection for about seven years. He oversees the group that processes liquor license applications. He reviews the case files after the investigations are complete and he reviews the documents to ensure they are correct.

Knipper is aware that Boby G, Inc. filed an application for a late hour license on August 6, 2014, for the premises located at 5637-39 West Grand Avenue. In addition to completing an application and passing petitions, an applicant for a late hour license must obtain signatures if there are over fifty voters within 500 feet of the premises. There were 50 voters within 500 feet of the premises.

The applicant was provided a list of the registered voters within 500 feet. That list is generated by the DBA's technology group from a list obtained from the Board of Elections.

Mr. Knipper identified City's Exhibit E, in evidence, as the late hour license petition filed by the applicant. It contains multiple copies of the petition signatures and the voter registration list because two business consultants review the list together. The third is the copy the witness used in reviewing the file. It has red ink. He reviewed the petition a little more leniently to give the applicant the benefit of the doubt. City's Exhibit F, in evidence, is a two page Late Hour Petition Analysis Form prepared by the consultants after their review of the signatures on the

petitions. This exhibit shows there were 114 names on the voter list provided to the applicant. Eleven duplicate signatures were identified and deducted from the 114. The applicant provided information that six people had moved or were deceased. That information was provided on City's Exhibit G, in evidence, which is correspondence from the applicant's law firm. That document lists 18 voters at addresses that are vacant or at addresses where there was never an answer. The investigation team from Business Affairs investigates 10% of those listed as being moved. From the original 114 voters, 11 duplicate signatures and six voters listed as moved were deducted which left 97 voters. The applicant was required to get 50% plus 1 which the exhibit stated was 50. The applicant submitted 38 signatures on the petitions. Twenty-one of the 38 signatures were not approved by the consultants. That left 17 valid signatures.

The yellow mark on City's Exhibit E is for a duplicate signature on the petition. Green marks indicated the signatures were incomplete. There were 9 incomplete names found by the consultants. Pink was used to note illegible signatures. The consultants removed nine such signatures. There were six names marked blue that were removed for not being on the voter list. Two names were marked in purple and removed as being fraudulent; one person will sign for another voter or voters.

Mr. Knipper conducted his own review of the consultants report. He added a few signatures and came up with 23 or 24 which was still short of 50.

On cross, Mr. Knipper was shown pictures 1 through 10 which appear to be pictures of buildings that were vacant. He believed the investigations team confirmed the people that had

moved. With the green signatures marked incomplete, the signatures are not compared with the voter card signatures. It is basically a judgment call. The signatures will be stricken if the consultant cannot read it or if it is an initial and a last name.

In response to a question from Commissioner O'Connell, Mr. Knipper agreed if every signature handed in was allowed the applicant would not have enough signatures.

In response to a question from Chairman Fleming, Mr. Knipper explained that the people on City's Exhibit G listed out addresses described as vacant-never answered were not removed from the list of voters since that term was ambiguous.

The City rested its case.

David Belis lives at 5637 West Grand Avenue and is familiar with the neighborhood and with Boby G's. He went out about ten to fifteen times to get the signatures. He identified Licensee's Exhibit 1, as pictures of places listed as for sale or for rent. Some were places nobody lived at anymore. He went several times to double check and got no answer.

The witness reviewed City's Exhibit C, which is his affidavit about people who moved. The group listed "vacant" or "never answers" as people that did not live there. He does not remember exact names but people that answered said the people did not live there.

The witness identified Applicant's Exhibit 2, as his notes he wrote about the petitions. It has checkmarks next to 24 names of people that do not live there anymore. That coordinates with his affidavit.

He obtained the 38 signatures himself. He did not write them or have anybody else write them.

On cross, the witness agreed he let people print the name. On City's Exhibit E, the same person signed Benitez Victor on Page 3, Lines 9 and 10. There were fifteen names listed as vacant, never answers. He could not recall which of the fifteen are vacant and which did not answer. Only five people actually moved. The first picture in Licensee's Exhibit 1 is vacant and looks like a factory. The address on the second page is 5650 and it is a commercial building. There were no apartments. On the next page there are apartments on the second floor and the person who lives there is on the list.

Prior to closing argument, the City stipulated it was proceeding on Mr. Knipper's review of the petition which found 26 valid signatures.

Since this is a de novo hearing, this Commissioner will review the petitions submitted to determine how many are valid. The total number of petitions submitted was 38. The original review by two members of the Department of Business Affairs and Consumer Protection removed three signatures for being illegible. These are marked in pink on City's Exhibit E.

These are signatures on Lines 10 and 12 of Page 2 of this exhibit and Line 11 of Page 3 of the exhibit. They are or seem to be:

- a. Adrian Guardiola at 5718 West Grand
- b. Unreadable at 5656 West Grand
- c. Villa at 2171 Major

Based on review of these signatures and the poll sheets, this Commissioner feels Adrian Guardiola's signature should be allowed as a valid signature.

The Department also removed one signature marked in yellow on City's Exhibit E for being duplicate. Sandra Ortiz's signature on Page 2, Line 16 of Exhibit E was removed for being duplicate of the signature on Page 1, Line 2 of said exhibit. There is only one Sandra Ortiz registered at 5626 W. Grand and the removal was appropriate as being duplicated.

Two signatures were marked in purple as fraudulent. They are the signatures of Erika Vasquez on Page 4, Line 15 and Elizabeth Mercado on Page 5, Line 1. These signatures should be considered valid.

The six signatures marked in blue were removed for not being on the voter list.

These six are:

- Familia Herrera 5631 West Grand Page 2, Line 11
- William Pages 5656 West Grand Page 2, Line 12
- Hureliano 2163 North Mason Page 3, Line 7
- Maria De La Luz 2171 Major Page 3, Line 8
- Maribel Flores 2168 Major Page 3, Line 13
- Roberto 2024 Parkside Page 4, Line 11

None of these names are on the list of eligible voters and were properly stricken from the petition.

Nine signatures marked in green were stricken as being incomplete. This would be using a nickname or a shortened name. The nine names were:

- Agosto R. Nieves 5651 West Grand Page 2, Line 7
- Carmen Mercado 5651 West Grand Page 2, Line 8
- Ana D. Chavez 5646 West Grand Page 2, Line 9
- Aragon 2151 Parkside Page 4, Line 7
- Eduardo Lana 2167 Parkside Page 4, Line 8
- Patricia Lana 2167 Parkside Page 4, Line 9
- Cynthia Romaneko 2158 Parkside Page 4, Line 10
- Naomi Gonzalez 2040 Parkside Page 4, Line 12
- Monica Ayala 2149 Parkside Page 6, Line 26

From the writing on the portion of City's Exhibit E prepared by Mr. Knipper, he marked ok next to all these signatures except for Ana Chavez. This Commissioner agrees with Mr. Knipper on the signatures he restored but disagrees about Ana Chavez. Her signature should also be considered a valid signature.

Applying these findings to a petition analysis it appears that there were a total of 39 signatures on the submitted petitions. This is based on the notion that the signatures on Page 3, Lines 9 and 10 were one signature.

Mr. Knipper's testimony was that he validated additional signatures and he believed his number of valid signatures was 23 or 24. He could not remember the exact number. This

Commissioner added up the names marked “ok” by Mr. Knipper on the voter list in City’s Exhibit E and that totaled 24. On the petition list, Knipper stated he checked off 27 names valid.

Since this is a de novo hearing, this Commissioner finds the following names on City’s Exhibit E all valid signatures:

- Nora Ortiz 5626 West Grand
- Sandra Ortiz 5626 West Grand
- Manuel Santana 2167 North Major
- Erick Solano 2111 North Mango
- Agosto Nieves 5651 West Grand
- Carmen Mercado 5651 West Grand
- Ana Chavez 5646 West Grand
- Adrian Guardiola 5718 West Grand
- Victor Benitez 2111 North Major
- Sofia Rivera 2105 North Major
- Hector Santa Cruz 2160 North Major
- David Velis 5637 West Grand
- Panagiota Mantis 5620 West Grand
- Nelson Rodriguez 5626 West Grand
- Benjamin Arroyo 5646 West Grand
- Aragon Isaias Garcia 2151 North Parkside
- Eduardo Lara 2167 North Parkside
- Patricia Lara 2167 North Parkside
- Cynthia Romaneco 2158 North Parkside
- Naomi Gonzalez 2040 North Parkside
- Yesenia Rodriguez 2110 North Parkside
- Benjamin Vasquez 2110 North Parkside
- Erika Vasquez 2110 North Parkside
- Jose Lara 2167 North Parkside
- Ronchi Rocco 2177 North Parkside
- Elizabeth Mercado 5712 West Grand
- Monica Ayala 2149 North Parkside
- Edgar Rodriguez 2154 North Parkside
- Isidro Ocampo 2160 North Parkside

If this list is correct, the applicant is short of the number of signatures required.

The procedure described by Mr. Knipper allows an applicant to give the Department of Business Affairs and Consumer Protection a list of people who have moved. A City investigator verifies 10% of those listed as “moved/have moved.” If that is true, the voters listed as moved are removed from the list of eligible voters. That happened in this case. The applicant listed six people as moved and all six were removed from this list of eligible voters. That is seen on Page 1 of City’s Exhibit F.

The issue in this case is that in addition to listing 6 people as moved, the candidate listed 18 people under the term VACANT/NEVER ANSWERS, 26 people as a VOTER LIST OF CERTIFIED MAIL RETURNED “UNDECLARED,” and 25 voters as listed under the category RESIDES THERE. It is unclear to this Commissioner why the candidate prepared these lists, but it does seem clear those voters were not included in the category of voters that moved. Since they were not so included, the City investigator would not have ascertained if these voters had actually moved. Mr. Velis could not clearly describe the procedure he used to make these lists.

With respect to the 18 people listed on VACANT/NEVER ANSWERS list, 3 are duplicates and Erick Solano signed the petition.

With respect to the MOVED list one person was a duplicate but the City gave the candidate credit for 6 people having moved.

Of the 49 people on the VOTER LIST OF CERTIFIED MAIL RETURNED

UNCLAIMED, the following people are not on the voter list:

- Porfiria Honorina Aviles 2040 North Parkside
- Aurelio Viera Jr. 2165 North Parkside

One person Erick Solano at 2111 North Mango signed the petition. There are 5 names duplicated on this list.

The candidate also introduced into evidence pictures taken by their circulator. The pictures are not dispositive that what they portray is vacant property.

The candidate's evidence was insufficient for this Commissioner to remove any additional names from the list of eligible voters.

The numbers in this case show 114 eligible voters on the list provided by the DBA. Eleven were properly removed as duplicate reducing the total to 103. While six were removed as moved, only five should have been removed leaving 98 eligible voters. 50% plus 1 of the 98 eligible voters comes to 50 signatures. Even with the additional signatures added by this Commissioner after this de novo hearing, the applicant did not provide 50 valid signatures.

The denial of the late hour license application for Bobby G, Inc. for the premises located at 5637-5639 West Grand 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 28, 2016

Dennis M. Fleming
Chairman

Donald O'Connell
Member