

LICENSE APPEAL COMMISSION CITY OF CHICAGO

3810 W. BELMONT OPERATIONS, LLC)
APPLICANT/(LATE HOUR))

For the premises located at)
3810 W. Belmont Ave., Floor #1)
Chicago, Illinois 60618)

Case No. 23 LA 03

v.)

Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

**DECISION of Commission Chair PARRY and Commissioner BERG, with
Commissioner GIBBONS DISSENTING**

A denial letter was issued by the Local Liquor Control Commissioner on August 24, 2023, denying the application for a LATE HOUR liquor license submitted by 3810 W. BELMONT OPERATIONS, LLC for the premises located at 3810 W. Belmont Ave, City of Chicago, County of Cook, State of Illinois (“Applicant”). For the reasons stated herein, the denial of the LATE HOUR liquor license is REVERSED.

JURISDICTION

This appeal was heard pursuant to the authority granted to the License Appeal Commission of the City of Chicago (“License Appeal Commission” or “LAC”) by the State of Illinois under (235 ILCS 5/) Liquor Control Act of 1934 (“Liquor Control Act”). The appeal

was timely and properly filed by the Applicant. Applicant seeks review of a denial of its application for a late hour liquor license pursuant to 235 ILCS 5/7-9.

BASIS FOR REVOCATION

Parties stipulated: “The only remaining issue for the License Appeal Commission (LAC) to determine is whether the Applicant provided the required number of signatures from legal voters registered within the affected area to the City when it submitted its Late Hour liquor license applicant.” (Stipulations, at ¶7).

SUMMARY OF PROCEEDINGS

Written and Signed Stipulations

Parties entered into a written and signed set of stipulations. In summary, the relevant additional stipulations are as follows. In addition to the stipulation cited above, parties also stipulated the required number of consent signatures is 84 (Stipulations, ¶8). The parties stipulated that the initial list of legal registered voters in the affected area provided to Applicant in City’s Exhibit 1 (Stipulations, ¶9) contained 356 names (City Ex. 1). Parties stipulated that City does not dispute that through further investigations based on that list of 356, 166 of those names were individuals who remained in residence in the affected area with the remainder no longer in residence (City Ex. 1, Bates #0015; Stipulations, ¶9). Parties further stipulated that Applicant’s signature list contained 105 entries (Stipulations, ¶10). Also stipulated was that City sent investigators to that area to verify signatures, but the investigation was “inconclusive,” and that subsequently two investigators then compared Applicant’s signature list of 105 to signature records held by the Chicago Board of Elections (“Board of Elections”) (Stipulations, ¶11-12) and that the investigators are not handwriting experts (Stipulations, ¶13). The Parties stipulated to the authenticity of 63 of the 105 signatures (Stipulations, ¶16) and the remaining 42 signatures

rejected by the two City investigators are the only signatures in dispute in this matter (Stipulations, ¶16). Parties stipulated to demonstrative exhibits City Exhibits 3-4 providing the signatures in dispute on the Applicant's signature list compared to records from the Board of Elections and City's reasons for rejection for each signature in dispute (Stipulations, ¶20-21).

Additional Evidence Presented

City Exhibits:

- 1 BACP & LLCC's file including affidavit of file review by Local Liquor Control Commissioner (Bates No. 0001); Denial Letter (Bates Nos. 0002-0003); initial list of registered voters (Bates Nos. 0004-0014); Applicant's Attestation in re registered voters no longer residing in affected/relevant area (Bates Nos. 0015-0023); Signature List/Late Hour Liquor License Petition (Bates Nos. 0024-0039); summary BACP/LLCC signature review (Bates Nos. 0040-0041); BACP Investigator McDonald's signature notes (Bates Nos. 0042-0051); BACP Investigator Antonio Torres' signature notes (Bates Nos. 0052-0059); Application and supporting documents (Bates Nos. 0060-0246); additional information considered in denial decision for Package Goods liquor license (Bates Nos. 0247-0339); Agreed/Approved Late Hour Exterior Safety Plan (Bates Nos. 034-0341).
- 2 Board of Elections response to subpoena for disputed signature information.
- 3 Demonstrative. Signature lines from Applicant's list and relevant Board of Elections information by name.
- 4 Demonstrative. City's reasons for rejection for each signature it rejected.

Applicant Exhibits:

- A. Applicant's Signature List/Late Hour Liquor License Petition.
- B. Copy of voter registration list with notations.

C. Board of Elections response to subpoena for disputed signature information.

Caselaw, Additional Ordinance(s) and/or Statute(s) offered

1601 South Michigan Partners v. Measuron, 271 Ill.App.3d. 415, (1995)

Bergman v. Vachata, 347 Ill.App.3d 339, 807 N.E.2d 558 (2004)

Municipal Code of the City of Chicago, section 4-60-130(e)

Pre-Hearing Concession

Prior to start of testimony, Applicant conceded that one of the 42 disputed signatures appeared to be a duplicate because the individual printed their name on one line and signed on another (disputed signatures Nos. 41 and 42 in City Exh. 3).

City's Case in Chief

City rested after presentation of Stipulations, admission of Exhibits 1-4, and case law.

Applicant's Case in Chief

Testimony of David Halpern, in relevant summary (T. 42)

The witness identified himself as 27-year veteran of the hospitality industry and an owner and operator of the Applicant and six other liquor licensed establishments in Chicago, three of which have late hour licenses, and none of which have had violations. The business also owns the building at 3810 W. Belmont. The witness described himself as knowing the neighborhood and having interacted with members of the community in operating one of the other late hour licensed establishment blocks from the premises for this Application. Two other establishments

with existing late hour licenses were purchased by the umbrella organization. He further described having a lot of experience with late hour licenses and that the late hour establishments the business owns is well known in the industry for those who work in hospitality to go to after they get off work. Witness explained the process to obtain a late hour license in detail. As to signature collection for one of the other locations, Witness explained that the owner hired a third party who was alleged to be an experienced consultant in liquor licensing to shepherd the business through the late hour licensing process, but that because the vendor did not follow the correct process, the business had to go around a second time to collect signatures. In that case, he explained, they had to get the signatures all over again because the certified mailing of notice of the application for a late hour license did not go out prior to the initial signature collection. He personally collected signatures for that late hour license both times. The witness explained in detail how signatures were collected for the application at issue here. He explained they made notes on the lists of registered voters when they were collecting signatures that included such things as management company numbers, when a better time to go back to an address might be, whether someone's name was no longer on a mailbox, phone numbers given by those answering the doors to other people, and whether someone didn't want to sign so that they wouldn't go back to that person. He explained the process of collecting signatures took two months (signatures had to be collected within 60 days). He explained they collected in winter, and he thought people didn't really want to open their doors, but was surprised that so many did and listened to the explanation of why they were collecting signatures, who they are and an explanation of the planned establishment. They knew some of the people from their other location in the neighborhood. He answered in the affirmative when asked if there was any negative feedback but was not asked to go into detail. He explained that a couple of other

employees helped collect signatures at the beginning, but that their help for the amount of time they helped was inconsequential and that it ended up being him and the two other witnesses at this proceeding that primarily collected signatures. He explained no one ever went out alone to collect signatures, one to interact and one to take notes and hold a flashlight if it was dark.

During the collection they would go back several times to some locations to collect them on different days and different times to try to connect with people when they were home. He explained they would ask for the person listed as the registered voter at the location, and that sometimes the person would say they don't live there anymore but that the person speaking did and wanted to sign their own name. He explained he didn't want to deny the person's desire to sign, but that he just didn't count them toward the number of registered voters on the list.

Witness further explained that a neighbor would assist with translations via a phone call, and that it only happened a "handful of times." He testified that he never signed someone else's name, never encouraged anyone else to sign the name of someone other than themselves, never had anyone tell him someone was signing someone else's name, he never had a non-resident sign the petition, did not know any of the signatures to be fraudulent and that he submitted a sufficient number of signatures to satisfy the City's requirements for a late hour application.

Testimony of Jack Wall, in relevant summary (T. 71)

The witness identified himself real estate broker, manager of bars and partner of the other two witnesses in liquor licensed establishments for about 10 years; specifically, he is a partner in ownership of the Applicant. He explained the process for obtaining a late hour license and testified consistently with Witness Halpern regarding the process and problems they had gone through to get their other establishment a late hour license. He testified consistently with

Witness Halpern about teams of individuals going out to collect signatures for the application at issue here and the variety of things would happen when they went to the locations, the repeated attempts to connect with people at the locations, and further testifying that he participated “in probably 90 percent of the occasions where we went out collecting signatures.” He has also collected signatures for a couple of election campaigns in the past. He further explained that if someone did not speak English, it was mostly Spanish or Polish and that sometimes they had a Spanish translator when they went out, or a Polish translator available by phone. He testified that no one who did not speak English signed without a translation. During his interactions with collecting signatures for this Application, the Witness testified that often the people would recognize their other establishment in the neighborhood or the names of some of their other establishments. As with Witness Halpern, he explained that if someone did not want to sign, they would write “no” next to their name on the list of registered voters. He also testified that he never encouraged anyone to sign a name other than their own, did not know anyone to have signed a name other than their own, did not sign other’s names himself, had no knowledge of any of the signatures being fraudulent, did not know any of the other collectors to had signed someone else’s name, and further testified they submitted more than a sufficient number of signatures required. He had no knowledge of any non-resident signing, but that occasionally someone would say the person they were looking for didn’t live there anymore, they’d explain why they were there and then the person who did live there wanted to sign (which happened “maybe a handful” of times and never with the intent to confuse or mislead the City). On cross examination, when asked to explain to how he confirmed the identities of the individuals signing the names, the Witness testified that they’d look at the name on the mailbox, ring the doorbell and ask for the person, and if someone answered the door saying they were the person, they

would sign the form. He testified he had no reason to believe a person wasn't who they said they were. The witness testified that he was aware that the signatory should be a registered voter. He testified it happened on occasion that a person would print their name instead of writing in cursive and that there were few recording cameras at the locations and that at multi-unit dwellings sometimes the people would come down to greet them, other times they'd go up to the individual unit.

Testimony of Scott Spidale, in relevant summary (T. 92)

The witness identified himself as an operations manager for the same business as the other two witnesses and an investor in the Applicant. He testified he was one of the people collecting signatures for the Application at issue and testified consistent with the other two witnesses about his experience with the umbrella organization's other establishment's late hour license application and complications with its signature collection process and his personal involvement in the collection. The Witness testified they did not hire a third-party consultant for this Application because after their experience with the other application they wanted to be more hands on and try to avoid any missteps. He explained the particulars of the signature collection process for the Application at issue here, including making notes and using translators consistent with the other two witnesses. He also noted the location of another of their establishments nearby and his familiarity with the neighborhood and mentioned that he received positive reactions when he indicated he was associated with that establishment. He described a brochure they would hand to people with a picture of the building and explanation of what they were trying to do and their history in the industry. He explained that reactions were more positive than negative. He also testified that he believed they provided a sufficient number of signatures

for the application, never encouraged or saw anyone sign a name other than their own, never signed someone else's name, was not aware of anyone having done so and did not doubt the veracity of the signatures. Witness testified that he was aware the signature sheet should be signed by registered voters and that if someone said they weren't a registered voter or weren't on the list they signed anyway if they were in support, but that he did not know if or which names that applied to. The Witness testified that everyone collecting signatures had the same literature to hand out and were routinely asking the same questions and following the same script.

Closing Arguments

City

City argued Applicant allowed non-registered voters to sign the petitions even though the collectors were aware only registered voters should sign, and that it wasn't known whether the discussion of a late hour license was had with each signatory. City urged the Commission to compare the 42 signatures at issue on the petitions to the voter registrations as shown in City Ex. 3. City emphasized that Applicant already had approvals for a tavern license which would allow them to operate until 2 a.m. (3 a.m. on Sundays) and an outdoor patio license and that the only thing at issue in this case was an extraordinary privilege of a late hour license which would allow the tavern to stay open until 4 a.m. (5 a.m. on Sundays). City argued the late hour license was properly denied.

Applicant

Applicant argued that any kind of a liquor license is a privilege under Illinois law. Applicant argued its diligence in collecting signatures and the owners' hands on approach after having experienced problems with a third party collecting signatures for a late hour license at another location, collecting well more than the 84 required signatures here. Of the signatures

collected six of the 42 disputed signatures were alleged to be non-voters. Applicant noted the list started with 356 registered voters, they hired a firm that determined that 113 of those people had moved, and that through attempts to collect signatures it was determined that another 77 where someone did answer the door were no longer living at the reported locations. Applicant argued that after subtracting the six alleged non-voters, referenced by the witnesses in their testimony, Applicant ended up with 92 signatures on the petition. Applicant argued that the Illinois Appellate Court has ruled that a printed name can indicate the assent of the person printing it and may be presumed valid as a manifestation of the assent, even if it does not match a voter signature card from a Board of Elections. Applicant argued that City did not explain what “inconclusive” meant as to the investigators’ inquest as to the signatories or the particulars of the investigation. It argued that standing at the door signing something on a cold night, like e-signatures, may not look like how a person signed a voter registration card. Applicant argued a reversal of the denial and a finding that the signature requirement was met.

City Rebuttal

City argued it is proper for the Commission to do a comparison of the signatures. City also pointed out that while Applicant provided testimony of individuals collecting signatures, Applicant did not call any signatories. City argued that all it really could do in verifying the signatures on the petition was to check them against the Board of Election records, which it did and that you can’t compare something that is printed to something that is in cursive and therefore one cannot determine whether the signature substantially complies using that evidence alone.

ANALYSIS

The standard of review is *de novo* in cases of denial of a liquor license application (235 ILCS 5/7-9).

The only thing at issue is whether Applicant provided at least 84 signatures as calculated by and to which was stipulated as necessary to satisfy the signature requirement by the parties. More specifically, there are 42 signatures which City disputes are valid, and which form the basis for denial of the late hour liquor license. The Commission found the demonstrative evidence in City's Exhs. 3 and 4 helpful in explaining City's position as to the disputed signatures.

The Commission finds Applicant's witnesses credible as to their individual testimony and further find that their testimony was entirely consistent with one another as to their understanding of the late hour license signature collecting process and experience with such not only with the Application at issue here but with the process they previously navigated in another late night liquor licensed establishment they co-own.

It appears from the testimony and evidence that this is a neighborhood that includes multi-unit dwellings and is one in which many people have moved in and out of over the years. The initial registered voter list enumerated 356 names and through the course of further investigation by consultants paid for by the Applicant and through Applicant's own efforts in locating which individuals still reside at their purported address the list was brought down to 166 names, approximately a 47 percent decrease in the number of registered voters from the original list. There was also testimony that certified mailings went to the list of registered voters and when signature collectors visited locations to select signatures, they provided literature about the proposed establishment and history of the owners and their other establishments to those who

opened the doors and were willing to talk. There is no information or evidence that anyone from the affected area objected to the issuance of the late hour license. Witnesses testified that some people refused to sign, but that does not necessarily mean they object to the license. It is only an indication that they did not want to sign the petition. As to those who signed who were not on the list but who indicated they lived at the location where they answered the door, Applicant explained that they were not “counting” those signatures. Late night licenses that affect all residents in surrounding area, not just the voters who are registered at those addresses in that area. It is understandable why Applicant did not refuse those limited number of signatories. Those names can be checked against the Board of Election Records.

Caselaw presented by City supports City’s assertion that this Commission should compare signatures collected to those of the voter registrations (*1601 South Michigan Partners v. Measuron*, 271 Ill.App.3d 415, 648 N.E.2d 1008 (1995)). Such comparisons were made.

Caselaw presented by Applicant discusses printed versus cursive “signatures.” The Illinois Appellate Court held that a printed name substantially complies with the signature requirement where there is no evidence that the person did not sign “in their own proper person only” (*Bergman v. Vachata*, 347 Ill.app.3d 339, 807 N.E.2d 558 (2004), 564). All the witnesses testified to personally going out to the locations and witnessing those who signed the petition represent themselves to be the person whose name they signed. All witnesses testified they knew of no instances to the contrary. No evidence was presented by City as to the results of an “inconclusive” field investigation as to the signatures the City disputed. While it is a theory that certain individuals did not personally sign the petition themselves, there was no evidence that City spoke with any of those individuals. The majority of the Commission finds that where a signature was printed, an address and/or other identifying information was listed, and the

collectors signed the attestations saying they witnessed the person filling out the petition is enough to satisfy the signature requirement absent evidence of fraud. The individual investigator's theory that a signature is not genuine based on that investigator's comparison of a handwriting sample on a voter registration card or the fact that a person filled out the petition with a printed rather than cursive signature is not enough to invalidate the signature. There are many reasons why a signature may not match the signature on a voter registration card, some of which were brought out in testimony such as signing a petition on a cold, dark night while standing in a doorway or noting that e-signatures may look quite different than a handwritten one. Looking at the petitions, and the voter registration cards, we see the space to sign is substantially smaller on the petition. People's signatures may change due to choice or change in physical/mental abilities. There are many factors that may affect the appearance of a signature and/or ability to sign.

The majority find that of the reasons for rejecting signatures in the demonstrative evidence presented in City Exh. 4 there were at least 22 signatures that were rejected that the Commission here deems valid and should not have been rejected. Adding at least those 22 names alone to the 63 stipulated authentic signatures is enough to reach and exceed the 84 signatures required for the late hour license. There were 22 signatures that fell under the headings "Signature does not match Board of Elections records," "First name only mismatch/signature does not match Board of Elections records" and "No signature on applicant's list/signature does not match Board of Election records" (excluding one (1) person who signed twice) in City Exh. 4. There were also nine (9) rejections under the heading "No signature on Applicant's list/signature does not match Board of Election record" for printed rather than cursive signatures – five of which had telephone numbers and two of those five included dating

of the signature, all with an attestation that the signature collector witnesses the person sign the petition.¹

Having fully considered and weighed the evidence summarized above, based upon the law, and for the reasons stated herein, the License Appeal Commission by its majority finds that the Applicant met the minimum requirement of 84 signatures required to obtain a late hour liquor license. The denial of the application on that basis for a late hour license is reversed.

CONCLUSION

IT IS THEREFORE DECIDED AND ORDERED that the August 24th, 2023 denial of the application for a late night liquor license for 3810 W. BELMONT OPERATIONS, LLC for the premises located at 3810 W. Belmont Ave., Floor #1, City of Chicago, County of Cook, State of Illinois is REVERSED and the license shall issue.

Laura Parry
Chair

Cynthia Berg
Commissioner

DISSENTING OPINION, by Commissioner Gibbons

After reviewing the hearing record and comparing the contested signatures, I agree with the City that the applicants did not meet the required number of signatures to approve a late night license. For the reasons stated above, I respectfully dissent.

Thomas Gibbons
Commissioner

¹ The majority in this decision disagree as to the exact number of signatures to be added, but agree that there are at least 22 signatures to be added.

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: April 2, 2024



Laura Parry
Chair



Thomas Gibbons
Commissioner



Cynthia Berg
Commissioner