

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

J & W Food & Liquors, LLC)
d/b/a J & W Food & Liquors)
Applicant (Change of Officers))
for the premises located at)
21 West 119th Street, 1st Floor) Case No. 19 LA 4
)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

**DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'DONNELL AND
COMMISSIONER GIBBONS**

NATURE OF THE CASE

Hosie and Velda Coleman filed a Change of Officers/Owners application with respect to J & W Food and Liquors, LLC doing business at 21 West 119th Street, 1st Floor. Since this business was located in a moratorium area the Applicants were required to follow the petition process set out under the Municipal Code of Chicago in order to continue the application process.

Pursuant to procedure, the Applicants received a list of 197 voters located in the moratorium area. The Applicants then submitted a list of 94 voters it believed were deceased or moved.

Included in this list are these six voters whose status is relevant to this case:

- Katrina Brock 11936 S. State Street
- Thomas Cobb 11925 S. Lafayette
- Kristin Cox 11936 S. State Street

- Icy Pulliam 11922 S. Perry
- Tanesheonna Robinson 11914 S. Lafayette
- Jonathan Washington 11922 S. Perry

After the Applicants filed their moved/deceased list, Investigator Antonio Torres from the Department of Business Affairs and Consumer Protection (“BACP”) was assigned to check whether the people on the moved/deceased list were still residing at the address on the voter list. He found the six voters set out above were still living at the address on the voter list. The number of valid voters after deducting the 94 on the moved/deceased list was 103. Eighty-three signatures were submitted and after deducting one, eighty-two signatures remained valid. The number of required signatures was 82 and 53 were needed to lift the moratorium. The petition was certified to contain the required signatures.

On May 16, 2019, Local Liquor Control Commissioner Shannon Trotter sent Hosie and Velda Coleman a letter denying their application for Change of Officers – T3, reviewed by her and was denied for providing a false statement during the application process. Specifically, it alleged at least six individuals were listed on the petition form as having had moved or deceased that were found to still be living at the address identified by the City’s independent review of individuals identified as deceased or moved.

The Commissioner advised the Coleman’s that their false statement violated 4-60-030 of the Municipal Code of Chicago which states “no license for the sale of alcoholic liquor shall be issued to a person who knowingly files false or incomplete information on a liquor license application.”

The Applicants filed a timely appeal with the License Appeal Commission.

SUMMARY OF THE PROCEEDINGS

Prior to the start of testimony, City Exhibits 1-6 were admitted into evidence without objection not as substantive evidence but as a complete record of what was reviewed by the Department of Business Affairs and Consumer Protection in this case.

Bryan Knipper has been a Business Consultant Supervisor for the City of Chicago's Department of Business Affairs and Consumer Protection working specifically with the Local Liquor Control Commissioner for ten years and nine years with liquor. He oversees the people that process liquor license applications. He manages their daily activities and reviews documents before presenting them to the Commissioner.

He is aware that in October 2018, J & W Food and Liquors filed an application for a Change of Officers for the premises located at 21 W. 119th Street. The documents contained behind Tab 3 of the binder is a fair and accurate copy of the application and supporting documents submitted to the Department by J & W Food and Liquors, LLC for the Change of Officers. These documents were admitted as substantive evidence without objection.

The witness testified there is a moratorium in place for liquor licenses at 21 W. 119th Street. An applicant in a moratorium area receives a list of registered voters within 500 feet of the establishment. The applicant will send out a certified mail letter to those registered voters within that 500-foot radius and send notices to the Alderman. The applicant then must circulate a petition and obtain 50% of the registered voters' signatures. In that process, the applicant

identifies people it claims to have been deceased or moved and are not available to sign the petition. Mr. Knipper identified the documents behind Tab 4 as a moratorium module, in this case, the original voter registration list given to the Applicants, and the Petition and Moved/Deceased list submitted by the Applicants. These documents were admitted as substantive evidence without objection.

After an application is submitted the moved/deceased list prepared by the Applicant is sent to investigations to check ten percent for falsehoods. The signatures are reviewed against the voter list and for legibility. Mr. Knipper identified the documents behind Tab 5A as the Moved/Deceased Voter List with comments made in writing by the department investigator. Ninety-four names were listed and the Department reviewed 54 names.

The results of the investigation of those 54 names revealed 29 names no longer at the address (6 deceased), 17 names that could not be confirmed due to no one answering the door, 2 names not confirmed by the person who answered the door and 6 names confirmed as still residing at the address. The investigator recommended proceeding with the application. The documents after Tab 5B were identified as 6 of the 7 pages of the Application Summary Report. The missing Page 5 was found on the twelfth page of the documents in Tab 4. These documents including the misplaced page were allowed in evidence without objection. The witness stated it was determined enough signatures were obtained in the application as 66 valid signatures were submitted and 53 signatures were needed.

After further review, the Commissioner determined that listing six people on the moved/deceased list that were still residing at the location said to be moved or deceased was the filing of a false statement which was the basis for the denial. No other deficiencies were found in the application.

Mr. Knipper identified the document in Tab 2 of the binder as the denial letter sent to the applicant. It was allowed in as substantive evidence without objection.

On cross-examination, Mr. Knipper stated he found no false information in the application or the supplemental documents. There was nothing found that raised any suspicion that the signatures on the petition were false or fraudulent. He was not involved in investigating the moved and deceased affidavits.

The Business Consultant on the application was Sandra Hernandez. She prepared an application summary recommending to the witness as her supervisor that the application be approved. She approved the application on January 10, 2019. Mr. Knipper then reviewed Ms. Hernandez's work product to determine it was done correctly and accurately. He signed his approval to the application on January 17, 2019. Based on the numbers calculated, the Applicants had a sufficient number of signatures and he had received an email from Sandra Hernandez from the Supervisor of the Investigations Unit that it was okay to proceed. At the time of his review, the Applicants had submitted 83 signatures and only one was disqualified by Sandra Hernandez. At the time of his review, the Investigations Unit would have reviewed the moved and deceased affidavit. Prior to his approval, the Investigations Unit had checked 54 of the 94 names listed on

the moved and deceased affidavit. That was a substantial total from the normal policy that investigators check ten percent of the names on the moved and deceased affidavit. Mr. Knipper did not know if there was a request to investigate this higher percentage but he did know the Alderman had sent an objection to the Commissioner. After his approval, the petitions were sent to the Board of Elections for an additional signature check. This was probably at the request of the Commissioner stemming from an aldermanic objection previously made.

The witness explained the email he referenced on direct examination that talked about procedure forward on the application in location Tab 5A. At the bottom, Miguel Campos, Supervisor of Business Compliance Investigations, emailed Sandra Hernandez on January 14, 2019, and stated: “Overall I would say you can proceed with the application.”

As part of his review of the application, Mr. Knipper reviewed the moved and deceased affidavit. That affidavit included voters that had moved, were deceased, incarcerated, hospitalized. It noted houses boarded up or vacant. This document was used to reduce the overall number of signatures required. Voters incarcerated or hospitalized would have been accepted as voters unable to sign the petition.

On redirect, Mr. Knipper stated Liquor Commissioner Shannon Trotter is responsible for making the final determination on behalf of the Department.

In response to a question from Chairman Fleming, Mr. Knipper stated that if the six signatures in controversy had been added back and only 88 names were deducted the Applicants had a

sufficient number of signatures. Mr. Knipper also stated in response to a question from Chairman Fleming that this was the only case he had knowledge of in which the City attempted to deny a license because someone said a person had moved that the City felt had not moved.

Antonio Torres has been an Investigator for the Department of Business Affairs and Consumer Protection for thirteen years. His primary responsibility is to check licensed businesses and, at times, charged with checking voter lists in connection to applications in a moratorium. He has three to five such investigations. In those cases, he is given a list of names and addresses and goes up and down the block trying to make contact. He is to verify 10 to 20 percent present or not. If he is unable to verify somebody lives in an address it would be counted as a no contact.

He was assigned to do such an investigation for a Change of Officers application for J & W Food and Liquors, LLC with an address of 21 West 119th Street. He conducted an investigation similar to what he described. Torres identified the first three pages behind Tab 5A as the voter list he was given. Torres identified the markings on the list as the notes he made reflecting the investigation he conducted. These notes reflect a marking for each name such as “Here” or “NE for No Entry” and “Moved” and “No.”

With respect to Katrina Brock, he would have knocked at 11936 South State and made contact with someone who confirmed Ms. Brock was still living there. He marked “H” after Thomas Cobb at 11925 S. Lafayette which means he contacted someone who told him Mr. Cobb was still there. He also would have spoken to someone at 11936 S. State who stated Kristin Cox was still there. He would have spoken to someone at 11922 South Pullman that told him Icy Pulliam was

still there. He would have spoken with someone at 11914 S. Lafayette that stated Tanesheonna Robinson was still there. He also would have spoken to somebody at 11922 who stated Jonathan Washington was still there. Mr. Torres emailed his findings to his supervisor, Miguel Campos who sent them to City Hall.

Mr. Torres explained some of these conversations were quick such as “yes, they are still here.” Sometimes the person he spoke with was not sure and did not verify whether an individual lived at that address. He felt he had affirmatively verified the persons listed as being at these addresses.

On cross-examination, Mr. Torres stated he did not do a formal report of the investigation but emailed a summary of what he found to his supervisor, Miguel Campos. He repeated that he spoke with somebody at the listed address for the six people he found still resided at these addresses. He took no notes of who he spoke with and did not get any contact information from the person he spoke with. He does not know the name of anybody he spoke with at those addresses. He believes his investigation was on January 3 or 4, 2019. He was not aware a petition had been circulated or when the petition was circulated. He did not ask the individuals he spoke with if the person listed on the moved and deceased list had actually resided at that location when the petition was circulated.

On redirect, the witness stated his determinations were based on his own investigation from speaking with whoever he spoke with.

On recross, Mr. Torres testified he had the moved/deceased list submitted by the Applicants when he did his investigation but he used it only to know where he was supposed to go. He did compare other than six people he investigated, the other people who were on the moved/deceased with the affidavit provided by the Applicants. He thinks he would have gotten enough details that a person was actually still at the location.

The City rested its case.

Katrina Brock currently lives at 11230 South Vincennes, Chicago, IL 60643. From July 11, 2018 – September 1, 2018, she was registered to vote at 11936 S. State, Chicago, IL but was residing at 11230 South Vincennes. She identified Applicant Exhibit 7 as an affidavit she signed in the presence of a notary. She states on oath that she is registered as a voter at 11936 S. State in Chicago, Illinois, but was not living at 11936 S. State during the time the petition was circulated for the transfer of the liquor license regarding J & W Food and Liquors, between July 11, 2018, and September 1, 2018. She was unavailable to sign the petition.

On cross, Ms. Brock explained she is registered to vote at 11936 S. State because her mother lives there. She moved in 2018 but as long as her mother has a house there, she is going to vote there. She does not consider that fraudulent because everyone does it. She has not lived at this address for about eleven years.

Hosie Coleman has been employed by the United States Army for twenty-nine years with the current rank of Master Sergeant. He is married to Velda Coleman who has been employed as a

Supervisor for courtroom deputies for the United States Bankruptcy Court for thirty years. They have one adopted child, a four-year-old little girl.

In June of 2018, he and his wife decided to purchase a business called J & W Food and Liquors located at 21 West 119th Street in Chicago, Illinois. He is looking to retire in less than two years and he wanted to own a business in a community he was familiar with. The purchase price is \$250,000 and that includes the limited liability company J & W Food and Liquor.

He was initially not allowed to apply for a change of officers because there was a moratorium in the area. He went to the Alderman's office to see if he would lift the moratorium. After several attempts to meet with the Alderman, his Chief of Staff said the Alderman would not lift the moratorium.

At that point, he decided to proceed with the moratorium petition process. As part of that process, he sent certified mail return receipt letters to 197 voters and also went door to door to get signatures. Mr. Coleman identified Applicant Exhibit 1, in evidence, as a document he created to track the status of certified mail and to list who had signed the petition. He started circulating the petition on July 11 and continued through August 29. He obtained the signatures himself or with the assistance of the current owner. He would speak to a person on the list he received from the City and then asked them to sign the petition. In this process, he encountered voters who were unable to sign because they moved, were incarcerated, were hospitalized or were in nursing homes. He also encountered boarded-up properties.

Mr. Coleman identified Applicant Exhibit 2, in evidence, as the voter's list identifying voters who had moved, died or were in hospitals or nursing homes. It also identified boarded-up properties. He color-coded this exhibit for tracking purposes.

He submitted the petition and certified mail document to the Alderman's office and also submitted them with the change of officer's application to the City of Chicago in early October. He kept in contact with Mr. Knipper who was head of that department who eventually stated there were a sufficient number of petition signatures to overcome the moratorium. Around January, Mr. Knipper stated there would be a recount and later said it looked like it was good to go.

In mid-May, he received the denial decision based on his lying about six signatures on the moved and deceased affidavit. There were 94 voters in total listed on this document and of that six only three were listed as moved. Two were listed as living in a nursing home and one hospitalized. The six names alleged to have been falsely included on the moved/deceased affidavit and the reason listed for removing each was as follows:

- Katrina Brock – moved
- Kristin Cox – moved
- Icy Pulliam – living in nursing home
- Tanesheonna Robinson – moved
- Jonathan Washington – in nursing home
- Thomas Cobb – hospitalized

Mr. Coleman then identified Applicant Exhibits 3, 4 and 6, in evidence, as return responses from the U.S. Post Office with respect to the certified letters sent. The post office could not deliver the letter to Katrina Brock and Kristen Cox. Alvin Cobb, a relative of Thomas Cobb signed for Thomas Cobb. Someone other than Icy Pulliam signed for his letter. That same person signed for Jonathan Washington at that address. A Michelle Warren signed for Tanesheonna Robinson.

After he learned the reason this application was denied, he attempted to locate these six individuals. He located Katrina Brock at 11230 S. Vincennes. Ms. Brock signed an affidavit in his presence and the presence of a notary public. Ms. Brock gave him information on Kristin Cox who is her mother. Ms. Cox was located at 8221 S. Houston and asserted that is where she had lived for a while. He witnessed Ms. Cox sign an affidavit before a notary public. He found Tanesheonna Robinson at 464 West 126th Street where she said she had lived for quite a while. She said she did live at 11914 S. Lafayette while the petition was circulated. He and a notary public witnessed her signing an affidavit. Thomas Cobb signed an affidavit he was in the hospital at the time the petition circulated and Jonathan Washington was found at Symphony of Morgan Park Nursing Home. He signed an affidavit to that effect before a notary public. He was living at the nursing home when the petition was circulated. Icy Pulliam was found in the same nursing home but is 90 years old and not coherent and was unable to sign an affidavit. Mr. Coleman identified Applicant Exhibit 8, in evidence, as documents reflecting that Mr. Pulliam was a resident.

Mr. Coleman denied intentionally, fraudulently or knowingly filing false information on the moved and deceased affidavit pursuant to his application.

On cross, Mr. Coleman asserted that at no time did the current owners go out without him to obtain signatures. He was present every time a signature was obtained. Prior to receiving the return from the postal service that it could not deliver the letters to Katrina Brock and Kristin Cox he had already been to their addresses. He spoke with a person named Evelyn about Ms. Brock and Ms. Cox.

He obtained the information about Mr. Cobb being hospitalized from a person at that address. Mr. Cobb later confirmed that he had been hospitalized during the time the petition was being circulated. Mr. Coleman has copies of each of the return receipts sent out and can plainly see that Alvin T. Cobb signed the receipt for Thomas Hill Cobb. He could not make out the signature of the person who signed for Icy Pulliam and he has not seen Icy Pulliam's signature or Jonathan Washington's signature. He obtained the affidavits after this appeal was filed. The document from Symphony Nursing Home regarding Icy Pulliam was generated on May 20, 2019, which is outside the range in which the petitions were being circulated.

ANALYSIS

Since this appeal is from a denial of a liquor license application the scope of this Commission's jurisdiction is to determine de novo the propriety of the denial of this application.

This is an unusual moratorium case since the basis for the denial is not that the Applicants presented an insufficient number of signatures on the petition to lift the moratorium. Mr. Knipper clearly stated that there would have been sufficient signatures to lift the moratorium if the six voters in questions had been returned to the universe of voters available to sign the petition.

The City has the burden of proving by a preponderance of the evidence that Mr. Coleman's listing of these six voters on the moved and deceased list was in error and that he knowingly filed this false or incomplete information.

Antonio Torres testified credibly about his investigation of the residence of these six voters. He also testified credibly about what this investigation did not entail. He did not obtain the names or contact information of the persons who provided him the information on the six voters. He did not memorialize these conversations in any way. He did not ask if the six voters in question were living at the addresses on the poll sheet during the relevant period in which the petitions were being circulated by Mr. Coleman. This credible testimony on what his investigation did not entail does not change the deficiencies in his investigation.

Mr. Coleman was completely credible in his testimony about how his procedures in the moratorium petition process and his subsequent conduct after receiving the denial letter. He was personally present at each address he went to for a signature on the petition and kept a record on each of the voters. He sent out 197 letters with return receipt and was able to testify to the specifics of the return receipts for each of the six voters in question. He testified with specific information on people he spoke with that gave him information he relied on in placing these six names on the moved or deceased list.

In addition to Mr. Coleman's testimony, there is the direct testimony at the hearing from Ms. Brock, the affidavits of five of the six voters and the documentation from the nursing home on Icy Pulliam.

Based on the totality of the evidence, the City of Chicago failed to prove by a preponderance of the evidence that the Applicants knowingly provided false or misleading information on its Change of Officers application.

Counsel for the Applicants argued that the denial letter did not state a basis for the denial of the application because it references Section 4-60-030 of the Municipal Code. That section then references 4-60-040 which is the application process and not the moratorium process which referenced in 4-60-24. That section provides for a fine or incarceration or both for a false statement on a moratorium document.

His position, in essence, is that if Mr. Coleman made knowingly false statements or provided false information in the moratorium process that is not a legal basis to deny this application under the Chicago Municipal Code.

Since this Commission has found de novo that the City did not prove the alleged basis for denial of this application it need not address this legal argument.

The denial of the Change of Officers application 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: September 18, 2019

Dennis M. Fleming
Chairman

Donald O'Connell
Member

Thomas W. Gibbons
Member