

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

TSGDVR, Inc.)
d/b/a Tini Martini)
Applicant (Late Hour))
for the premises located at) Case No. 11 LA 30
2165-69 North Milwaukee Avenue)
)
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

The applicant applied for a Late Hour license for the premises located at 2165-69 North Milwaukee Avenue. Since this location is in a moratorium area it was necessary for the applicant to file petitions with the signatures of 50% + 1 of the voters within 500 feet of the premises. After a review of the petitions, the Local Liquor Control Commissioner denied this application because the applicant did not file the requisite number of petitions. The application was also denied by the Local Liquor Control Commissioner as its issuance would tend to create a law enforcement problem. The final basis for denial was that the late hour exterior safety plan submitted was insufficient in that it failed to include provisions for the installation and maintenance of surveillance cameras installed at each exit as required by Section 4-60-130 (f)(3)(ii) of the City of Chicago Municipal Code.

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

The first basis for denial to be reviewed will be the question of the adequacy of the number of petitions filed to lift the moratorium. If this first basis for denial is not overcome, reversal on the other two bases would not change the denial of the license.

Since there is a moratorium on late hour licenses at this location the applicant was required to follow the petition process set up in 4-60-021(c) of the Chicago Municipal Code. The code requires an applicant for a late hour license to obtain petitions indicating the written consent of a majority of the legal voters within 500 feet of the applicant's location. In this case, the parties seem to agree on the math and that 110 signatures were required to lift the moratorium. Initially, the City acknowledged 85 approved signatures on the petition. After attorneys met at the Board of Elections it was agreed that there were additional valid signatures. That left the applicant 14 signatures short going into this hearing.

At the hearing the licensee called a Cristine Perez as a witness. She identified Applicant's Group Exhibit 1, in evidence, as affidavits she obtained from 14 persons whose names were stricken by the City as invalid on the moratorium petition. As to each of these fourteen witnesses she testified that she personally saw their identification and each identification matched the name of the person who signed the affidavit. She is a notary and she notarized each of the 14 affidavits. The body of these affidavits contains language that the affiant had previously signed on a specific date the late hour license petition of TSGDVR, Inc., d/b/a Tini Martini located at 2165-69 North Milwaukee. It listed the affiant's address on the date the petition was signed.

In the course of cross-examination by the City's attorney, the witness testified she believed the signatures of Maria Rubino, Roxanne Velasquez, Solien Moreno and Sarah Weinstock were the same on the petition and on the affidavit. The signatures of Sandy Camarena, Ciria Hernandez De Camarena, Bruce Qualls, Robert Gonzalez Jr., Margaret Smith, Enriqueta Santillian, Monica Santillian, Gary Herron, Gloria Garcia, and James Thomas did not look like the same signature on the petitions or that the signatures were so messy she could not tell if they were the same.

The issue before this Commission with respect to the disputed signatures is not dependent on a determination of the credibility of Cristine Perez. This Commission has no reason to believe that she was not completely truthful as to how she obtained the affidavits. The affidavits are not conclusive on the issue of whether the affiants on the affidavit actually signed the original petitions. The credibility of Ms. Perez is not a factor in this Commission's decision on the original signatures.

Since this case is dealing with a limited, if any, margin of error it seems appropriate to review each disputed signature. This Commissioner finds as follows:

1. As to Sarah Weinstock, petition page 3, line 6, the signature on the petition matches that on the affidavit and the signature is valid.
2. As to James Thomas, petition page 8, line 21, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
3. As to Garry Herron, petition page 8, line 20, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.

4. As to Gloria Garcia, petition page 7, line 4, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
5. As to Solien Moreno, petition 2, line 17, the signature on the petition matches the signature on the affidavit and is a valid signature. (There may be a problem since there is a duplicate of this name on petition 6, line 29, which was the challenged signature. The signature on petition 2, line 17, was not challenged.)
6. As to Maria Rubino, petition 15, line 28, the signature on the petition is completely illegible. As such it cannot be compared with the signature on the affidavit. It is not valid and will not be counted.
7. As to Bruce Qualls, petition 10, line 26, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
8. As to Roberto Gonzalez Jr., petition 10, line 23, the signature on the affidavit does not match the signature on the petition. The signature is not valid and will not be counted.
9. As to Margaret Smith, petition 10, line 21, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
10. As to Sandy Camarena, petition 2, line 23, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
11. As to Ciria Hernandez (De Camarena) the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
12. As to Roxanne Velasquez, petition 5, line 16, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.
13. As to Enriquetta Santillian, petition 5, line 10, the signature on the petition does not match the signature on the affidavit. The signature is not valid and will not be counted.

14. As to Monica Santillian, the printed name on the petition matches the printed name on the affidavit. It will be counted as a valid signature.

Without addressing the issue of whether Solien Moreno has already been counted as a proper signature on the petitions, the fact that twelve of the fourteen disputed signatures have been held to be invalid means the respondent did not submit the required number of signatures to lift the moratorium. The denial of the liquor license on this basis is affirmed.

While it may not be necessary to address the remaining issues regarding denial of the license this Commissioner will do so for the sake of judicial review should the decision on the petitions be reversed.

A second basis for the denial of the late hour license was that the late hour exterior safety plan submitted was insufficient in that it failed to include provisions for the installation and maintenance of surveillance cameras at each building exit as required by Section 4-60-130 (f)(3)(ii) of the Chicago Municipal Code. Specifically, Mr. Knipper from the Local Liquor Control Commission testified the license was denied because of a lack of security cameras. Testimony at the hearing from Katey Albert was that twelve security cameras were installed after the denial took place. Tiviano Savino, one of the owners of the applicant, identified Applicant's Exhibit 2, in evidence, as an invoice for camera installation at the licensed premises. There are cameras located at each of the applicant establishment's exits. Saviano testified he paid the invoice and the cameras were installed two months prior to the invoice date of April 12, 2011. The recording capacity on the exterior camera is thirty days. The witness identified

Respondent's Group Exhibit 3, in evidence, as pictures of the exterior cameras. Page 1, at the top, shows a close up of a camera and at the bottom it show the monitors for the camera.

The top photograph on page 2 is a picture of monitor and the bottom picture shows the front door camera. Page 3, at the top, shows another camera at the front and the bottom is a picture of the rear camera. Page 4, at the top, shows another exterior camera overlooking an exit and the bottom is a picture of the monitor overlooking an exit. Page 5 contains another picture of the exterior camera. There is one entrance and three exits to the premises and cameras are located at the entrance and the exits. All cameras are functioning. Mr. Savino stated he did not know he needed these cameras for a late hour license and admitted he had submitted an exterior safety plan that references the cameras.

By admission of the respondent the late hour safety plan submitted did not include provisions for installation and maintenance of surveillance cameras installed at each building exit as required by Section 4-60-130 (f)(3)(ii) of the Municipal Code. The testimony of Mr. Knipper was that the City's concern was with a lack of security cameras being installed. The testimony of the respondent along with the invoice and pictures in evidence establish that security cameras have been installed. Since this issue is de novo before this Commission it is the decision of this Commissioner that the City failed to meet its burden of proof on this issue.

The final basis for denial was that the issuance of this license would tend to create a law enforcement problem. This Commissioner has adopted the theory that such a law enforcement problem can be established by testimony regarding the area in general, as well as, testimony

dealing with the specific location of the applicant. The evidence presented by the City on this issue came from Sergeant Joseph Giambrone. He was testifying on behalf of 14th District Commander Linda Flores. He is familiar with the applicant's location at 2165 N. Milwaukee and the area around that location. Within a half mile of the applicant's location there are two large venues on Milwaukee Avenue. V-Live at 2047 N. Milwaukee Avenue has a capacity of 2000, and the Congress Theatre at 2135 N. Milwaukee Avenue has a 4600 capacity. They go till 2:00 a.m. with different types of concerts. Within that block and a half there have been over 1100 calls for service over the last two years. The Commander was concerned about the congestion in the area and the violent nature of a lot of calls for service. Calls for service at the applicant's location at 2165-69 N. Milwaukee from January, 2010 through October 11, 2011, showed 29 calls for service at the applicant location including disturbances and battery calls which usually occurred at closing. Only one of these calls occurred since February of 2011. The Commander objects to this late hour application because of the large amount of calls on Friday and Saturday nights along that stretch of Milwaukee. The police personnel are presently unable to keep up with the volume of calls. Adding a 4:00 a.m. license to that area would make the police less able to provide service in that area.

Respondent did admit there have been problems in the past, but with the change in the business model for the location those problems have been alleviated. Over the last year, there have been no violent incidents. They have met with the community to address their concerns.

Despite the fact there has been a change in the applicant's business model with a resulting drop in problems at this particular location, the nature of the calls for service in the

surrounding area continued with problems of traffic congestion are sufficient for the denial on the basis of law enforcement to be affirmed.

The decision of the Local Liquor Control Commission denying the application for a late hour liquor license at 2165-69 N. Milwaukee Avenue 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: February 17, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member