

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Buck’s Saloon, Inc. )  
d/b/a Replay )  
Applicant (Change of Officers) )  
for the premises located at )  
3439 North Halsted Street ) Case No. 14 LA 6  
)  
v. )  
)  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF AND  
COMMISSIONER O’CONNELL

Buck’s Saloon, Inc.’s application for a Change of Officers was denied by the Local Liquor Control Commission of the City of Chicago. The basis for the denial was the determination that there was significant liquor license violation history by the applicants at other locations in the city of Chicago that make them ineligible for application approval.

With respect to **John Oppenheimer**, a 29.25% owner his history was:  
Club Flamingo LTD (DBA: Redno Five)

- 2013 Public Nuisance – Voluntary Surrender of Late Hour License
- 2010 Battery by Agent and Failure to Notify Police – 30 Day Suspension
- 2007 Operating with Expired Liquor License, Operating without a Late Hour License – 25 Day Closing
- 2006 Happy Hour Violation, Battery by Agent, Failure to Notify Police, Operating without a PPA License, Occupancy Violation – 25 Day Closing
- 2005 Fire Hazard (Blocked Doorway), Occupancy Violation, Operating without a City Liquor License, Failure to Notify Police – 10 Day Suspension
- 2004 Operating without a Tobacco License, 100.100 Violation – 21 Day Suspension

- 1998 Operating After Permitted Hours, Sale of Alcohol to Minor, Sexual Abuse - \$1,500 Fine

Christopher St, LTD. (DBA: Hydrate and Halsted Bar & Grill with Hydrate)

- 2007 Sale to Minor – Not a SAM – Voluntary Fine \$1,000

With respect to **Mark Liberson**, a 29.25% owner his history was:

Christopher St, LTD (DBA: Hydrate and Halsted Bar & Grill with Hydrate)

- 2007 Sale to Minor – Not a SAM – Voluntary Fine \$1,000

The past history with respect to **Mark Kwiatkowski**, a 5% owner is:

The CUE CLUB, INC. (DBA: Uncle Fatty's)

- 2009 Failure to Notify of Change of DBA, 100.280 Violation - \$2,000 Voluntary Fine
- 2008 Failure to Display-Friendly Neighbor Sign, Failure to Display Occupancy Placard, Failure to Notify Police, Keeper of a Disorderly House, Battery by Agent, Failure to Notify Police - \$1,500 Fine
- 2001 Narcotics – 14 Day Closing
- 2001 Sale Alcohol to Minor - \$500 Fine

The applicant filed a timely Notice of Appeal with this Commission.

Since this case deals with a denial of a liquor license, the issue before this Commission is to determine de novo the propriety of the denial of this application.

Althea Cotton has worked for the City's Department of Business Affairs and Consumer Protection for 27 years and is presently in charge of the day to day operations for hospitality licensing. It is the regular practice of her department to review the disciplinary history of applicants because if a business owner has a substantial history of license violations, they tend to cause law enforcement issues and may impact the community. The application for Buck's Incorporated, for the premises located at 3249 N. Halsted, was denied because of previous liquor violations for new owners. The department also reviewed the disciplinary history of the location.

City's Exhibit 4, which has the history of Buck's Saloon, Inc., was allowed in evidence over objection.

Ms. Cotton testified the concern with this specific application was that three new owners had a substantial license history from previous locations. She recited the history associated with John Oppenheimer as a 29.25% owner of Club Flaming, LTD (DBA: Redno Five) as previously set out in this decision. She stated the disciplinary history with respect to Mark Liberson as a 29.25% owner of Christopher St, Ltd. (DBA: Hydrate and Halsted Bar and Grill with Hydrate) was a sale to minor, not a SAM, with a voluntary fine of \$1,000 in 2007. That same violation was also attributed to John Oppenheimer based on his percentage of ownership of Christopher Street, Ltd. It was stipulated that Ms. Cotton was reading an accurate recitation of what is alleged with regard to the individuals and their operation of the business in the city of Chicago. Ms. Cotton stated the department reviewed the history of the officers in this application as substantially negative.

On cross, Ms. Cotton stated she did not discuss the application with Mr. Steadman and Bennett Lawson, but did discuss the application with Mr. Steadman as members of the license review panel. It is her position that the corporation collectively is ineligible for a license based on the disciplinary history of the three individuals. Collectively, these three own 64% of the corporation and the decision is made collectively. In her mind, it did not matter for her to be aware if any of the applying individuals is responsible for the day to day operation of the business as all benefit from the business. If you own a percentage in the corporation you would have some say so in the day to day. Ms. Cotton was not aware if Mark Kwiatkowski and Mark

Liberson have recently been approved for licenses at other locations. She did not know if the voluntary surrender of Redno Five's 4:00 am licenses was the result of a license revocation proceeding. The witness admitted the denial letter did not allege the applicants made any false or misleading information and did not allege any of the applicants had been convicted of a crime or that they lack good character and reputation in the community.

Ms. Cotton stated there are approximately 26 specific bases under Municipal Code 4-60-30 upon which a liquor license must be denied, but she was not sure if any were referenced in the denial letter. She added it would not be her decision to state whether she believed any of these three individuals were ineligible to hold a liquor license.

Bennett Lawson is the Chief of Staff for 44<sup>th</sup> Ward Alderman Thomas Tunney and in that position he assists the Alderman in reviewing applications for liquor licenses. He did review the application with the Alderman and Mark Liberson. He and the Alderman did a thorough review of the application and determined they do not have deep concerns about the transfer of ownership. He is aware that Mr. Liberson owns establishments called Hydrate, Elizir, and Halsted which are all within 100 feet of each other on Halsted. It is his understanding that John Oppenheimer and Mark Kwiatkowski have ownership interests in Halsted. He and the Alderman feel they have a good history on Halsted. Halsted has not posed any law enforcement or quality of life issues with respect to residents surrounding the area. In his dealings with Hydrate and Halsted over the last ten years, no instance has arisen that would lead him or the Alderman to conclude these individuals evading or circumventing local liquor laws. In his opinion,

individually and as a representative of the Alderman, none of these three individuals pose a law enforcement threat.

On cross, the witness stated he had not spoken with the Commander about this case specifically. He is not familiar with a business known as Redno Five at 440 N. La Salle. The fact that Redno Five was involved in community meetings with the Department of Business Affairs and Consumer Protection had come to his knowledge. The witness did speak to Greg Steadman after the denial of this license to get an understanding about the denial. No objection to this license was submitted to the Department of Business Affairs and Consumer Protection, but the witness did not believe a letter of support had been submitted. His conversation with Greg Steadman led the witness to have an understanding that the denial of this license was based on the past disciplinary history at Redno Five, which was the location owned by Oppenheimer. It was his further understanding Mr. Steadman's objection did not deal with Mark Liberson or Mark Kwiatkowski. There have been no law enforcement problems at Replay in the last nine months which is the period in which the applicants have been managing the location.

Mr. Kwiatkowski has been a shareholder at M2 Dining d/b/a Halsted since 2004. He has no responsibility for the day to day operation at Halsted. He has no right to exercise control of this business since Mark Liberson has the voting shares. Mark Liberson controls the day to day operation at Halsted. His ownership in Buck Saloon's, Inc. would be as a 5% shareholder. Mark Liberson has governed the day to day operation of Buck's Saloon based on his control of the voting shares. He plays no role in the day to day operation of Buck's Saloon, Inc.

Mr. Kwiatkowski received a conditional approval from the City for a liquor license at Etno Village Grill located at the corner of Lincoln, Sheffield, and Wrightwood. In the fall of 2013, this allowed him to complete a build-out of the space. He is not open yet, but expects to open late summer after the site is inspected.

With respect to this application, Mr. Kwiatkowski submitted personal history information and personal financial information. He was also fingerprinted. He has never been made aware of any police objection to the application and was never made aware of any negative history other than the denial letter.

On cross, Mr. Kwiatkowski stated his 50/50 partner at Etno Village is a Daniel Karatosic. Neither Mr. Oppenheimer nor Mr. Liberson are on that application. He admitted the disciplinary history with respect to Uncle Fatty's set out in City's Exhibit 2 is accurate. He has been responsible for the day to day operation there since 2002 and will be responsible for the day to day operation of the Etno Village Grill. He has held a liquor license with Mr. Liberson and Mr. Oppenheimer at M2 Dining but does not know the percentage of ownership at that location.

John Oppenheimer had interests in Hydrate, Halsted, Replay, and Redno Five, businesses that have or had liquor licenses. The license for Redno Five was turned in and the property was sold in January of 2014. Redno Five was closed as a business decision and was not the result of a disciplinary proceeding against its license. He operated Redno Five with Duke Midland and Joe Trapocendo (phonetic) for fifteen years. Each of the three were officers and each owned 1/3 of the shares. With respect to the reference of a public nuisance on City's Exhibit 2, Mr.

Oppenheimer explained that as the neighborhood gentrified, there were complaints of congestion, valet parking problems, and outside noise. Redno Five was a bar/tavern and nightclub with a late hour license. Community meetings were held in 2013 in City Hall. A plan of operation was developed which included surrendering the late hour license. There was never a license revocation proceeding. Applicant's Exhibit 1, the Plan of Operation, and 2 – the cancellation of the late hour license, were allowed in evidence.

Mr. Oppenheimer owns 31% of the stock of Buck's Saloon but is not an officer and has no day to day responsibility in regard to the business decisions. He would be prevented from taking part in those operations by a shareholder's agreement where Mark Liberson has a controlling interest in the voting shares. He has a 30% in Christopher Street, Ltd., d/b/a Hydrate. That business has a similar shareholder's agreement where Mark Liberson controls the voting shares.

On cross, the witness stated matters addressed in the plan of operation included issues with valet, security, noise, litter, and the late hour license. The witness was not involved with the license in 1998 and could not comment on the history prior to 1998. The rest of the disciplinary history looked accurate to him.

Mark Liberson holds liquor licenses in the city of Chicago as a shareholder in Christopher Street, Ltd., d/b/a Hydrate, M2 Dining, Inc., d/b/a Halsted Bar, and is applying for Buck's Saloon, Inc., d/b/a Replay. All are located in the same block of Halsted in the 44<sup>th</sup> Ward. He has been President and a shareholder of Christopher Street, Ltd., d/b/a Hydrate for eleven

years. John Oppenheimer is a shareholder. The witness and his management team control the day to day business decisions and operations of Hydrate. He controls the majority of the voting shares pursuant to a shareholder's agreement. In 2009, he filed a Change of Officers application for Hydrate in conjunction with his buying out certain minority shareholders. That application was approved. Hydrate filed an expansion of premises application in 2011 to build a more upscale lounge area. That application was approved by the City. He has the controlling voting shares on M2 Dining, Inc., d/b/a Halsted and he and his management team are responsible for the day to day business operations. Mark Kwiatkowski and John Oppenheimer are shareholders but cannot override his decisions made at Halsted. An application for a PPA license for Halsted in 2013 was approved. The shareholder's agreement for Buck's Saloon, Inc. gives the witness 100% of the voting shares. He and his management team have complete control of the business decisions made by Buck's Saloon, Inc. Neither John Oppenheimer nor Mark Kwiatkowski have the ability to override any of his decisions.

Mr. Liberson is familiar with the original denial letter which is City's Exhibit 2. The total disciplinary history attributable to him is a 2007 violation for a sale to a minor. In actuality, it was that a minor was allowed in the club. In a conference with the Liquor Commissioner's representative, it was explained that a minor could not be in a tavern even if that person was not drinking. He paid a \$1000 fine. There has been no disciplinary history at Halsted Street. In the last nine months to year that he has been responsible for the day to day operation of Buck's Saloon, Inc. there has been no disciplinary history.



Prior to the start of evidence, Chairman Fleming noted that the denial letter in this case, City's Exhibit 2, did not reference a specific section of the Chicago Municipal Code as its basis for denial. It was discussed that the City be allowed to file an amended denial letter to set out that specific statutory basis for denial. Over the applicant's objection, the City was given leave to file an Amended Denial Letter. That amendment was sent to the License Appeal Commission and it is made part of the record. It is exactly the same as the original denial letter except that the first sentence states specifically that the application was denied to law enforcement concerns pursuant to Section 4-60-040 of the Municipal Code.

Section 4-60-040(h) specifically states that the local liquor control commissioner may deny an application for a city liquor dealer's license if the issuance of the license would tend to create a law enforcement problem. The Illinois Appellate Court in the case of Vino Fino Liquors 2558 v. License Appeal Commission of the City of Chicago defined the term "tend to create law enforcement problem" to mean that the City may deny a license to an applicant who would not obey liquor control laws and the law generally or who would impede enforcement of those laws." While this case is helpful in giving this definition, it also suggests that a reviewing commission or court must review the records in each case individually to determine if the City has met its burden on this issue.

To understand the Vino Fino decision it is important to review some of the significant facts on that case:

1. On July 1, 2001, Nilsa Gonzalez purchased Paco's Liquors, Inc., a licensed packaged goods liquor store. She became the president and sole shareholder of Paco's Liquors.
2. In January of 2004, and four months later, the licensee was cited for selling alcohol to a minor. The first case was settled with a voluntary seven day closing.
3. On July 23, 2004, Nilsa Gonzalez filed an application for a new packaged goods store for a new corporation at the same address as Paco's Liquors. Gonzalez was to be the president and sole shareholder of Vino Fino.
4. On September 10, 2004, the second sale to minor was settled for a \$2000 fine.
5. The denial letter specifically referenced the fact that the president and 100% shareholder of Vino Fino is the president and 100% shareholder of Paco's Liquors.
6. Richard Haymaker, the Deputy Director of the LLCC testified the license application was denied because approval would "have allowed an existing licensee escape their license history." Specifically, it would have impeded enforcement of 4-60-181(d) of the Chicago Municipal Code which provides for the immediate revocation of a liquor license upon the third sale of alcohol to a minor within three years.
7. The original decision of the LAC affirming the denial of Vino Fino's license found the purpose of reincorporating as a new corporation was "either wipe the slate clean of previous violations and start anew or to avoid responsibility for previous violations."
8. Sale of alcohol to minors is a Class A misdemeanor under state law (235 ILCS 5/6-16)

The relevant facts with respect to this application include:

- a. The applicants are seeking approval for a Change of Officers and are not intending to avoid any past disciplinary history of the corporation holding the present liquor license.
- b. John Oppenheimer and Mark Kwiatkowski will not have any management control of the day to day operations of the business. All day to day operation decisions will be made by Mark Liberson and his management team.

- c. With respect to John Oppenheimer, the facts surrounding the 2013 Public Nuisance leading to a Voluntary Surrender of the Late Hour license of Club Flamingo, Ltd. (DBA Redno Five), do not establish any violation of liquor laws on the law in general.
- d. Also with respect to John Oppenheimer, the testimony in the record is un rebutted that he was not involved with the operation of Club Flamingo, Ltd. (DBA Redno Five) in 1998 when there were violations of operating after permitted hours; sale of alcohol to a minor, and sexual abuse - \$1,500 fine.
- e. There is no evidence in the record to establish what role, if any, John Oppenheimer played in the other matters listed in the denial letter that did occur while he was an active owner of Club Flamingo, Ltd. (DBA Redno Five). That with the exception of the allegations of battery by an agent, the other violations are not misdemeanors under the criminal code.
- f. With respect to Mark Kwiatkowski, the 2001 narcotics and sale to minor which resulted in penalties of a 14 day closing and a \$500 fine occurred prior to his having an ownership interest in THE CUE CLUB and cannot be attributed to his operation of this licensed premises since 2002.
- g. Also with respect to Mark Kwiatkowski there is nothing in the record to document whether he was personally involved in the matters that were the basis of disciplinary action in 2008 and 2009.
- h. That with respect to Mark Liberson the only discipline on his record is a 2007 sale to minor – not a SAM which resulted in a \$1000 fine. (This same sale is attributable to John Oppenheimer who did not have management control) This occurred at Christopher Street, Ltd. (DBA Hydrate and Halsted Bar and Grill with Hydrate).

The issue in this case comes down to whether the approval of the Change of Officers application based on the proposed restructure of the existing corporation will tend to cause a law enforcement problem. Unlike Vino Fino where there was a sole shareholder and president with a personal history of sales to minor attempting to evade that history by incorporating a new company, the applicants are purchasing an existing corporation and will inherit the disciplinary history of Buck's Saloon, Inc. Unlike Vino Fino where there was a direct link between the operators of Paco's Liquors and its disciplinary history to the applicant in Vino Fino, there is no

link between the previous operators of Buck's Saloon and these applicants. The facts in the record establish that John Oppenheimer and Mark Kwiatkowski will not be involved in the day to day management of Buck's Saloon, Inc. The fact that in all his years of operating liquor license establishments Mark Liberson can be connected to one sale to a minor is not sufficient evidence to conclude that the decision of the Local Liquor Control Commission to deny the Change of Officers application was proper.

The denial of the Change of Officers application is reversed.

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: August 7, 2014

Dennis M. Fleming  
Chairman

Stephen Schnorf  
Member

Donald O'Connell  
Member