

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Bond Drug Company of Illinois )  
d/b/a Walgreens #05356 )  
Applicant (Packaged Goods) )  
for the premises located at )  
4710 South Western Avenue )  
 ) No. 10 LA 44  
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

On July 29, 2010, Gregory Steadman in his position as the Commissioner of the Local Liquor Control Commission sent a letter to the applicant denying its application for a Packaged Goods liquor license for 4710 South Western. This denial was based on the City of Chicago Municipal Code 4-60-040 which states in relevant part that “The local liquor control commissioner...may deny an application for a city liquor dealer’s license if the issuance of such a license would tend to create a law enforcement problem...” The applicant filed a timely Notice of Appeal and this matter proceeded to de novo hearing before the License Appeal Commission. Since this case deals with the denial of an application for a liquor license the issue before this Commission is to review de novo the propriety of the decision denying the packaged goods application.

A review and summary of the evidence presented at the hearing will aid one to understand the facts of the case and bases for the decision.

The City called Officer Alonso Garza. He has been a Chicago Police Officer for 18 years and is currently the Business Liaison Officer in the 9<sup>th</sup> Police District. In that role he puts himself out to the business community in the 9<sup>th</sup> District to facilitate their police needs and to be helpful to them.

As part of his duties, he also reviews liquor license applications on behalf of Commander David M. Jarmusz. He testified in his official capacity at the request of Commander Jarmusz. He was aware that Walgreens filed an application for a packaged goods liquor license for the premises at 4710 S. Western. That location is within the 9<sup>th</sup> District. He was assigned to investigate that application and he did so investigate. In that investigation he reviewed the history of calls for service or arrest at that location. He would generate copies of any police reports. He then conducted an on-site interview with the applicant to discuss present problems and whether there would be future problems from the sale of alcohol. He would have also reviewed their current licenses. When these steps were completed a synopsis of the investigation was given to the Commander. Garza recommended to the Commander that he disapprove the application. Garza identified City's Exhibit 3, in evidence, as a copy of Commander Jarmusz's letter to the Department of Business Affairs and Consumer Protection dated July 20, 2010 objecting to the issuance of the license. The basis of this objection was high crime in the area and the calls for services generated at that location.

Garza conducted his personal interview on June 21, 2010. He spoke to the store manager, Ms. Ashqar. The conversation lasted about fifteen minutes. She described the area

where the liquor would be installed. They discussed the reports generated about calls for service and police reports, and he asked her specifically about an armed robbery where the offender was held for the police. She mentioned a security guard had been employed at that location for about a year and half because of shoplifting issues. The security guard worked in the evenings.

The area of 4710 S. Western was described by Garza as being the corner of the main thoroughfare of Western Avenue and 47<sup>th</sup> Street. It is a main artery with a lot of foot and vehicular traffic. There are no locations that sell alcohol within a two-block radius. This location has a parking lot.

Garza explained the Chicago Police Department uses the ICLEAR system to keep and maintain a database of information concerning police incidents, calls for service and arrests in Chicago. The system is self-generating in that calls to 911 or 311 are automatically entered into the system by the operator within 24 hours. The records are kept in the regular course of business 24 hours a day, 365 days a year. With that system one is able to request reports of calls for services or arrests relative to a particular location.

City's Exhibit 7 (a-d) was identified as ICLEAR reports for service calls for 4710 S. Western from June 1, 2009, through June 21, 2010, and from July 1, 2010, through January 12, 2011. Service calls is a generic term given to a 911 or 311 call for any city service. These reports document 50 calls for service at 4710 S. Western. There is a report of an assault on August 30, 2009, and a call for a person with a knife on November 12, 2009. The final disposition on that call was that it turned out to be an armed robbery. There was an assault in

progress reported on December 21, 2009, with a final disposition listed as an aggravated assault using her hands. On February 1, 2010, there is a call from U.S. Cellular about a battery in progress. There was three other calls on this incident with a final disposition of an aggravated battery. There was a call of a man stabbed on May 12, 2010, with a final disposition of an armed robbery. The initial dispatches noted EMS refers to Emergency Management Services for an ambulance. The term “final event” in the final disposition column means the event was closed. City’s Exhibit 7 was allowed in evidence over objection.

City’s Exhibit 8 (a – i) is a group exhibit containing four individual reports. These are Incident Check reports through the ICLEAR system that have received R.D. numbers. That means police reports were generated for these incidents. Pages 8 (a & b) relate to a two block radius from 4710 S. Western down 47<sup>th</sup> Street. Pages 8 (c & d) relates to a two-block radius on Western. These reports cover a date range of June 1, 2009, through January 12, 2011, and they cover a wide array of alleged crimes. There is a February 24, 2010 incident on Page 8c, noted strongarm which means the victim did not see a weapon. Over objection, City’s Exhibit 8 was allowed in evidence.

Based on his review of these reports and his experience working in the 9<sup>th</sup> District, Officer Garza gave his opinion that crime in the area surrounding 4710 S. Western would be described as medium to high. He further gave his opinion that sales of alcohol at this location would be taking on police resources because you would get more crime and more calls for service. It was his opinion crime would be increased by allowing a packaged goods liquor store at this location. Over objection, Garza described City’s Exhibit 9 (a, b, c) as a report of actual

arrests from July 1, 2010, through January 12, 2011. The total is 13 arrests. The address of the April 16, 2010, and the January 25, 2010, arrests is listed as 4710 S. Western on the Walgreens premises. These would have been arrests where an agent for Walgreen's signed the complaint. Over objection, City's Exhibit 9 was allowed in evidence.

Garza reviewed City's Exhibits 7, 8 and 9 with the Commander. The Commander does not object to all liquor licenses within the 9<sup>th</sup> District. There is another Walgreens selling liquor about seven blocks away at Archer and Western. There is no crime in that area. Garza summarized Commander Jarmusz feels it was not appropriate to add a liquor license to that crime area and it would put a drain on his police resources.

Garza stated Commander Jarmusz has a Master's Degree in Public Safety Administration and that he also has a Master's Degree in Public Safety Administration with an emphasis on global terrorism. His opinion is based on a combination of his educational background and his police experience. As part of his master's program he did take a course on how best to develop police/business relationship in a given community. He has used the information he learned in that course in fulfilling his duties as the business liaison officer in the 9<sup>th</sup> District. His job in that capacity is to develop strong relationship between the police and local businesses with the ultimate goal of deterring crime and creating a safer environment. He wants businesses that physically invest and improve the property in the area. Walgreen's is one of those places. He has no first hand knowledge if Walgreens attends CAPS meetings, but sign-in sheets indicate it does not. He does encourage business owners to call police when they see illegal activity. Businesses that do are an asset to the discharge of his duties.

Garza reviewed City Exhibits 7 A and B, which showed incidents allegedly occurring at 4710 S. Western. Over the 34 calls listed there are some duplicate calls for the same incident. There are actually 24 separate incidents and Walgreens called in on 21 of these 24 incidents. On these 21 incidents Walgreens acted in a way that benefited the police department in the discharge of their duties. Garza admitted he was not personally involved in responding to any of the calls and has no firsthand knowledge if any arrests were made or whether there were any criminal convictions.

Garza stated he had submitted a report to the Commander which resulted in the Commander's letter, in evidence as City's Exhibit 5, opposing the issuance of this license. That report referenced multiple calls for service including the stabbing of a male pedestrian. He highlighted that incident since it was an important event. This incident took place on May 12, 2010, and is referenced by RD No. HS304328. He was not present but inferred a person was stabbed from the actual report. He obtained the 85 incidents in a one block radius of the store during the last 12 months from police reports but one of those reports was not before this Commission. His report reflects the Alderman had no plans to oppose the issuance of the license. He did not speak with any community organizations to determine if they supported or opposed the issuance of this license.

Garza testified he has been a customer of this Walgreens while on duty and in uniform. He agreed the manager was forthright and as a general statement agreed that Walgreens is not a contributor to any crime in the area. He believes the Commander agrees with that statement. He

did review in detail Walgreens' policies with regard to sale and control of alcohol at that store and he did not review the scope of Walgreens' security policies.

Garza has no personal knowledge if any of the incidents listed in City's Exhibit 8 or about the arrests listed in City's Exhibit 9. While it is his opinion crime will increase if this license is issued, Garza admitted it is just as likely crime will go down. He did not see anything different in how the Walgreens at 47<sup>th</sup> and Western was operated in comparison to the Walgreens at Archer and Western. There are different external forces that Walgreens has no control of such as people coming to the store at 47<sup>th</sup> and Western to try to rip it off every hour.

Garza does feel with respect to the location, its issuance will invite more activity of a criminal element since there is no other liquor store in that area. This would occur if anyone opened a liquor store at this location and the opposition is not based on Walgreens seeking the license.

The City rested its case.

Erin Neff is an in-house counsel for Walgreens who deals primarily on regulatory law issues including alcohol regulation. She is involved at a high level with any aspect of selling alcohol. She works with licensing and works on how citations might affect Walgreens alcohol license policies. They recently started to license a large number of stores across the nation. Since alcohol is so regulated, Walgreens makes sure that its actions follow federal regulations and regulations of each individual state. She was involved in ensuring the employees and

managers were trained to Walgreens' policies for alcohol. Walgreens often took the most stringent state regulations and incorporated those policies into its general policies at the 4600 license locations in the United States and Puerto Rico.

The stores in Illinois previously held liquor licenses but they were phased out in the mid to late 1990's. This was a business decision as the company wanted to move in a different direction. Those liquor stores were large one-shop stores with a large offering and sales of spirits. There is no intention of returning to the size and scope of those stores and liquor now will be sold for the convenience of its customers. Customers wanted the convenience of alcohol but not necessarily a full liquor store. That consideration is what is driving Walgreens efforts to obtain a license for 4710 S. Western. Walgreens would only sell beer and wine from two separate locations in the store. There would be 12 feet of wine and approximately 5 feet of cold beer.

Liquor would be devoted to less than 2% of overall floor space. Applicant's Exhibits 1 and 2, in evidence, generally portrays what the space for wine and beer would look like at 4710 S. Western. There might be closed doors as opposed to open air cooler system in this picture. Walgreens has made a business decision to not carry fortified wines or malt liquor products.

The national policies on alcohol apply to Illinois states. All employees must submit to drug tests and criminal background investigation before hire. It is Walgreens policy to card all individuals who are purchasing alcohol who appear to be under the age of 40. The point of sale system prompts the teller to answer yes or no to whether the purchaser is under 40. If the answer



is yes, the system then requires an I.D., a birth date and identification before it allows alcoholic sales. In addition, only employees over the age of 21 who have gone through Walgreens alcohol training and have been cleared to make sales can sell alcohol. That system would be installed at 4710 S. Western and eventually a new system that scans a driver's license will be installed. Walgreens uses closed circuit TV monitors at all its locations and she assumes that includes 4710 S. Western. All of Walgreens employees are required to go through Bassett training before they can sell alcohol and that policy will apply to 4710 S. Western. Walgreens also trains its employees in what is called Situation Bassett Training which uses a video computer screen to walk an employee through Walgreens alcohol policies. It allows putting employees into situations they might encounter and has them answer multiple choice questions. If a wrong answer is given the program stops and explains why it was a wrong answer.

As part of her job the witness would be aware of any allegations of state regulations that could affect a license. They have never had a problem with criminal activity affecting one of their businesses unless it would be a strict violation such as a sale to minor. Since the rollout application process began with 76 stores in Chicago, she has never been advised of any potential law enforcement issues with respect to those licenses.

Mary Al-Ashqar has worked for Walgreens for twenty-two years and has been the manager of the store located at 4710 S. Western since December of 2003. She has been a store manager for fourteen years and has managed four other stores. None of the stores she has managed have had a retail liquor component but she was an assistant manager at six or seven stores that did sell liquor. At 4710 S. Western Walgreens employs security from a company

known as SEB. It provides one security person to deter shoplifting. The guard is unarmed and is stationed at the front of the store. The presence of security has been effective at deterring shoplifting since the loss through theft or damage was measured below a 3.9 at a level of 3.1. Walgreens is seeking a liquor license at this location for the convenience of the customers. Since Walgreens in general advertises it sells beer and wine, customers at her store ask for the product. Retail liquor is not intended to be a primary component of the overall business model. The 4710 S. Western store is approximately 12,000 square feet. The specific floor space that would be occupied by alcoholic products would be 12 feet in length in the warm area and six feet of merchandise in the cool. This would be approximately 2 percent of the floor space. There are plans to carry spirit products and Walgreens does not carry low cost alcohol like fortified wines or malt liquor.

Walgreens has alcoholic beverage sales and service policies with regard to beverage sales. When liquor is scanned at the register it asks for an ID. The date of birth or the ID must be scanned in the register. This applies to customers under the age of 40. There are two fail-safe components. The register will identify an alcoholic beverage product and will prompt the sales associate to ask for an ID and the sales associate itself. All sales associates must be 21 to sell alcoholic beverages. The system she is familiar with has a lockout mechanism that will prevent alcoholic beverage sales during hours when it is illegal. She does not know if that system has been installed since they do not have liquor at 4710 S. Western.

She is familiar with "TIPS" and "Bassett Certificate." All but the two employees who have just turned 21 have gone through Bassett training. That is liquor training that tells you how

you would be liable for selling liquor to someone underage or who appears impaired. She is Bassett certified as well as 19 of her 23 employees. The two that just turned 21 will be going through this training.

These policies and procedures were in effect at the Walgreens stores she worked at as an assistant manager that sold liquor and they were effective at deterring underage alcoholic beverages purchases. She has no reason to believe they would not be effective at 4710 S. Western.

Since 2009 the store has not been a focal point of criminal activity in the neighborhood and has not contributed in any way to criminal activity either at the location or in the immediate surrounding neighborhood.

She did explain to Officer Garza that one of the reasons Walgreens employs a security guard at this location is to deter shoplifting. The guard has not been there for the seven years she has been manager. Her district manager put a security guard at his stores as he is concerned about inventory. She usually works from 7:00 a.m. until 5:30 p.m. or 6:00 p.m. She was not aware of and did not hear about a stabbing on May 12, 2010. She does not recall the security guard calling the police to report any type of crime over the last few years. When she said Walgreens has not been a focal point of criminal activity in the neighborhood that comment was based on the hours she spends in the store and anything she has been told by her assistants or staff. The last time she was aware a call was placed to the police by a security guard or Walgreens was in November of 2009. She has no independent recollection of there being any

kind of armed robbery or stabbing or violent crime at Walgreens on May 12, 2010, and such a crime was not reported to her.

Juan Mancano is the Chief of Staff for the 12<sup>th</sup> Ward Alderman George Cardenas. 4710 S. Western is located in the 12<sup>th</sup> Ward. The Alderman's offices are now about a mile away at 2458 W. 38<sup>th</sup> Street, but up until August of 2007 the offices were located less than a block away at 4651 or 53 S. Western. He worked for the Alderman when the offices were located less than a block from Walgreen's and shopped there at that time every other day. He is familiar with that store and the surrounding residential and commercial districts in the immediate area. As Chief of Staff he oversees matters dealing with development and attends community meetings and CAPS meetings with respect to crime. He has a pretty good sense of where the hot spots of criminal activity are from resident complaints and calls to the office with concerns of criminal activity. He also reviews 311 reports personally. He does not feel 4710 S. Western is an area of concern from a criminal standpoint as far as the Alderman's office is concerned. The concern is in the residential area a couple of blocks west and a block south of Walgreens. Crime is not a major issue on the 47<sup>th</sup> Street Commercial District or on the stretch of South Western Avenue bordering Walgreens. He has spoken with the Alderman on the issuance of this license and the Alderman supports the issuance of this license. He did review 311 reports on this location but does not have the specific date. He and the Alderman did not consult with the police commander about the commander's opinion whether 4710 S. Western is a high crime area. His definition of a hot spot would be an area where some criminal activity has been reported.

Mark Gordon is a loss prevention supervisor for the Walgreens Company with the responsibility to provide support to 36 stores from an internal and external security standpoint. 4710 S. Western is one of the stores under his direct supervision. He receives information on crime and thefts in two ways. Incidents would be reported directly by phone and further information could be sent electronically or it could be initially sent electronically. Store managers have leeway to assess what should be reported but if anything occurs on the inside premises or in the main parking lot, it should be reported as a courtesy call and he could then decide whether a report should be generated. Shoplifting or incidents of a physical nature regarding an employee should be reported as should a violent crime involving the stabbing or armed robbery of a customer. Before testifying he did review the electronic reports generated by the 4710 S. Western store. The one report was of a shoplifting incident in November of 2009 where the individual tried to exit and produced a knife.

The matter was handled internally by the store's management staff. No report of illegal activity on May 12, 2010, at the Walgreens at 4710 S. Western was reported to his office. In the eight year period he has been responsible for 36 stores a little more than 20 of those stores have been approved to sell alcohol. There has been no uptick in problems that he attributes to the granting of those liquor licenses. He does not have recollection of being notified that on April 16, 2010, an offender was being held at the 4710 S. Western store, and has no recollection of being told that an offender was being held for retail theft on January 25, 2010. He also does not recall a report of an aggravated assault with a handgun occurring on December 21, 2009.

Since this case is an appeal of an order from the local liquor control commissioner of a city with more than 500,000 persons the issue before this Commission is to decide the propriety of that decision de novo.

The City of Chicago Municipal Code states the bases on which an application for a liquor license can be denied. The Local Liquor Control Commissioner has discretion in determining which section of the Municipal Code could be applied to the facts of an application in deciding to deny an application. In other cases before this Commission applications have been denied on law enforcement and on deleterious impact grounds separately. In other cases, the Local has denied on law enforcement grounds within the definition of deleterious impact. In this particular case the only basis for denial was Section 4-60-040 which states in pertinent part that “the local liquor control commissioner may deny an application for a city liquor dealer’s license if the issuance would tend to create a law enforcement problem.” As stated in several other decisions the decision as to whether the decision to deny was proper depends on the evidence presented on each individual case. Previous decisions of this Commission may be helpful but should not be considered precedents.

The evidence supporting the City’s position that the issuance of this packaged goods license at this particular location would tend to create a law enforcement problem consists of records for calls for service as well as the opinion of Officer Garza. There was no testimony from neighbors or community associations in opposition to this license. There was no specific testimony from Officer Garza or neighbors or community associations as to specific conditions that currently exist that cause law enforcement problems. There was no testimony of loitering,

of public intoxication, of littering, of trespass to property or any other type of problem that would be exacerbated by the issuance of this license. While Officer Garza testified 47<sup>th</sup> and Western is a high crime area, of the 34 calls about 47<sup>th</sup> and Western, they dealt with only 24 incidents and Walgreens or its security were the callers on 21 of the 24 incidents. Garza also acknowledged that he and the Commander do not feel Walgreens would necessarily do anything wrong but it is his and the Commander's position they would oppose anyone opening a liquor store at 47<sup>th</sup> and Western because the opening of such a store would increase crime.

This evidence was partially rebutted by the Alderman's Chief of Staff. While Mr. Mancano may not have been able to state with certainty dates on which he reviewed 311 reports or what specifically may have been on those reports, his opinion as Chief of Staff to Alderman Cardenas based on his experience in that position and a lack of complaints from constituents that 4710 S. Western is not a high crime area.

The City referenced to the case of M.J. Ontario v. Richard M. Daley in support of its position that opinion testimony on prospective events can be a basis to uphold a denial of a license. It was argued this case allows using evidence of the crime in the surrounding area to support the argument that the issuance of a license would exacerbate existing crime and other problems. The evidence supporting the denial does not have to be site specific to the applicant. It should be noted that the denial on M.J. Ontario was based on the fact the area had been "plagued with numerous problems including: noise, litter and other problems which endanger and disrupt the local community. Based on those matters the Director of the Local Liquor

Control Commission found granting a license would have a deleterious impact on the health, safety and welfare of the surrounding community.”

M.J. Ontario had a liquor license and was seeking a late hour license. At the hearing Alderman Natarus testified to his own personal observations of hearing late night traffic and overcrowding due to a mass exodus of cars after 5:00 a.m. on the weekends. He testified further that he had personally saw fights, crowds of inebriated people and individuals soliciting sex and controlled substances around the establishment at 224 W. Ontario. Lieutenant Cooper testified to numerous calls for service in the area including criminal damage, parking complaints, robbery, deceptive practices and theft. The opinion also notes the applicant admitted there were problems with crime, litter, noise and drunken patrons in the area. The Court in the M.J. Ontario case rejected the argument that there must be “site specific” evidence presented at the hearing and determined the evidence on the record was sufficient to show there were problems in the area that would be exacerbated by the issuance of this license at this location. There was sufficient evidence to support the finding of deleterious impact.

The recent Vino Fino case dealt with the denial of a liquor license since its issuance would tend to create a law enforcement problem. There was no denial on deleterious impact grounds. While the facts of Vino Fino are different from this application, the Appellate Court defined the term law enforcement under those facts as an applicant who would tend to not follow the liquor laws. In that case the present licensee had a history of violating liquor laws by sales to minors. Since the applicant was, in fact, the same owner seeking a new license under a new



corporation, there was evidence that issuance of the new license to that applicant at that location would create a law enforcement problem.

This Commissioner does not feel that Vino Fino should be read as requiring site specific or applicant specific evidence in all cases in which denials are based on law enforcement concerns. An applicant with no background in violating the liquor laws or any criminal laws could be denied if the evidence showed that location of the premises or the type of merchandise to be sold was such to create or exacerbate crime. The City did not produce any such evidence in this case. As mentioned earlier, Officer Garza testified the problem was not with Walgreens but with the location. The evidence presented about this location was insufficient to establish that there was existing crime that would be exacerbated by issuing Walgreens this license. There was no evidence that Walgreens has any history of violating liquor laws at any location. There was testimony that the alcohol sales would be limited to wine and beer and marketed as a convenience to their existing customers. Walgreens will not be selling 40 ounce bottles of malt liquor or half-pints or fortified wines. This is significant because sales of that type of merchandise seem to lead to criminal activity in the form of loitering and littering.

The evidence presented in this case was insufficient for the City to establish the propriety of its denial of this license at this location. The decision of the Local Liquor Control Commissioner 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 15, 2011

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member