

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Dynamic Food & Liquor, Inc.)
d/b/a Dynamic Food & Liquor)
Applicant (Packaged Goods))
for the premises located at)
301 South Pulaski Road) No. 10 LA 49
)
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

Dynamic Food and Liquors, Inc., applied for a Packaged Goods license for the premises located at 301 S. Pulaski. (Despite the fact it was mentioned at times in the record that this was a change of officers application the documents in the record are for an application for a new license in the name of the new corporation at this location.) The letter of denial sets out the application did not meet the criteria listed under Section 4-60-021(c) of the Municipal Code of Chicago. Prior to the start of proceedings the parties agreed that section was listed in error and that the case would proceed under Section 4-60-024 of the Municipal Code. Since this case deals with a denial of an application the matter of the propriety of this denial was tried de novo by this Commission.

Section 4-60-024(e) deals with the requirements an applicant must meet if they wish to successfully overcome a moratorium on additional liquor licenses if that applicant is a person

acquiring the licensed premises by purchase. In general, the applicant must give notice to all legal voters within a distance of 500 feet from the licensed premises and then file with the Department of Business Affairs and Consumer Protection the written consent of 51 percent of the legal voters as registered within the 500 foot area. This ordinance also states that after the Department of Business Affairs and Consumer Protection or its designee has verified the legitimacy of all signatures supplied with the application and any revocations that may be filed, the department shall certify whether sufficient valid signatures have been filed to proceed with the application.

A synopsis of the evidence presented at the hearing will help one understand the analysis of this decision.

Barbara Parker has been a Senior Business Consultant for the City of Chicago's Department of Business Affairs and Consumer Protection for four and a half years. In that capacity she assisted applicant Dynamic Food and Liquor in its application for a new packaged goods license at 301 S. Pulaski. After checking the moratorium module she became aware that there was a moratorium in place at that location which prohibited new packaged goods licenses.

There was a procedure for an applicant to overcome the moratorium by filing a "moratorium application" and submitting signatures from 51% of the registered voters within 500 feet of the establishment supporting their application for the package goods license. The Department provides the applicant with a list of the registered voters. That list is generated through its computer system. Ms. Parker identified City's Exhibit 2, in evidence, as the list of

voters within 500 feet of 301 S. Pulaski that was generated in connection with this application. The witness then identified City's Exhibit 3, in evidence, as the petitions submitted in support of lifting the moratorium. Applicants also usually provide an affidavit stating the number of people who have moved or are deceased. The total of those names are subtracted from the total on the list. City's Exhibit 5, in evidence, was identified as the affidavit of deceased voters provided by Amin Elayyan on behalf of the applicant. It lists 35 people who allegedly died. City's Exhibit 6, in evidence, is an affidavit from Amin Elayyan on behalf of the applicant listing voters that had moved. It listed 305 people. City's Exhibit 4, in evidence, is a notarized correspondence from Amin Elayyan to Ms. Parker dated December 22, 2009, which states he found 324 people had moved; 30 addresses are vacant, and 38 are deceased.

The witness identified City's Exhibit 7, in evidence, as a worksheet prepared in part by her that analyzes the petitions. Florence Hardy also worked on City's Exhibit 7. City's Exhibit 8, in evidence, was identified as an internal application summary that was not disclosed to the applicant. It was prepared by her and sent to the Local Liquor Control Commissioner for review. On Page 8, under the moratorium section there is a blank for the space "10% of above confirmed." This means that 10% of the signatures on the petition had not yet confirmed by the investigations unit. Ms. Parker stated that Investigator Murray was assigned to verify what was presented to the department was accurate.

Ms. Parker again asserted this was an application for a new license and not a change of officers. She maintained there presently is not a liquor license at that address. She explained an applicant must provide a copy of all the certified receipts mailed and the return receipts.

Dynamic Food did submit those receipts but she does not remember the number of pieces of mail sent out. The moratorium numbers on City's Exhibit 8 reflects 875 registered voters within 500 feet. From that number 392 voters were reportedly deceased or moved leaving a total of 466. This number on the sheet was not verified by inspectors. 446 signatures were submitted and 80 were disqualified which left 366 valid signatures. 238 valid signatures were needed to lift the moratorium.

Ms. Parker reviewed City's Exhibit 3 and 4, which reflect 324 residents moved, 30 are vacant, and 38 are deceased. This comes to a total of 392. There were also 17 duplicate voters which would also be deducted from the original total of 875 voters. This is how the valid number of voters was determined to be 466.

Michelle Murray is an Investigator for the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission. She and Investigator Walter Clement were assigned by their supervisor to verify the information presented in the affidavits. She was attempting to confirm if people on City's Exhibit 5 had moved and whether the people on City's Exhibit 6 were dead. This investigation took about three hours.

With respect to City's Exhibit 5, the list of voters respondent asserted were deceased she checked 18 and one voter was still living. With respect to the 305 voters listed on City's Exhibit 6, that respondent asserted had moved or the address was vacant she checked 112 names and 9 persons still lived at their locations. She could not say which person was still alive or which persons were still living at their locations.

The usual type of signature case that comes before this Commission deals with whether an applicant has submitted sufficient good signatures to overcome the moratorium. Testimony is presented by the City to remove signatures for various reasons and applicants present testimony to support having the challenged signatures counted as valid. This does not seem to be the facts of this case. The calculation provided in the City's case in chief states a requirement of 238 valid signatures and applicant submitted 366 valid signatures. This would mean the applicant submitted 128 more signatures than required. If one adds the ten voters to the valid voters list the licensee would need to produce 51% of 476 or 243 voters. This would still result in excess signatures.

Since this case does not seem to address the issue of the number of valid signatures this Commission will address the application section of the ordinance the parties agree should have been listed in the denial letter. After explaining the process for obtaining signatures it states... "after the Department of Business Affairs and Consumer Protection or its designee has verified the legitimacy of all the signatures supplied with the application and any revocations that may have been filed, the department shall certify whether sufficient valid signatures have been filed to proceed with the application." This section seems to require the Department of Business Affairs and Consumer Protection to do two specific acts for moratorium applications.

These are:

1. Verify the legitimacy of all signatures supplied with the applicant; (emphasis added)
2. Shall certify whether sufficient valid signatures have been filed to proceed with this application.

The record reflects that neither of these steps were followed in this case.

Ms. Parker testified that investigators verify 10% of the signatures but she did not explain what happens if the results of that 10% canvass reveals fraud or simple errors. It would seem that there would be a procedure or protocol to address the results of the 10% canvass but there is no evidence of such in the record. This Commission can speculate as to what those procedures might be but that speculation cannot be a basis for a decision.

The Department never certified whether sufficient valid signatures have been filed to proceed with this application. The denial letter does not address that issue at all. It does hint that the results of its 10% canvass showed fraud or inaccuracies on the petition sufficient to reject them outright, but it does not so allege those matters. Counsel for the Local Liquor Control Commission stated it is the applicant that has burden of establishing it has presented a sufficient number of signatures. That may be so but the ordinance seems to require that the department first verify the legitimacy of all the signatures and certify whether enough valid signatures have been filed.

The two requirements of the Municipal Code as previously set out have not been complied with by the Local Liquor Control Commission. The evidence in the record at this hearing shows that the applicant followed the proper procedures and that it presented sufficient valid signatures to overcome the moratorium and proceed with the application.

The denial of this application based on 4-60-024 of the Municipal Code 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: June 29, 2011

Dennis M. Fleming
Chairman

Donald O'Connell
Member