

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Two Brothers Mart, Inc. )  
Majdi Eid, President )  
Applicant (Change of Officers/Packaged Goods) )  
for the premises located at )  
3756 West Montrose Avenue )  
 )  
v. ) Case No. 09 LA 36  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Norma I. Reyes, Commissioner )

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

This case arises out of a denial of a Change of Officers application for a license that existed at 3756 W. Montrose for sale of Packaged Goods. This application was originally dated on January 23, 2006, and apparently was placed on suspension for a period of time. The relevant date of this application was December 30, 2008.

A denial letter dated April 9, 2009, explained the Change of Officers liquor license application was denied because the business failed to satisfy the moratorium license mailing and petition requirements mandated by the City of Chicago Municipal Code, and for an illegal expansion of the business premises. A timely appeal of this denial was filed with this Commission. The City did not proceed on the illegal expansion of the business premises basis for denial. During the course of the hearing, on or about January 19, 2010, the City issued an amended denial letter setting out an additional reason for the denial. That additional reason was

the disciplinary history of Two Brothers Mart, Inc., in the two year period prior to the date of application which included a 21-day closing for a narcotics violation which was served from October 6 through October 28, 2008, and a pending revocation proceeding under case 09 LR 61, did not allow for the issuance of this license.

This case was consolidated for the purpose of hearing with case 09 LA 31. Some of the evidence in the record deals with this case alone, some with 09 LA 31 alone, and some with both cases. This Commissioner does not consider evidence relating only to the 09 LA 31 case in his decision in this case.

Since the location of these licensed premises is in a moratorium one must look to Section 4-60-024 of the Municipal Code to determine whether the existing license can transfer to the new corporate officer. The application for the Change of Officers in this case was governed by section (e) since Mr. Eid would be any other person who is acquiring the licensed premises by purchase.

The issuance of a license under section (e) is subject to petition the requirements that require 51% of the legal voters registered within a 500 foot area to consent in writing to the issuance of this license.

The issuance of a license under section (e) would not be permitted if the licensed

business has not been closed for a total of more than ten days at any time from two years prior to the date of application for the new license until processing of the application is completed; and no proceedings for revocation or suspension of the existing license are pending during the processing of the application for the new license.

Greg Steadman is Chief Counsel for the Local Liquor Control Commission which is part of the City's Department of Business Affairs and Consumer Protection. He has been in that position for ten years and is involved with the ultimate decision on whether to approve or deny a liquor license application.

City's Exhibit 6 was identified by Mr. Steadman as a copy of the Change of Officer's liquor license application signed by Majdi Eid as President. This type of application is used when the license is held by a corporation and an officer of that corporation is transferring his or her interest to another individual. This application was originally created on January 23, 2006, but was suspended for failure of the applicant to provide documents in a timely manner. It was considered complete for processing on December 20, 2008. This license was located in a packaged goods moratorium area. There are special requirements with regards to applications for packaged goods licenses in such area. If the local alderman does not lift the moratorium by ordinance the applicant needs to circulate petitions to obtain the written consent of 51% of registered voters residing within 500 feet. Other issues that would bar the transfer of a license in a moratorium area include a disciplinary history of a closure of ten days or greater within the last two years and having any pending cases that seek to suspend or revoke the present license. Mr.

Steadman identified City's Exhibit 8, in evidence, as a Certified Order of Disposition setting out the past disciplinary history of Two Brothers Mart, Inc. The most recent case was 07 LR 136, which reflects a 21-day closing for a narcotics violation. City's Exhibit 9, in evidence, is a Voluntary Closing/Suspension form signed by Mr. Eid on behalf of Two Brothers Mart, Inc. It shows that the licensee accepted a 21-day voluntary suspension for the May 17, 2007 narcotics violation. The suspension was served from October 6 through 28 of 2008. Since this 21-day closing was served within two years prior to the date of application this Change of Officers license could not be issued pursuant to Section 4-60-024 (e) of the Chicago Municipal Code.

Mr. Steadman explained the petition process in moratorium cases. He identified City's Exhibit 10, in evidence, as a copy of the list of voters within 500 feet of the establishment. A Liquor Moratorium Petition Analysis Form was prepared and is in evidence as City's Exhibit 11. The number of registered voters within 500 feet was 388. After deducting the 21 duplicate names and the 130 names submitted by the applicant that may have moved or are deceased the number was reduced to 237. Mr. Steadman calculated 51% of 237 to be 121 voters. City's Exhibit 13, in evidence, are the original petitions submitted by the applicant. City's Exhibit 14, in evidence, is a copy of the original petitions that has been color coded by the business consultant to explain why a signature was not accepted as a good signature. Orange is used for an incomplete signature; blue denotes an individual not on the voters list; green is for a signature from a person not being in the 500 foot radius range, and red is for illegible signatures. One hundred sixty-three signatures were submitted and the Department of Business Affairs and Consumer Protection acknowledged 31 good signatures and 132 invalid signatures. Fifteen of

the signatures were marked in red as illegible, 107 were coded orange as being incomplete, 5 were marked blue for individuals not on the voters list and 5 were marked green for not being within 500 feet. Mr. Steadman explained the petition form requests a signature, print his or her name, sign the name, sign their address, list their phone number and set out the date they signed the petition. Absence of any of these is an incomplete signature. The applicant is given a package with instructions that explain this process.

Mr. Steadman explained the procedure that allows signatures to be rehabilitated. City's Exhibit 15, in evidence, are Affidavits submitted in an attempt to rehabilitate several of the rejected signatures. These documents included an affidavit from Majdi Eid certifying that these rehabilitation signatures were true and correct. After his review of the 64 signatures submitted, Mr. Steadman came to the conclusion several were signed by the same person. At that point he refused to accept any of the affidavits. He specifically identified pages 37 to 42 and 47 and 48 as pages that appeared to be written by the same person. The fact is that even if all 64 signatures had been rehabilitated the applicant would have produced only 95 of the needed 121 signatures.

Gloria Covarrubias was paid by Mr. Eid \$10.00 an hour to obtain signatures on the petitions. She received a copy of Respondent's Exhibit 2, which was the list of names and addresses she went to obtain signatures. Many people did not want to give their phone numbers. She signed and dated the petitions she circulated on November 19, 2008. The date on which many of the voters actually signed the petition is not listed because she was in a hurry. It took about two weeks for her to get the signatures.

Mr. Eid testified he worked with Gloria to obtain the signatures on City's Exhibit 14 and it took about two weeks to get the signatures. He did not accompany Dawn Gibbons who circulated other petitions in City's Exhibit 14.

This Commissioner is concerned with the fact that the City filed an amended denial letter while in the course of testimony on this case. Since this Commission is an administrative body, there are no written rules on amendments that govern our cases. This Commissioner feels that it is appropriate to balance the right of the City to produce evidence on matters that would support a denial of a license with the due process rights of an applicant. In this case the amendment adds a legal basis which, if proven, bars the issuance of this license. The issue is not complicated. Counsel for the applicant was given sufficient time to investigate this new allegation and to prepare a defense. The applicant's due process rights were protected in this manner.

Section 4-60-24 of the Municipal Code applies to application process in this case. The location of these premises was in a moratorium area. Mr. Eid was required to either have the Alderman of the 39<sup>th</sup> Ward lift the moratorium or obtain signatures of 51% of the voters within 500 feet on petitions consenting to the license. The City has met its burden of proof on its position that the applicant did not obtain the needed 121 signatures. The facts on this case are such that even if the applicant had obtained the 121 signatures the license application must still be denied. There is no dispute that this licensed premises accepted a 21-day voluntary closing/suspension on September 25, 2008. This suspension was served from October 6, 2008, through

October 28, 2008. This voluntary closing/suspension was served within 2 years of the December 30, 2008, application date. The City has met its burden of proof that this disciplinary history disqualified this location from a liquor license.

Denial of the application for this Packaged Goods license is upheld on both grounds. The decision of the Local Liquor Control Commissioner is upheld.

**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: May 7, 2010

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member