

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

2122 Fantasea, Inc.)
d/b/a Fantasea)
Applicant (COP-IA))
for the premises located at)
2122 West Lawrence) Case No. 11 LA 21
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

CHAIRMAN FLEMING’S OPINION JOINED BY COMMISSIONER O’CONNELL

On August 4, 2011, City of Chicago Local Liquor Control Commissioner Gregory Steadman issued an Amended Denial Letter with respect to 2122 Fantasea’s application for a Consumption on Premises – Incidental Activity Liquor license for the premises located at 2122 W. Lawrence. This denial was based on the three factors:

1. The issuance of this license would create law enforcement problems as set out in City of Chicago Municipal Code 4-60-040.
2. In the last year the current licensee has been cited and has pending disciplinary cases for operating without a PPA license, operating after a cease and desist order, operating a restaurant as a tavern, failure to cooperate with police and failure to produce books and records.
3. The local alderman believes the applicant will operate the restaurant as an illegal nightclub, in the same manner as the prior licensee. Attempts to work with the applicant to ensure that his new business will not operate as an illegal nightclub have been unsuccessful.

Since this case is an appeal from an order refusing to grant a license the issue before this Commission is to determine de novo the propriety of the refusal.

This matter proceeded to hearing at the License Appeal Commission of the City of Chicago. Assistant Corporation Counsel Maggie Shiels represented the City and David Daudell represented the applicant.

A review of the evidence will assist in understanding this decision.

Gregory Steadman has been the Local Liquor Control Commissioner of the City of Chicago since March of 2010. As part of his duties he interprets and applies the Municipal Ordinances and state laws pertaining to liquor licensing. He has access to the City's database information on licensed businesses. It is called IRIS License Database System. He reviewed the licensing records for 2122 W. Lawrence which currently has a liquor license. That license is held by Fantasea, Incorporated, and it is a Consumption on Premises – Incidental Activity license. That license was issued in July of 2009. He became aware of problems with the establishment shortly after the license was issued. This led to the commencement of community meetings with the licensee because of alleged public nuisance issues. After three meetings the process was terminated because the community and the licensee could not come to an agreement.

Mr. Steadman explained there are two liquor revocation cases pending against Fantasea, Inc. Case 10 LR 109 alleged 14 violations of the Chicago Municipal Code or

State of Illinois statutes which took place on August 20, 2010, and September 26, 2010. Case 11 LR 27 alleged 3 violations of the Chicago Municipal Code or State of Illinois statutes. He was not aware if those cases had proceeded to hearing. He was aware that the possible penalties for these rather serious charges was likely revocation of that license.

The State of Illinois Liquor Control Act and Chicago Municipal Code both have restrictions on issuing a new liquor license at an address where a previous liquor license was revoked. If there is a revocation, a one year ban of any new liquor license at that address can be imposed. At his option he could impose that revocation only against the licensee. That option is usually exercised when the revocation is based on an eligibility issue. The one year ban on the address is instituted because of misconduct.

Steadman has reviewed the application for a new Consumption on Premises – Incidental Activity for 2122 W. Lawrence filed by 2122 Fantasea, Inc. He made the ultimate decision to deny this license in April of 2011. There were two bases set out in the original denial letter. There was a law enforcement denial based on the police commander’s opinion that issuance of this license would cause a law enforcement issue. The second basis was the pending revocation cases.

Steadman issued an amended denial letter on August 4, 2011. After the election he received a letter from the newly elected Alderman of this ward expressing concerns that the applicant would operate as a restaurant and not a tavern.

He also explained it has always been the policy of the Liquor Commission that whenever there is a pending case that could result in revocation of the liquor license and then a one year ban on the premises for any new liquor licenses any application will be denied due to the pending cases. Issuing a new license and then revoking it later would damage the new applicant.

In response to a question from the Chairman, Steadman stated the business consultant should have advised the applicant of the pending revocation cases and what that could potentially mean about the application. If they insist on going further, the consultant would have the applicant sign an affidavit that they were advised of pending cases and that they understand the potential outcome of those cases could result in the denial of the liquor license. There was no such affidavit in the application documents for this license.

In response to another question from the Chairman, Mr. Steadman reported the applicant has an establishment called the Allegra Restaurant on Roosevelt Road. That license was issued in 2009 and he was not aware of any license disciplinary history at that location.

Steadman acknowledged he was not implying that the applicant had anything to do with the disciplinary problems with the current license. He admitted the one year ban after revocation is discretionary with him. He could issue a new license after revocation.

He also repeated there was no signed affidavit in the file showing the process had been explained to this applicant. If the process had not been followed that fact would not change his position on the bases for the denial of the application.

Lucy Moy-Bartosik has been a Chicago Police Officer for twenty-eight and a half years and has been the Commander of the 20th District for three and a half years. 2122 W. Lawrence is in her district. The area around that address has two or three businesses on that side of the street with residences above those businesses. Down the street is all residential. None of those businesses are open after midnight. She is familiar with a business that was located at 2122 W. Lawrence and was called Fantasea. The business opened in October of 2009 and she started getting complaints at beat meetings around November or December of 2009. These complaints came from residents that people were highly intoxicated on the streets. There were fights, large amounts of garbage and beer bottles up and down the alley and the side streets. These complaints came up at beat meetings for seven or eight months in a row. In February of 2011, she received notification from the City that this applicant was seeking a liquor license at this address. The witness identified City's Exhibit 6 as a letter she sent to the Commander of the Vice Control Division objecting to this license application due to community concerns, a pending license case 10 LR 109, PPA violations, and failure to show proof of dramshop insurance.

The Commander did her own investigation into the community complaints about Fantasea. In approximately March of 2010 she went to Fantasea at about 10:00 p.m. in

the evening. There were not too many people there. The restaurant was not operating. There was no food in the refrigerator whatsoever. The bar was opened and there was a DJ in the back. She attended meetings with the Fantasea establishment at the Department of Business Affairs. The purpose of the meetings was to see if the owner of the business would relinquish the license because of the number of complaints. The owner was not willing to relinquish the license.

The Commander testified that she submitted certain reports with her letter objecting to the issuance of this license. City's Exhibit 9 lists calls for service for 2122 W. Lawrence from February 2010 through February 2011. This report reflects calls for police services for disturbances, premise checks, traffic stops, problem solving and auto accidents. They are significant because they cause manpower to be designated to the west end which drains manpower from the entertainment area and trouble spots east of Ashland Avenue.

City's Exhibit 10 is an Arrestee Name Check for October 22, 2010. It shows four persons arrested for prostitution at 2122 W. Lawrence. City's Exhibit 11, lists the number of RD numbers or case reports generated for 2122 W. Lawrence from August 20 through October 22 of 2011.

The Commander did meet with Mario Morales who is the president of the applicant corporation in June of 2011. She met with him at the establishment. Also present was his attorney and a representative from the Alderman's office. She felt the

location still looked like a nightclub that looked like they were trying to make look like a restaurant. She suggested the applicant meet with the community at a beat meeting and also suggested he need not remain open until 3 or 4 in the morning if it was to be a restaurant. She is not aware if Mr. Morales has agreed to limit his hours of operation and has not seen Mr. Morales at a beat meeting.

The last beat meeting was on June 27, 2010, and the issue of the issuance of this license did come up. The community was upset this was to be another nightclub. The Commander has never seen a document from the applicant with an agreement to close before 2:00 a.m. A business of 2122 W. Lawrence open that late causes a possibility of a law enforcement problem if there is a disturbance which causes her manpower to respond west instead of being east where the entertainment area is.

The Commander said there is no business currently operating at the location. She also acknowledged Mr. Morales does not own the location and cannot make changes to the existing restaurant. She is not aware if the City advises applicants not to invest money before a license is issued. She did say there are no allegations that Mr. Morales was involved in any of the disciplinary matters at that location. The vice squad arrests for prostitution occurred outside the premises and Fantasea, Inc., was not charged with keeping a house of ill repute. She could describe what the specifics were relating to the disturbance call on April 24, 2010. There were no charges at the location for underaged drinking or for battery intoxication or public indecency. She could not say if the

referenced traffic stop was associated with the establishment. The same for an auto accident at 3:30 in the afternoon.

With respect to the August 20 premise check violations were issued for the kitchen not being open, for garbage in the alley, for PPA and entertainment licenses. Those charges are presently before the Local Liquor Control Commission. These matters are directly related to Fantasea, Inc. She is not aware of any arrests at that location.

The Commander did admit she knew Mr. Morales owns another restaurant with a perfect record. She did not visit the Fullerton Avenue establishment and did not talk to the police commander or anyone at the police station in the district in which Mr. Morales operates at this time. An incidental license allows a restaurant with a liquor license to remain open until 2:00 a.m. She has nothing against Mr. Morales, but objects to this location because it is mainly a residential area. If there is a disturbance at 2:00 a.m. it causes a drain on manpower.

Jim Poole is a community specialist in the office of Alderman Ameya Pawar of the 47th Ward. He handles all the public safety issues in the office and responds to community members about complaints about businesses. He was authorized by the Alderman to testify on his behalf at this hearing. 2122 W. Lawrence is in the 47th Ward and he is familiar with the current business operating there known as the Fantasea Lounge. It operated as a nightclub late into the night. He is aware that an applicant known at 2122 Fantasea, Inc., has applied for a liquor license at that location. The

Alderman objects to this license and has sent a letter regarding that objection to the Local Liquor Control Commission. The witness identified City's Exhibit 8, as that letter and added he participated in drafting the letter. The office has received two or three calls that another business like the previous one not be allowed at that location.

Poole went to the location on June 22 where he met Commander Moy-Bartosik, Mr. Morales and his attorney. The front looked like a short order grill but the back had benches like in a club and tables like in a restaurant. There were no windows and it would be simple to run anything without anyone knowing. There were concerns about late hours. There was a meeting on August 2 at the ward office. The Alderman expressed his concern this was a family area and he did not want a nightclub. The letter from the Alderman was drafted shortly thereafter. The Alderman had requested the location close at midnight and Mr. Morales refused. The Alderman feels there is a good chance if this new licensee can operate until 2:00 a.m., there will be a similar impact as from the previous business.

Since this case involves an appeal of a denial of a liquor license, the issue before this Commission is to determine de novo the propriety of the decision.

Under the City of Chicago Municipal Code the Local Liquor Control Commission 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. (4-60-04) Law enforcement concerns can also be raised under a denial based on deleterious impact provisions of the code. In

this case deleterious impact was not alleged as a basis for denial. The sole question is whether the issuance of this incidental activity license to this applicant would tend to create a law enforcement problem.

This Commissioner does not adhere to the concept that such a determination must be limited to a review of the actual applicant's background. The fact is that there are certain areas of the city where the issuance of a liquor license to any applicant would tend to create a law enforcement problem. The type of liquor license applied for and the type of product sold are also factors to be reviewed on a case by case basis in reviewing denials based on law enforcement grounds.

The Illinois Appellate Court defined the term law enforcement problem in the case Vino Fino Liquors, Inc. vs. The License Appeal Commission. After noting that the Chicago Municipal Ordinance did not define the phrase "tend to create a law enforcement problem", the Appellate Court reviewed the entire ordinance and determined the intent of that phrase was to prohibit the issuance of a license to individuals and entities controlled by individuals who have a prior history of disobeying liquor laws and the law in general. This defined the terms to deny an applicant who would "tend to create a law enforcement problem is to 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." Since the applicant in Vino Fino had a history of sales to minors, it had a history of violating a law directly related to the control of liquor. That prior history was sufficient evidence to deny the license on the grounds that it "would tend to create a law enforcement problem."

Applying this standard to the facts of this case results in the City not meeting its burden of proof that the issuance of this license to this applicant would tend to cause a law enforcement problem. The facts in the evidence are that the applicant has operated another establishment for a period of years without any disciplinary problems. With this history there is no reason to believe the applicant would operate a business at this location in a different manner.

As referenced earlier this Commissioner feels that the City can establish its burden on denials for law enforcement denials even if the applicant has no history of violating laws relating to the control of liquor. There have been cases where the location of the premises to be licensed or the type of the business at a particular location can present sufficient evidence to deny a license. The evidence in this case does not rise to that standard.

The basis of the objections raised by the Commander, the Alderman and the community is the fear that the applicant will not operate a restaurant but will operate the premises as a nightclub. This would bring back the problems that plagued the community when the location was open under the current licensee. While many decisions in these cases deal with speculation and cases like M.J. Ontario allow decisions to be based in part on speculation, the mere fear that a licensee with no history of discipline operating another licensed establishment may operate a nightclub is not sufficient for a law enforcement denial. The fact that the applicant will not voluntarily

agree to limit its hours of operation is not sufficient reason to deny a license on the law enforcement basis.

Commissioner Steadman testified to the policy at the Local Liquor Control Commission to deny an application if the premises for which the license is applied for is in jeopardy for being a location that is ineligible for a license because the current license may be revoked. That is a common sense approach to protect applicants from paying application fees for licenses and to prevent applicants from expending other costs and expenses. It is not a basis to deny a license application set out in the Municipal Code. If the applicant proceeds the status of the premises is not a legal basis to deny the license.

This decision should not be interpreted as this Commission disregarding the fears and concerns of the Alderman, the Police Commander and the community. This decision is based on the evidence presented de novo at this hearing.

The denial of the Consumption on Premises – Incidental Activity license for 2122 Fantasea, Inc., for the premises located at 2122 W. Lawrence Avenue 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: December 15, 2011

Dennis M. Fleming
Chairman

Donald O'Connell
Member