

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor
Chicago, IL 60610
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IN THE MATTER OF
Chimpoulis/Richardson)
COMPLAINANTS,)

AND)

J & O CORP., d/b/a The Cove Lounge,)
and Agnes Spulak,)
RESPONDENTS.)

CASE NO. 97-E-123/127

TO:

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ORDER

Now pending are Complainant Richardson's Motion for Reconsideration to Make Layne Rachowicz and Michael Fohran Parties Defendant and Complainant Chimpoulis' Motion for Leave to Amend the Complaint to Conform the Pleadings to the Proofs and Add Michael Fohran as a Respondent.¹ At the close of the final day of hearing, Chimpoulis filed his motion, and the Hearing Officer granted leave to allow Richardson to renew his motion filed at the close of his case in chief, based on testimony presented during the final two days of hearing, and granted Chimpoulis leave to supplement his motion upon receipt of the remaining transcript. Chimpoulis later chose not to supplement or brief his motion. Respondents J&O, Inc. and Agnes Spulak have responded to both motions, and Richardson has filed a reply.

¹Leda Sipes, Special Administrator for the Estate of John Richardson, has been substituted as Complainant for Richardson, now deceased. For simplicity's sake, we will continue to refer to Richardson as one Complainant.

Richardson's previous Motion to conform the pleadings to the proof and add Rachowicz and Fohran as Respondents was denied in an Order dated May 28, 1999, primarily because Richardson had not satisfied the following requirement of Commission Rule 210.160(b)(2):

The Complainant may seek to amend his or her Complaint at the Hearing itself only if the information which forms the basis of the motion is first learned at the Hearing and could not have been learned beforehand (including during discovery).

Richardson's Motion for Reconsideration is based primarily on the rebuttal testimony of Glenn Driver, called by Complainant Chimpoulis, about his knowledge of the process by which the liquor license for the Cove Lounge was transferred to the new owners after the bar was sold. In particular, Driver testified that a petition circulated among residents living within 500 feet of the bar, as a prerequisite to the City's transfer of the liquor license, listed Spulak, Rachowicz and Fohran as the owners of Respondent J&O Corporation.

However, this information – Driver's recollection – could have been learned prior to the Hearing. Even though Driver was Chimpoulis' witness, he was listed by Chimpoulis on his Preliminary Witness list. In effect, Richardson complains that he could not be expected to ask the right questions of Driver because his counsel did not know what Driver's answers would be. But because Richardson knew that the identity of the bar's owners was in issue, it would have been a logical element of his investigation to ask former customers what they knew of the new ownership of the bar.

More important, the relevant information that is offered in support of the motion is not in fact Driver's vague belief as to what the petition said, which is of little probative value; the relevant information is what the petition actually said. The question is not whether Richardson's counsel anticipated or could have anticipated that Driver had any knowledge or recollection of the wording of the petition, but whether Richardson could have obtained admissible information about the petition prior to the Hearing. Richardson knew that the ownership of the Cove Lounge was in issue, and there was nothing to prevent him from conducting his own investigation and discovery concerning the process by which the liquor license was transferred by the City of Chicago to the bar's new owners. Thus, Richardson has failed to adduce any information to support his Motion for Reconsideration that could not have been learned before the Hearing, and his motion is denied.

Chimpoulis' Motion must also be denied. The basis for Chimpoulis' motion is that Fohran admitted that he was the bar's manager, and that Fohran was the supervisor who discharged Chimpoulis, he supervised the day-to-day activities of the bar, he interviewed and hired the bartender who replaced Chimpoulis, he had a set of master keys to the cash register, and he referred to himself saying, "We have the bar" and talked to people about his plans for after "I" get the bar. However, Complainant himself knew this information prior to the Hearing, as demonstrated by his own testimony.. See, e.g., Tr. 235, l. 18 - Tr. 236, l. 10; Tr. 239, ll.5 - 18; Tr. 240, l. 23 - Tr. 241,

l. 3; Tr. 242, ll. 22 -24; Tr. 245, ll. 5 - 12; Tr. 317, l.22 - Tr. 318, l.14; Tr. 324, ll. 21 -23; Tr. 327 , l. 20 - Tr. 329, l. 5; Tr. 330, ll. 1 - 9. Thus, Chimpoulis also has failed to satisfy the critical requirement of Reg. 210.160(b)(2) that the information that is the basis for the motion to add Fohran as a Respondent not have been obtainable prior to the Hearing.

In sum, both motions to amend the Complaint are denied. The following briefing schedule is set on the merits of the Complainants' claims: Complainants shall file and serve their post-hearing briefs on or before October 8, 1999; Respondents shall file and serve their response on or before October 22, 1999; and Complainants shall file and serve their replies on or before October 29.

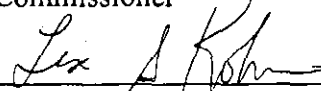
PURSUANT TO REGULATION 250.100(b), A PARTY MAY OBTAIN REVIEW OF THIS ORDER ONLY AFTER THE COMMISSION HAS ISSUED AN ORDER DISMISSING THE COMPLAINT OR RULING UPON AN ADMINISTRATIVE HEARING.

CHICAGO COMMISSION ON HUMAN RELATIONS

Clarence N. Wood

Chair/Commissioner

By:



Lisa Salkovitz Kohn

Administrative Hearing Officer

Date:

9/15/99