

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

75th Street Entertainment, Inc.)
d/b/a Club Escape)
Applicant (Late Hour))
for the premises located at)
1530 East 75th Street) Case No. 17 LA 8
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

BACKGROUND OF THE CASE

75th Street Entertainment, Inc., d/b/a Club Escape, applied for a Late Hour liquor license. That application was denied on March 17, 2017, by Local Liquor Control Commissioner Shannon Trotter for three separate reasons.

The first basis for denial was that the Applicant failed to secure the majority of voter signatures needed. Section 4-60-130 (e) of the Municipal Code stated in relevant part, “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.” The Applicant was required to get the signatures of 50% + 1 of the registered voters within 500 feet of the business premises as listed on the voter registration list provided to the Applicant. The Applicant collected an insufficient number of registered voter signatures.

The second basis for denial was law enforcement concerns raised by the Police Commander for the Third District who expressed his position that the issuance of the late hour license would lead to law enforcement concerns. Section 4-60-040 (h) states, “the local liquor control commissioner...may deny an application for a city liquor dealer’s license if the issuance of such license would tend to create a law enforcement problem.”

The third basis for denial of this application was that the Applicant’s exterior safety plan was insufficient. Section 4-60-130 (f) of the Municipal Code states, “every application for a late-hour privilege must be accompanied by an exterior safety plan meeting the requirements of this section (f).” It was alleged the exterior safety plan submitted by the Applicant does not meet with all the requirements.

The Applicant filed a timely appeal of the denial with this Commission on April 5, 2017. The matter proceeded to hearing on June 14, 2017. The Applicant was represented by Stephen Berrios of the Shiller Preyar Law Offices. The City was represented by Assistant Corporation Counsel Matthew Allee.

SUMMARY OF PROCEEDINGS

Darren Doss has been a Chicago Police Officer for 27 years and has been the Commander of the 3rd District for about 18 months. The general boundaries of the 3rd District are from 61st to 75th and from the Ryan to Lake Shore Drive. The 1530 E. 75th Street establishment is located within the boundaries of the 3rd District. Club Escape, which is a bar and dance club, is located at that address.

Immediately south of Club Escape is a Jewel and east of that is Jackson Park Hospital. Around the corner on the north side of 75th Street is a gas station with restaurants to the east. There is a senior citizen home on the same side of the street as well as a few local businesses. On the other side of 75th Street to the west, each block has multiple unit buildings as well as single-family homes.

Commander Doss is aware that 75th Street Entertainment, d/b/a Club Escape, has applied for a Late Hour Liquor License for the premises at 1530 East 75th Street. His opinion is that the late hour license should not be granted based on the demographics of the neighborhood. That area is an ongoing gang conflict for the district and the late hour license would give the existing criminal element a target risk environment and more opportunity to avail themselves to crime in the neighborhood. There are also citizen concerns of the late hour noise and things that go along with a later license.

The ongoing gang activity in the area is traditional and has been going on for years; for quite a while. It has been going on since he was the Tactual Lieutenant in the 3rd District and before he was ever assigned to the 3rd District.

The Commander testified that Club Escape itself and its enclosed environment is not the problem. It is parking outside and when people leave the club. There is no parking facility so they park along 75th Street and the side streets. Right now the calls for service show robberies along 75th Street and batteries to the north. He reviewed the calls for service for this location and found they were numerous and of every variety.

Given the environment, he sees an uptick and a cause for concern of the license if the license were to extend after 2:00 am. There have been shots fired calls and people have been shot in that target risk environment. If that environment is extended, there will be more opportunities for these crimes.

On cross, Commander Doss testified he has never met Warren Berger. He went to Club Escape before the Cubs won the World Series to ask if they would be celebrating the Cubs win. He has been present in response to several calls outside of Club Escape along 75th Street. He could not remember the specific dates he responded to calls. He has never received any calls for incidents inside Club Escape and to the best of his knowledge; there have been no incidents inside Club Escape. He has been in the 3rd District for approximately three years.

The witness explained further the term “target risk environment.” In that area, there are Gangster Disciples that call themselves Sirconn City. Immediately to the north are the Pocket Town Gangster Disciples. They cruise this area and when they see people in the area on 75th Street they shoot. These two rival factors of the Gangster Disciples do not frequent Club Escape but they traverse 75th Street.

Commander Doss did not know Club Escape’s clientele. When he did visit the club, there were men and women as old as him, 51 and younger. He did not mention parking as a concern in his letter to Business Affairs and Consumer Protection and he did not know Club Escape has a parking lot.

Bryan Knipper has been a Business Consultant Supervisor with the City of Chicago's Department of Business Affairs and Consumer Protection. He oversees the hospitality consultants which encompasses liquor license applications. He is aware that on September 13, 2016, 75th Street Entertainment, Inc., d/b/a Club Escape, filed an application for a Late Hour Liquor License for the premises located at 1530 East 75th Street.

Mr. Knipper stated a late hour applicant needs to do a series of activities leading up to the filing of the application. They obtain a list of registered voters from the department and they are to send a registered mailing to each one of those registered voters signifying they are applying for a late hour liquor license. They must also notify the alderman by certified mail that they are applying for a late hour liquor license. The applicant has 60 days to obtain signatures on a petition of a majority of the registered voters. They also need to submit a late hour exterior safety plan. The alderman and the police commander are also notified. These requirements are pursuant to the City's Municipal Code.

At the beginning of the process, the business consultant provides the applicant with a list of registered voters within the 500-foot radius. It is prepared from the Chicago Board of Elections. The applicant takes the list and sends out registered letters to all the voters on the list. The applicant must keep the returned slips showing they did the mailing notifying the voters of the late hour application. After the mailing goes out, the list is used to go door to door to obtain a majority of the registered voters' signatures on the petition to allow a late hour license.

In this case, the Applicant obtained the late hour packet and voter list on May 2, 2016. The Applicant submitted completed late hour petition forms to the department within 60 days of filing the application. The witness identified City's Exhibit 4A, in evidence, as the Petitions filed in this application. The markings on the petitions were made by the two business consultants that analyzed these petitions. These consultants were Shuaib Menk and Lawrence Smith. Consultants use varying colors and notations to say if a signature is valid. Anything crossed off would mean that person is not on the BACP list. Check marks would mean the signatures needed to be verified.

Mr. Knipper identified City's Exhibit 4B, in evidence, as a Petition Analysis form completed by the consultants. The process starts with verifying the mailings. The number of registered voters on the list is determined and the applicant has the opportunity to submit a list of voters they believe are deceased or moved. That number is subtracted from the total number of voters to the amount of people available to sign the petition. That number is divided in half and one is added for the simple majority. In this case, there were 222 voters which cut in half is 111 and adding one, the majority, would have been 112.

The consultants then go back through the petition list and examine the signatures to see if the signature is legible and what address is associated with that signature. They then go back to verify the name and address is on the voter list. The City tries to give the benefit of the doubt. It is a two-part process; part one is defining the universe of possible voters and part two is verifying or analyzing the submitted petitions against the universe list.

Knipper stated that in this case, both business consultants felt the number of signatures was insufficient to meet the burden of a majority of the registered voters in the area. This was one basis for denying this application.

The other bases for denial were that the late hour exterior safety plan needed some work and the police commander's objection. The witness identified City's Exhibit 1, in evidence, as the denial letter in this case.

City's Exhibit 6, in evidence, includes a recapitulation sheet prepared by the Applicant which lists what the Applicant felt was valid signatures. Subsequent to the submission, another review was done. City's Exhibit 9, in evidence, was generated with the new submission to see if additional signatures on the petition should be counted. After this additional review, the Applicant was 21 signatures short on this analysis.

Mr. Knipper explained this exhibit shows the list of registered voters within 500 feet totaled 246. There were 24 duplicate entries that were withdrawn which dropped the number to 222. The applicant submitted a list of 20 voters who were deceased or moved and after a review, the City agreed 14 had moved or died which reduced the number to 208. Two of the signatures on the petitions were not on the BACP list but were found to be valid which increased the number of eligible voters to 210. The required number of signatures was 50% + 1 of 210 or 106 valid signatures on the petitions.

City's Group Exhibit 3, in evidence, was identified as the Voter List from BACP given to the Applicant. Part of the exhibit is the list of 20 voters the applicant wanted removed from the eligibility list because that person had moved or died. The final document in this group exhibit was the result of the city investigator's canvass of the 20 submitted names that were invalid entries and were not removed from the list of eligible voters.

City's Exhibit 8, in evidence, shows that the Applicant submitted a total of 152 signatures. The Applicant's signature collector did a duplication and validity analysis and struck 34 signatures which dropped the number to 118. One of these signatures, that of Sade Weathers, was a duplicate reducing the number to 117. The department's investigation found 43 signatures were not on the Voter List provided to the Applicant by BACP. Of these 43, BACP accepted 11 but 32 were confirmed as invalid. That took it down to 85 total signatures. With respect to the 11 signatures allowed those dealt with variations in the names or misspellings.

With respect to the 32 confirmed as invalid signatures, the city investigators did not find these names on the original list provided to the Applicant. An investigation of the Board of Election records was done to see if these names had been registered or had subsequently registered. City's Group Exhibit 4, in evidence, are the Poll Sheets from the 2nd and 21st Precincts of the 8th Ward for the March 25, 2016, Election and the November 8, 2016, Election. These elections were used because they would have bracketed when the list was created on May 2, 2016.

The second page of City's Exhibit 9, in evidence, listed results of this investigation into the 32 possible signatures. It is broken down in response to the recapitulation sheet provided by the Applicant. Of these 32 signatures, none were on the BACP list or the Board of Elections poll sheets for the March 15, 2016, Election. Twenty-six were not on the Board of Elections poll sheet for the November 8, 2016, Election. The six that were on the November 8, 2016, Election poll sheet on October 3 or October 5, 2016, would not have registered on the date they signed the petition. None of the 32 were found to be valid which left 85 valid signatures. This left the Applicant 21 short of the 106 required signatures.

Mr. Knipper identified City's Exhibit 4C, in evidence, as the Exterior Safety Plan submitted by the Applicant. It contains notations on it made by Business Consultant Menk. Those notations were his thoughts on points to embellish and put more meat into the exterior safety plan. The plan did not have insurmountable problems but the City wanted to see more detail.

The witness identified City's Exhibit 5, in evidence, as a To/From Report from Commander Doss recommending this application be denied for the deleterious impact it would have on the surrounding 3rd District community.

In response to question from Chairman Fleming, Mr. Knipper stated it was the City's position that if six people who registered later are included as valid signatures, the applicant would still not have enough valid signatures.

On cross-examination, Mr. Knipper agreed that he did not create the documents but that he reviews the documents. He did not personally do a review of the signatures for the analysis.

With respect to City's Exhibit 4B, Mr. Knipper acknowledged the exhibit states a total of 304 signatures were submitted. 226 were not approved and 78 were approved. That 304 total was an error. Mr. Knipper also agreed that the total number of voters listed on City's Exhibit 3, the list given to the applicant, is listed at 242. The number is at least inconsistent with the number on City's Exhibit 9, and the denial letter which stated there were 246 names on the BACP list. If the 24 duplicate names were deducted from 242, it would leave 218 eligible voters.

Mr. Knipper did not personally do a review of the 20 voters listed on the moved or deceased list. That was done by the investigation unit and set out in an email that is part of City's Exhibit 3. Knipper agreed there are three layers of people referenced in the email who performed a review. Investigator Murray listed her findings, but there are no notations or bases on which she performed her review. Her supervisor, Miguel Campos, makes a series of findings without saying how he came to the conclusions only that they were based on Michelle's representations. Mr. Menk just uses the numbers as generated here.

The witness repeated he did not do the analysis in City's Exhibit 9, Part Two, which led to eleven signatures being accepted as valid. It was explained to him that the person reviewing found a reasonable cause to add those names such as a hyphenated name or a misspelling.

Mr. Knipper was given Respondent's Exhibit 1 to review and he identified it as a document from the Chicago Board of Elections that stated Fred Cross is registered at 1448 East 75th Street, Chicago, Illinois as of June 8, 2017. The second page is an Illinois voter registration application date stamped March 15, 2016. Mr. Cross was not listed on the Board of Elections poll sheet or on the BACP list given to the applicant.

Respondent's Exhibit 2, was described as a Voter Registration Certification from the Chicago Board of Elections which stated that a Kirkland B. Washington, Sr. at 1448 East 75th Street, Unit Number 501, Chicago, Illinois 60619 was registered as of June 8, 2017. The second page reflects a change of address or possible original registration date stamped July 6, 2006, at an address of 618 S. Wabash, Chicago. Page three seems to show a change of registration to 1448 E. 75th as of October 5, 2016. Mr. Knipper admitted he does not know how often the Board of Elections updates their registry.

Mr. Knipper repeated he did not perform the review of the petitions in City's Exhibit 4A. His testimony that a check equals good and a highlight indicates bad was based on a quick glance at the sheets. One of the Petition Analysis Forms in 4B lists six different colors, but 4A has only one color highlighting signatures and that is a purplish hue. The witness assumed the purplish hue corresponded to signatures stricken because they were not on the list of voters.

On redirect, Mr. Knipper clarified the distinction between a starting number of 246 voters as opposed to 242 voters. Exhibit 4B calculates the total number of voters on the voter list was 246. Four of the names were duplicates which reduced the number to 242. That number 242 is

the same total of voters at the bottom of the last page of the provided voter list. The four duplicates on the voter registration list were removed before the voter list, in this case, was given to the Applicant.

Mr. Knipper stated that Fred Cross was on the list of eligible voters for the November 2016 Election and he was added back and counted as a valid signature. Another voter was also added back and counted.

Marc Loveless is a Civil Rights Advocate who serves on the Cook County Commission for Social Innovation and runs an organization called Coalition for Justice and Respect. He is presently pursuing a master's in business at Roosevelt University.

Mr. Loveless is familiar with Club Escape in that Club Escape has been a strong partner in getting information to the community about HIV prevention and awareness. Club Escape is a black LGBT bar that has dancing and performers. In the mainstream white gay community on the north side, there is a plethora of bars, clubs, restaurants and those sorts of things. The desire of black MSM's to socialize is limited because there are only two clubs for them including Club Escape. He comes to Club Escape to get information out about the outbreak of AIDS in the group of young black men. Club Escape has been helpful in getting that message out to their customers. He has been to Club Escape about eight times within the last year. He has never seen a fight inside Club Escape or seen police inside Club Escape.

Mr. Loveless opined a late hour license at Club Escape would help the community because that community has a limited number of venues. This would be the only venue open that late and would give him more time to do things like testing and vaccinations and trying to help people get linked to care.

John Preston has been involved with elections in the city of Chicago for 35 to 40 years. In that involvement, he has gone door to door to collect signatures for someone trying to get on the ballot. He has conservatively worked on 75 to 100 elections. He has participated in records examinations where one candidate challenges the signature of the opponent. He is familiar with the software used by the Chicago Board of Elections to store voting records registration. He has used or engaged this software 40 to 50 times.

Mr. Preston collected signatures of registered voters on petitions for Club Escape in May and June of 2016. He was contracted to do the work by the Law Offices of Shiller Preyar. In obtaining these signatures, he followed a list provided to him by the law office. While canvassing he encountered registered voters who were not on the list provided by the contractor. He collected those persons signatures as those persons represented that they were a registered voter.

Earlier this year, he contracted with the Shiller Preyar Law Offices to verify signatures being contested. He went to the Chicago Board of Elections and matched signatures on the petitions with the signatures at the Board of Elections. He looked at the similarities of signatures and made sure the voter was registered. He came to a total of 118 valid signatures.

In the summer of 2016, he constructed a list of moved and deceased voters after his canvassing of the sheets he had been provided and confirming with other voters that those people were deceased or moved. He did not speak with everyone on the list and it is possible there were others on the provided list who also moved or were deceased.

On cross, the witness identified part of City's Exhibit 3 as the list of names provided by BACP. The page after that list is the list of deceased or moved voters that were to be removed from the total number of eligible voters. A Raheem Jordan at 1501 E. 74th was listed as moved. After reviewing City's Exhibit 6D, line 15, the witness agreed there is a signature from a Raheem Jordan included on the moved and deceased list. Mr. Preston also agreed the names of Patrizza Jones and Gary Mayberry are on his deceased/moved list, but their signatures are on Petition F, lines 24 and 25 of City's Exhibit 6.

Mr. Preston was referred to City's Exhibit 9 which contains a summary by the city of the submitted petitions. The document lists 32 individuals the city found not valid with 26 having no record of being registered with the Board of Elections until the November 2016 Election. With reference to Yvette Hill, who was counted by the witness as a valid signature, the witness agreed Yvette Hill was not on the poll sheet for the March 2016 primary or the November 2016 poll sheet. The petitions were obtained in May of 2016. Mr. Preston denied this would be an invalid signature based on the fact the name was not listed on either of these two poll sheets.

On redirect, the witness stated he made the moved and deceased list after he collected all the signatures. He did his recapitulation sheets in 2017. He reviewed the signatures before he

turned them in to his contractor. This review was based on a computer at the Board of Elections and was done after November of 2016.

Warren Berger has run the 75th Street Entertainment Corporation which owns Club Escape for over 20 years. Club Escape is an LGBTQ tavern which is primarily a men's oriented facility. The average age of the patrons would be 50 with a range between 25 to 70. He has never seen Commander Doss at Club Escape. There have been no incidents inside Club Escape which has a zero tolerance regarding fighting. If there is a potential problem people are asked to leave and they probably would not be invited back. There are six employees with one to two acting as security depending on the day of the week. His main security person has been enrolled in a security school and is in the process of getting his PERC card. There has never been an issue with gang activity and no history of Gangster Disciples wars inside the club.

The witness explained the LGBTQ community as a whole comes out later than the normal community and would enjoy being able to stay out later because they do not arrive until 12:30 or 1:00. He added there is plenty of parking including a lot and street parking. He cleans the street gutters and sidewalks everyday and trash is picked up twice a week by private people as well as by the city. A security person is posted at all times at the front door and he counts to see the number of people occupying.

ANALYSIS

The first basis of denial to be analyzed will be whether the Applicant obtained and filed with the Department of Business Affairs and Consumer Protection the written consent of the

majority of the legal voters registered within the affected area. The applicant needed to get 50% + 1 of the registered voters within 500 feet of the business premises as listed on the voter registration list provided to the Applicant.

In order to establish the number of the signatures needed, it is necessary to determine the number of the names provided on the voter list provided by BACP. The City maintains that number is 242, while the Applicant refers to the number 246 as listed in City's Exhibit 1; the denial letter. The count of the number of names on the voter list is 242 which reflects any duplicate names were removed. The original list of voters on the list given to BACP by the Board of Elections was 246 but included four duplicate names. The starting figure of this analysis is 242.

The Applicant tendered a list of 20 voters that moved or died. An investigator from BACP confirmed two people were deceased, four were still living at the location, five were verified as moved, and there was no entry on nine people. Despite this finding, the Local Liquor Control Commissioner deducted all 20 names on the deceased/moved list which left a total number of individuals available to sign the petition as 222. Fifty percent plus one brought the number of signatures required to sign the petition as 112.

Three hundred and four signatures were submitted on the petition forms. 143 names were removed based on the fact they were not listed on the voter list provided to the applicant. Those removed names were marked in purple on the Department's Analysis Form dated 1-9-17, which is in evidence as City's Exhibit 4B. A review of these marked signatures confirms the fact

these signatures were not on the list provided to the applicant by BACP. The review of the submitted petitions by BACP showed 92 duplicate signatures. Adding the names not on the list and the duplicate names totals 224. Subtracting 226 from the 304 leaves 78 valid signatures which is below the required 112 voters.

In response to the city's evaluation of the petitions, the Applicant submitted signature recapitulation sheets alleging they contain 118 valid signatures. Mr. Preston testified that in 2017, he went to the Board of Elections and personally inspected these signatures. He reported all signatures were valid as of that 2017 inspection. This evidence does not address the issue in this case which is whether these signatures were valid signatures of registered voters listed on the voter list provided to the Applicant pursuant to the Municipal Code.

Part of City's Exhibit 9 is a breakdown of 32 of the signatures on Applicant's recapitulation sheets. Twenty-six voters are not listed on the BACP list, the March 15, 2016, election poll sheets, or the November 2016 poll sheets. Six are found only on the November 2016 poll sheets.

Taking the evidence in the light most favorable to the Applicant, it did not provide the 112 signatures needed pursuant to the Municipal Code.

The second basis for denial of this license was that its issuance would tend to create a law enforcement problem--Municipal Code of Chicago 4-60-040 (h). The testimony on this issue came from the District Commander who explained that the location of the Applicant was such

that a late hour license would tend to create additional opportunities for law enforcement. The Commander admitted that there is already a law enforcement problem in this area and admitted that the Applicant is not involved in this law enforcement problem.

There has been different approaches to what the city must prove in cases where an applicant has been denied on the issue of whether the issuance of this license at this location would tend to create a law enforcement problem. Under the approach in the case of *Vino Fino Liquors v. City of Chicago*, 394 Ill App 3d 516, 914 N.E. 2d 724 (2009), the focus was placed on the background of the applicant. That approach is that if an applicant has no background of violating liquor laws or the law in general, the issuance of a license would not tend to create a law enforcement problem.

The second approach to these type cases was set out in *Move N Pick Convenience, Inc., v. Emmanuel*, 30 N.E. 2d 661 (2015). In that case, the Appellate Court reviewed the particular facts in *Vino Fino* and reviewed in detail the opinion in *Vino Fino*. The Appellate Court found that the court in *Vino Fino* never stated that an applicant's history was the only factor to consider when assessing whether the issuance of a liquor license would "tend to create a law enforcement problem." The Appellate Court in *Move N Pick* upheld the denial of the liquor license based only on the location of the requested liquor license and the testimony from the police commander that the area in question was subject to increased criminal and gang activity and the Insane Disciples street gang was a huge problem in that neighborhood. Commander Doss referenced the calls for service in the area and explained how these impacted police service in that area.

There is no dispute that the Applicant has not operated this licensed establishment in a manner that has ever violated liquor laws or the law in general. It is well respected in its community. The evidence in the record from the Commander is undisputed. This late hour liquor license would tend to create a law enforcement problem due to its location and to the ongoing gang activity and infighting in the area.

The third basis for denial of this late hour license was a finding by the Local Liquor Control Commission that the exterior safety plan submitted by the applicant did not meet all the requirements of Municipal Code 4-60-130(f). There was no competent evidence presented as to what the specific differences were and/or how they could be corrected. Mr. Knipper's testimony suggested any problems were minor and should be resolved between the parties.

DECISION

The burden of proof, in this case, is whether the City proved the bases for denial of the late hour license by a preponderance of the evidence.

After a review of the entire record and having had the opportunity to observe the witnesses testify and to weigh their credibility, this Commissioner finds that the City did not prove the exterior safety plan submitted by the Applicant did not meet the requirements of Municipal Code 4-60-130 (f).

The City did prove by a preponderance of the evidence that this Applicant did not obtain and file the written consent of a majority of the legal voters registered within the affected area pursuant to Municipal Code of Chicago 4-60-130 (e). The City also proved by a preponderance

of the evidence that issuance of this license would tend to create a law enforcement problem pursuant to 4-60-040 (h) of the Municipal Code.

Based on both of those findings, the decision of the Local Liquor Control Commissioner to deny the application for a late hour liquor license 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: September 1, 2017

Dennis M. Fleming
Chairman

Donald O'Connell
Member