

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

1344 East 67th Street Corporation)
db/a Midway Food & Liquors No. 2)
Applicant (Packaged Goods))
for the premises located at)
1344 East 67th Street)
) Case No. 10 LA 52
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF COMMISSIONERS SCHNORF AND O'CONNELL

We believe that the decision in the Vino Fino case applies to the facts of this case but we take a broader view of what the court set out in that opinion.

The Appellate Court states that the purpose of requiring an applicant to provide information on their personal history is to allow the Local Liquor Control Commission to promote the City's goal of protecting public health and safety. It then defined to deny a license to an applicant who would tend to create a law enforcement problem is to deny a license who would not obey liquor control laws and the law generally or who would impede enforcement of those laws.

While the facts in Vino Fino are similar in ways to the facts of this case there are also important differences. In that case there was testimony that two citations for sale of alcohol to a minor had occurred at the licensed premises while Nilda Gonzalez was the

owner and 100% shareholder of Paco's Liquors which held the liquor license at 2558 W. Division. Nilda Gonzalez was also the owner and 100% shareholder of the applicant Vino Fino Liquors for a license at 2558 W. Division. Richard Haymaker, the Deputy Director of the Local Liquor Control Commission, testified at the hearing before the License Appeal Commission. Haymaker explained that the two sales to minors that occurred while Nilda Gonzalez was considered in the decision to deny. Two previous sales to minors that occurred when Ms. Gonzalez's father owned the corporation were not considered. Mr. Haymaker further testified that the LLCC denied Vino Fino's license because an approval of the application would "have allowed an existing license escape there license history."

Haymaker specified the issuance of a license to Vino Fino would have impeded the enforcement of Section 4-60-181(d) of the Municipal Code which provided for the immediate revocation of a liquor license upon the third sale of alcohol to a minor violation within three years. If a new license issued to Vino Fino and a third sale to minor violation occurred within the three years, the LLCC would be unable to enforce the automatic suspension provision of Section 4-60-181(d).

Reinforcing the point that a concern of the LLCC in Vino Fino was an attempt to erase a past disciplinary history is referenced in a section of the LLCC's denial after remand which stated in relevant part:

"In light of her testimony at the hearing before the License Appeal Commission, it is clear the sole purpose of this application is to erase her license disciplinary history. The LLCC has

determined that allowing a license with a track record of violations to shed its disciplinary history undermines the regulatory process, endangers the public and poses a law enforcement problem.”

This overriding concern by the LLCC that the applicant in Vino Fino not be able avoid the past disciplinary history of Paco’s Liquors does not exist in this case. Jose Vasquez is not attempting to avoid past disciplinary histories by applying for a new liquor license for these premises. There is no evidence in the record that the license existing for 1344 E. 67th Street has any disciplinary history. There was evidence from Mr. Vazquez that since he took over day to day operation of 1344 E. 67th Street no one has been cited for illegal sale of alcohol.

A narrow reading of Vino Fino would suggest that the fact that Mr. Vazquez’s businesses have seven past sales to minors automatically proves that the issuance of this license should be denied on the basis that its issuance would tend to create a law enforcement problem. That is not a true reading of the Vino Fino decision. In Vino Fino the applicant produced 14 witnesses that testified in support of issuance of the license. Included in those witnesses were two Alderman, a representative of the 14th Police District, the Director of Cook County Commissioner Robert Maldonado’s office, the Director of the Division Street Business Development Association and seven local merchants. The applicant testified to improvements made to the store including security cameras and an automated cash register system. After weighing all the evidence the License Appeal Commission ruled against the applicant. The Appellate Court ruled that it was not against the manifest weight of the evidence in that case for the License Appeal

Commission to rule against the applicant. The Appellate Court did not issue a mandate that in all similar cases an applicant must be denied. In fact, one can infer from the Vino Fino decision that had the LAC ruled in favor of the licensee after hearing conflicting testimony, that decision would not have been reversed as being against the manifest weight of the evidence.

We agree with Chairman Fleming that the disciplinary history of the 47th Street Corporation is not relevant to this case. Jose Vasquez has no interest in this corporation and any disciplinary history of this corporation should not be considered with respect to this application.

The Stipulation of Facts signed off by the parties with respect to V & V Liquors is that it is a privately held corporation incorporated pursuant to the laws of the State of Illinois that has held a City of Chicago retail liquor license since approximately 1988. The undisputed testimony of Jose Vasquez is that he is involved in the day to day business affairs of V & V Liquors. There have been no violations of liquor laws at V & V Liquors since 1999. From 1988 until February 5, 1999, there were four sales to minors. Since 1999, Jose Vasquez has implemented business policies with regard to the sale of alcoholic liquor at V & V Liquors. Since there have been no violations since February 5, 1999, these policies seem to be working.

We are not suggesting that Jose Vasquez can escape responsibility for the sales to minors by the 59th and State Street corporation. He is a 75% owner of that corporation.

It is important to note that the evidence in the record is that Jose is not involved in the day to day operation of this establishment. His brother Carlos has that responsibility. The most recent sales to minors having occurred on February 5, 2009, and on July 16, 2009, on Carlos' watch. This would probably be a sufficient basis to find issuance of a license to Carlos would be denied on the law enforcement basis.

With respect to the two licensed establishments under the direct supervision of Jose Vasquez there have been four license violations of sales to minor since 1988 and none since 1999. Jose Vasquez was not personally involved in any of these four incidents. The evidence in the record is that he has never been convicted of any criminal offense. Based on these specific facts concerning the history of Jose Vasquez's direct management of liquor stores, the City failed to meet its burden of proof that the issuance of this license to 1344 E. 67th Street Corporation would tend to cause a law enforcement problem.

The denial of this license is reversed.

CHAIRMAN FLEMING'S DISSENTING OPINION

On September 3, 2010, Local Liquor Control Commissioner Gregory Steadman wrote the applicant a letter denying its application for a Packaged Goods liquor license for the premises located at 1344 East 67th Street. This denial was based on the Local's determination that the issuance of this packaged goods liquor license would tend to create a law enforcement problem. This decision was based on past history of Sales to Minors at other liquor establishments owned or controlled by the applicant. These Sales to Minors occurred over a time period from February of 1999 through July of 2009. The applicant filed a timely Notice of Appeal with the Commission. This matter proceeded to hearing on December 7, 2010. Assistant Corporation Counsel Rachel Berger and Jamie Zehr represented the City and Harlan Powell represented the applicant.

Since this case involves an appeal of an order of a local liquor control commissioner refusing to grant a liquor license, the issue before this Commission is to decide de novo the matter of the propriety of the refusal to grant the packaged goods liquor license.

Prior to the start of testimony the parties entered into a Stipulation of Facts. With respect to the applicant, 1344 E. 67th Street Corp., it was stipulated that Jose Vasquez owns 100% interest in and is the sole corporate officer of 1344 E. 67th Street Corp.

With respect to the 59th and State Street Corporation, it was stipulated this corporation has held a City of Chicago retail liquor license since approximately 1987. It

was further stipulated Jose Vasquez holds a 75% ownership interest in and is the president of this corporation. Carlos Vasquez holds a 25% interest in and is the secretary of this corporation.

It was stipulated also that V & V Liquors, Inc., has held a City of Chicago retail liquor license since 1988. Jose Vasquez and Carlos Vasquez each hold a 50% interest in this corporation. Jose Vasquez is the president and Carlos Vasquez is the secretary of this corporation.

The parties also stipulated that as to the 47th Street Corporation, it has held a City of Chicago retail liquor license since 1997. Carlos Vasquez and a Miguel Villalobos each hold a 50% interest in this entity with Carlos being the president and Miguel being the secretary of said corporation.

There was also a stipulation that on or about December 22, 2009, V & V Liquors, Inc. entered into a loan agreement with 1344 E. 67th Street Corp. That loan agreement is set out on a Promissory Note executed by Jose Vasquez on behalf of the lender V & V Liquors, Inc., and by Carlos Vasquez on behalf of the borrower 1344 E. 67th Street Corp. V & V Liquors, Inc., would lend sixty-thousand dollars (\$60,000) to 1344 E. 67th Street Corp. That loan would be repaid at 6% interest with monthly payments of two-thousand eight hundred dollars (\$2,800), commencing on January 22, 2011, with a final thirty-thousand dollar (\$30,000) payment due on December 22, 2011.

A review of the evidence presented at the hearing will help define the issues and understand this decision.

Alethea Cotton is presently Assistant Commissioner of the Department of Business Affairs and Consumer Protection. She reviews and signs off on all liquor applications submitted by applicants to the department's business consultants. The department denied the Packaged Goods liquor license application for the premises at 1344 E. 67th Street filed by the 1344 E. 67th Street Corporation. The denial was based on law enforcement based on the history of the applicant. The reasons for the denial were set out in the letter of denial sent to the applicant. That denial letter is in evidence as City's Exhibit 1.

The denial letter specifies the disciplinary history for the 59th and State Street Corporation includes four sales to minors. City's Exhibit 4, in evidence, is an Order of Disposition for this corporation. It reflects a combined 30-day closing for the February, 2009, and July, 2009, violations. It also reflects a \$3,000.00 fine for the January, 2007, offense and a \$2,000.00 fine for the June, 2006, offense.

The denial letter also references the disciplinary history of V & V Liquors, Inc., in which Jose Vasquez holds a 50% ownership. City's Exhibit 5, in evidence, reflects the previous dispositions for violations relating to sales to a minor. There were four previous violations from May 29, 1990, through September 30, 1999. A violation warning was

issued on a May 29, 1990 case; the November 19, 1996, case ended with a voluntary fine of \$500.00; the February 3, 1999 matter, and the September 30, 1999 matter resulted in 5 and 15-day suspensions respectively. (It should be noted the denial letter did not reference the 1990 case)

The denial letter also references the history of the 47th Street Corporation in which Carlos Vasquez owns 50% of the corporation. This corporation is owned by Carlos Vasquez and Miguel Villalobos. Jose Vasquez has no ownership interest in this corporation. Over objection the disciplinary history of this corporation was allowed in evidence as City's Exhibit 6. It shows a March, 2010, sale to minor with a \$2,000.00 fine and a 3-day closing, a May 22, 2007, sale to minor with a \$1,200.00 fine, a May 24, 2007, failure to notify of change of DBA with a \$700.00 fine, and a February 2005, sale to minor resulting in a \$500.00 fine.

Ms. Cotton explained the reason the department felt there was a law enforcement issue was that they are all the same type of offense. The frequency of these cases also troubled the department. The department considered the offenses relating to Carlos because he was a money lender on this application. The department considers sales to minor a major violation and the department associated ten sales to a minor to these two individuals.

Ms. Cotton testified she reviewed the denial letter and the gold sheet orders of disposition in preparing for her testimony. Prior to the denial the entire file was

reviewed. She did not recall if there was evidence of any other violations of the law but stated the denial letter sets out no other violations of the law other than those noted in the orders of disposition. While Ms. Cotton could not testify whether the investigations that led to those dispositions were conducted by BACP investigators or Chicago Police investigators, they were a result of one or the other conducting an investigation of these licensed premises. The department would have determined Carlos Vasquez was a beneficial interest holder in 1344 E. 67th Street Corp., based on the financial documents in the application. She did not discuss the application with anyone living in the vicinity of 1344 E. 67th Street or 59th and State Street or with any residents in the area around V & V Liquors. She does not know if the Chicago Police Department is having difficulties doing their job on or about 1344 E. 67th Street or at 59th and State Street, the area of V & V Liquors or in the area of the 47th Street Corporation.

Ms. Cotton stated the department looks not only at how many license violations are affiliated with an applicant but also looks at the time frame in which the violations occurred. Anything they read is considered recent history to the department. She did admit the department takes into account the length of time an applicant may have conducted business and she did consider 27 years in business to be a substantial time. She did not investigate as to any liquor related violations that may have occurred at 1344 E. 67th Street and stated there was no current liquor license at that location.

The City rested its case.

Carlos Vasquez came to the United States in 1984 at the age of 17 and has been a United States citizen for sixteen years. Prior to coming to the United States and subsequent to his coming to the United States, he has not been charged or convicted of any crime. He started working in a liquor store in 1984 and has worked in positions involving liquor sales since 1988. He has never personally been cited or been found liable for selling liquor to a minor.

Carlos Vasquez stated he is not a shareholder of or an employee of the 1344 E. 67th Street Corporation. He receives no money or other form of compensation from that corporation, does no services to benefit it, has no input in the hiring or firing of any employees and has no role in the day to day operation or management of that corporation. He has not personally loaned that corporation any money and has not loaned his brother Jose Vasquez any money with regards to his acquisition of 1344 E. 67th Street Corporation. He does own a 50% interest in V & V Liquors and a 50% interest in the 47th Street Corporation. Miguel Villalobos owns the other 50% of 47th Street Corporation and Jose Vasquez has no ownership interest in that corporation. At one time he was paid for bookkeeping services but he does not currently do bookkeeping for that company. Jose Vasquez has no input as to the hiring and firing of employees at the 47th Street Corporation and has no role in day to day operation of the liquor store operated and owned by 47th Street Corporation at 4700 South Cottage Grove Avenue. V & V Liquors, Inc., is a liquor store located at 5500 S. State Street.

Carlos Vasquez testified also that he and his brother are close, good friends and own businesses together. He did not become a corporate member at this location because his brother wanted to have his own business. He did sign off on a loan from V & V Liquors to his brother for sixty-thousand dollars (\$60,000.00) at 6% interest.

Thomas Johnson has been a licensed attorney in the State of Illinois for 35 years and is one of the attorneys of record for 1344 E. 67th Street Corporation. He has helped the Vasquez brothers since 1993. He incorporated 1344 E. 67th Street Corporation with Jose Vasquez as the sole officer and sole shareholder. The purpose was to purchase the real estate and business located at 1344 E. 67th Street from an individual named Freddy Davis. Mr. Davis had run a store that sold groceries and liquor at this location for many years. Mr. Davis is elderly and was in a very difficult position financially. 1344 E. 67th Street Corporation purchased the business inventory and equipment for \$125,000.00. The real estate was to be purchased for \$240,000.00, in a contract that called for a \$75,000.00 down payment and over time payments of \$10,000.00 a month. The debts accumulated by Mr. Davis would be paid from those monies. There was also an intern management agreement whereby 1344 E. 67th Street Corporation was in the business after the closing on December 22, 2009. The transaction was premised on Mr. Vasquez securing a liquor license for this corporation. He has worked with the State of Illinois Department of Revenue to deal with a \$200,000.00 liability owned by Mr. Davis. His paralegal sent out certain information that was submitted with this application to the Department of Business Affairs and Consumer Protection.

Information on the actual application indicating an affiliation between Jose Vasquez and 47th Street Corporation would be inaccurate. Jose has never had anything to do with that company as a stockholder, officer or manager. That has always been Carlos and Mr. Villalobos.

Mr. Johnson was not aware of Jose Vasquez being the business bookkeeper for 47th Street Corporation and was not aware of any payments to Jose by Carlos for the bookkeeping. He never reviewed the final liquor license application and he assumes Mr. Powell's office was responsible for checking the facts.

Johnson explained that the deal is contingent on Mr. Vasquez obtaining a liquor license, but added Vasquez has already paid a sizeable amount of money to pay the debts of Mr. Davis. To this point the only thing left is the payment of \$60,000.00 to the state. If a liquor license is not obtained Mr. Vasquez would get the food business. The licenses presently are owned by Mr. Davis under the business name of AMC Mini Mart under a management agreement with 1344. When presented with the documents reflecting 11 sales to minors by companies owned by the Vasquez brothers, Mr. Johnson indicated he did not know specific dates of violations and assumed the paperwork was accurate.

Jose Vasquez came to the United States in 1976 and became a citizen in 1981. He has never been charged with or convicted of crime prior to coming to the United States or since arriving in the United States. He initially worked for Zenith for four years and then started working at a liquor store. He has been involved in the retail sale of liquor

consistently since 1981. He has never personally been cited in that time for any unlawful sale of alcohol. He worked for Sam's Wine and Spirits for eighteen months and then purchased a different Sam's Wine and Spirits at 5901 S. State Street. That was in about 1986. This is now the business known as 59th and State Street Corporation.

Jose Vasquez stated he is the sole officer and shareholder at 1344 and he currently manages the day to day operation, including the sale of liquor, pursuant to his agreement with Mr. Davis. He took over these duties in December of 2009. Since then no one has been cited at 1344 E. 67th Street with an illegal sale of alcohol. He made changes to the business operation since he took control. He added new coolers and almost a full line of groceries. Business has increased six to seven times. He did a survey of community residents to see if they were satisfied and had a very nice response. Carlos Vasquez is not an officer or shareholder of 1344, and he has not worked for or been paid any money from the business generated at 1344 E. 67th Street. No one including his customers, his neighbors, the alderman or the police commander has ever brought to his attention any crime or law enforcement problems in the neighborhood.

Jose Vasquez explained the policies with regard to the sale of alcohol at 1344 E. 67th Street. He does his own checks by sending a young guy to try to purchase liquor. If an employee agrees to sell the clerk and maybe the manager is fired. He has recently hired a private company, the Bars Company, to do similar investigations twice a month. If there are no violations over the course of the year all four employees receive a \$500.00

bonus. All employees are TIP certified. There are 16 cameras around the building and in the parking lot. There is 24 hour video monitoring.

Jose Vasquez is involved in the day to day grocery and liquor business of V & V Liquors located at 5500 S. State Street. He is behind the counter doing sales and he does the hiring and firing. There have been no violations of any laws since 1999. The clerk responsible for that sale was terminated. He was not present when this violation occurred. Policies similar to those described as being in place at 1344 E. 67th Street are in place at V & V Liquors including the \$500.00 per employee incentive program. He has eight employees at this location and all are TIP certified. Bars Company has been hired to run independent stings at V & V Liquors. V & V Liquors has had a retail liquor license in the City of Chicago since 1988.

Jose Vasquez testified he is a shareholder and officer for the 59th and State Street Corporation but is not involved in the day to day business affairs. His brother has those responsibilities. This a grocery and liquor store located at 5901 S. State Street. His understanding is that his brother has implemented policies at 59th and State similar to those at V & V Liquors and 1344 E. 67th Street. The eight employees at this store are TIP certified and the same termination policy is in place for an employee who violates liquor sale policies. The Bars program conducts independent sting operations and the incentive program exists. 59th and State Street Corporation has had a liquor license in the City of Chicago since 1987.

Jose Vasquez on cross-examination acknowledged it is unlawful in the city of Chicago to sell alcohol to a minor and that as a liquor license owner he is responsible for the acts of his agent. His 59th and State Street business has been cited for selling alcohol to a minor as has the business at V & V Liquors. There has been fines and most recent at 59th and State Street a 30-day closing. Jose Vasquez repeated that the 1344 E. 67th Street Corporation has not paid his brother any money, but admitted his brother signed off on a loan from V & V Liquors where V & V Liquors would receive 6% interest.

Vasquez believes he started his policies at both locations in 1999, but does not know if his brother has the same policy at the 47th Street Corporation. Vasquez admitted the 47th Street Corporation was listed on this application as a liquor business in which he previously applied for a liquor license. He responded that there have been no positive tests from the stings operated by the Bars program. Those stings are for sales of alcohol and tobacco to a minor.

The Appellate Court defined the term to deny an applicant who would “tend to create a law enforcement problem” is to deny an applicant who would not obey the liquor control laws and the law generally or who would impede enforcement of those laws. Sales of alcohol to minors is a violation that is directly related to the control of liquor and is a Class A misdemeanor under state law. It is also a violation of the Chicago Municipal Code. It concluded the prior history of disobeying liquor laws was sufficient evidence to deny the applicant on law enforcement grounds.

In its denial in this case, the LLCC relied on part of a history of sales to minors that have occurred at the 47th Street Corporation located at 4700 South Cottage Grove Avenue. That corporation is owned by Carlos Vasquez and Miguel Villalobos. Jose Vasquez is not an owner of this corporation and there is no evidence he was involved in any way with the operation of the 47th Street Corporation at the time the sales to minors occurred. The fact that Carlos Vasquez through V & V Corporation lent money to Jose Vasquez and the fact that Jose Vasquez may have performed bookkeeping duties for 47th Street Corporation is not relevant to this case.

The only basis for denial of this application is that its issuance would tend to create a law enforcement problem. The basis for that determination was the past history of sales to minors at other liquor establishments connected to Jose Vasquez. Since no evidence was presented on whether the issuance of this license would lead to an increase in crime in general, the analysis in this case must follow the principles set out in the case of Vino Fino Liquors v. The License Appeal Commission of the City of Chicago, 914 N.E.2d 724.

The facts in Vino Fino were somewhat similar to the facts in this case. A liquor store owner of a corporation with a past history of four sales to a minor applied for a new license under a new ownership. Two of the four sales to minors occurred when the applicant was running the business and two occurred prior to her taking over the business. The application was denied on law enforcement grounds based on the negative license history of the applicant and the existing corporation. Only the sales to minors that

occurred while the applicant operated the liquor store were considered by the Local Liquor Control Commission in its denial of the new license. There are obvious distinctions in that the applicant in this case is applying for a license at a different location under a different corporation but the holding in Vino Fino is still applicable.

At the hearing before the License Appeal Commission in Vino Fino, the applicant presented evidence of several improvements made to the store including age-verification software, an automated cash register system and several security cameras in the interior and exterior of the establishment. Fourteen witnesses including two Alderman and an officer representing the 14th Police District testified in favor of the applicant. At the conclusion of the hearing, the License Appeal Commission upheld the denial of the license. The LAC's decision emphasized that allowing this license would in essence allow a license with a history of violations to wipe the slate clean by changing the corporation. This decision was appealed to Circuit Court which was remanded to the Local Liquor Control Commission to confirm that the LLCC's decision was based only on the violations that occurred after the applicant took over the business. The LLCC so confirmed that fact and again denied the application. That denial was affirmed by the Circuit Court and an appeal was taken to the Appellate Court.

Jose Vasquez holds a 75% interest in 59th and State Street Corporation which has held a City of Chicago liquor license since 1987. He also holds a 50% interest in V & V Liquors, Inc., which has had a City of Chicago retail liquor license since approximately

1988. As part of a management agreement he has operated the business at 1344 E. 67th Street for the last year.

The disciplinary history of V & V Liquors shows four sales of alcohol to minors over the years 1990 through 1999. Dispositions ranged from a voluntarily warning to a 15-day closing.

The disciplinary history of 59th & State Street Corporation reflects four sales to minors. The dates of the sales were June 23, 2006, January 18, 2007, February 5, 2009, and July 16, 2009. The first two cases resulted in fines of \$2,000.00 and \$3,000.00 respectively and the last two cases resulted in a combined 30-day closing.

There was no evidence of any disciplinary action taken against the location of 1344 E. 67th Street while Mr. Vasquez has operated the store under a management agreement.

Mr. Vasquez testified to steps he has taken to prevent further sales to minors. He has implemented them at V & V Liquors where he personally manages the day to day operations. Since he implemented them in 1999, there have been no other violations at that location. His brother is responsible for the day to day business affairs for the 59th and State Street Corporation and Jose Vasquez believes his brother has instituted similar programs at that location to prevent further sales to minors.

While Carlos Vasquez may run the day to day operation of the 59th and State Street Corporation, Jose Vasquez owns a 75% ownership interest in this corporation. If Carlos had implemented policies to prevent sales to minors at the same time in 1999, those implementations failed to prevent the four sales to minor from June of 2006 through July 16, 2009. The last sale to a minor occurred within one year of this application.

Based on the past history of seven sales to minors in businesses owned in part or in whole by the applicant, and based on the fact that the last sale to minor was in July 16, 2009, under the guidelines set out in the Vino Fino case, the City has met its burden of proof that the issuance of this liquor license to this corporation owned by Jose Vasquez would tend to cause a law enforcement problem.

I would have affirmed the decision of the Local Liquor Control Commission.

Dennis M. Fleming
Chairman

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: April 6, 2011

Stephen B. Schnorf
Member

Donald O'Connell
Member