

REPORT OF:
ALCOHOL LICENSE REVIEW COMMITTEE
OF THE CITY OF MADISON

CITY OF MADISON,

Complainant,

Legistar ID#'s: 55532 & 55590
NON-RENEWAL HEARING

vs.

DIVINE ORDERS CATERING, LLC
M. LaVerne Buchanan
2122 Luann Lane
Madison, WI 53713,

Respondent.

INTRODUCTION

On April 26, 2019, the City of Madison, represented by Assistant City Attorney (ACA) Jennifer Zilavy, filed a Summons and Complaint with the City Clerk alleging that the Respondent had violated several provisions of Chapter 38, Madison General Ordinances (Alcohol Beverages Regulated). On April 26, 2019, that Summons and Complaint was properly served on the Respondent. On April 30, 2019, the City filed an Amended Complaint with the City Clerk and subsequently served that Amended Complaint upon the Respondent on April 30, 2019. Both the Complaint and the Amended Complaint contained a number of factual allegations to support the City's charge that the Respondent was "keeping or maintaining a disorderly house" in violation of §38.01(1)(a)(2), M.G.O.

On May 2, 2019, the Respondent, by its owner, Ms. LaVerne Buchanan appeared before the City of Madison Alcohol License Review Committee (ALRC) for the purpose of answering the complaint. The members of the ALRC present and participating in this hearing were Mr. Thomas A. Landgraf (Chairperson), Alderperson Sheri Carter, Alderperson Michael Verveer, Mr. Michael S. Donnelly, Mr. Stefan J. Fletcher, and Mr. Patrick J. Grady. ALRC members Alderperson Paul E. Skidmore and Mr. Fernando Cano Ospina were not present for the hearing and did not participate in this decision. The ALRC currently has a vacant position. The hearing was transcribed by a certified Court Reporter, and that transcript is attached (Exhibit A) and incorporated into this decision as though fully set forth herein.

At the outset of that hearing, ALRC Chairperson Landgraf, confirmed that the Respondent was appearing by its owner, Ms. M. LaVerne Buchanan, proceeding *pro se*. Mr. Landgraf directed the ALRC's legal counsel, ACA Roger Allen, to explain the hearing procedures to the parties. ACA Allen complied with that request.

The Respondent denied all of the charges alleged in the Complaint. She also moved the ALRC for a set over of the hearing as she had been unable to obtain legal counsel and believed that the hearings were untimely. The ALRC deliberated in closed session to consider the Respondent's request for a set over. After such deliberation, the ALRC reconvened in open session and denied the Respondent's request for a set over. The ALRC then proceeded to conduct an evidentiary hearing.

The evidentiary hearing then proceeded with the City, by ACA Zilavy, calling its witnesses and the Respondent, by Ms. Buchanan, then calling witnesses. Both parties were permitted to make oral closing statements. Following the evidentiary hearing, the ALRC convened in closed session to deliberate. The ALRC bases its decision below, not on the number of witnesses for either side, but rather, bases its decisions on the strength of the witnesses' testimony, the clarity of their recollections, their abilities to make firsthand personal observations of the events alleged in the Complaint, any personal interests in the outcomes, and the consistency of their testimony.

The ALRC recommends that this license NOT BE RENEWED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALRC unanimously reached the following decisions:

1. The Respondent was properly and timely served with the Summons and Complaint;
2. The Respondent understands the allegations of the Complaint;
3. The Respondent understands that if the allegations are proven, the ALRC may recommend non-renewal of its "Class B" Combination Alcohol Beverage license and/or its 21+ Entertainment License;
4. The transcript of the evidentiary hearing is attached hereto as Exhibit A;
5. A copy of the licensee's current "Class B" Combination Alcohol License is attached hereto as Exhibit B;
6. The Respondent does not hold a current 21+ Entertainment license. Although the Common Council granted the renewal of that license, the license was never actually issued to the Respondent as the Respondent failed to pay the fee for the current licensing period. Indeed, Respondent conceded that she never paid the fee for the current licensing period. Therefore, the ALRC concludes that the Respondent does not currently hold a valid 21+ Entertainment License and thus, does not have a license to renew. In the alternative, the ALRC concludes that a licensee who does not pay the licensing fee for the preceding licensing year, is unfit for renewal of that very same license;

7. A copy of the Respondent's 2017-18 licensing year "Class B" Combination Alcohol License is attached hereto as Exhibit C;
8. A copy of the Respondent's 2017-2018 licensing year 21+ Entertainment License is attached as Exhibit D;
9. A copy of the Respondent's original "Class B" Combination Alcohol License, issued on January 11, 2017, is attached hereto as Exhibit E;
10. A copy of the Respondent's original 21+ Entertainment license is attached hereto as Exhibit F;
11. The Office of the City Attorney (OCA) has requested that the ALRC recommend non-renewal of the Respondent's licenses each year that the Respondent has been in operation. The ALRC has reviewed conditions on the license at each of those non-renewal proceedings and has adjusted conditions so as to protect the health, safety and welfare of the community. The Respondent consented to the placement of these conditions on its licenses;
12. On November 21, 2018, the ALRC ordered a financial audit of the Respondent. The purpose of the audit was to ensure that the Respondent was abiding by Condition 10 of its current "Class B" Combination license and Condition 11 of its expired 21+ Entertainment License, to wit, that the "[e]stablishment will meet the definition of a restaurant as defined by Madison General Ordinance 38.02." The Respondent failed to comply with MGO 38.05(10) which states, in pertinent part, that "[t]he licensee shall cooperate fully with the Finance Department and shall provide access, without delay, to any of the business' books of account, bank statements, billings, invoices and any other documents relating specifically to the licensed business as may be requested by the Finance Department." The Respondent delayed responding to the City's request to provide complete financial records and, ultimately, provided insufficient documentation for the City's financial auditor to form any conclusions as to whether the Respondent was operating in a manner that met the definition of a restaurant;
13. The Respondent violated Condition 10 of its "Class B" Combination Alcohol License and Condition 11 of its 21+ Entertainment License and operated as a bar or tavern and not as a bona fide restaurant. Indeed, Respondent's own witnesses referred to the Respondent as "Luann's bar;"
14. There are substantial noise, traffic, and litter complaints resulting from the Respondent's operations. These issues are negatively affecting the quality of life in the surrounding community;
15. The Respondent violated Condition 5 of its licenses that required it to "...provide State of Wisconsin licensed security personnel for all Divine Orders Catering events held at

2122 Luann Lane licensed premises. Security personnel shall wear clothing that makes them readily identifiable as security staff.” While there was some dispute over whether security personnel ever wore appropriate clothing properly identifying those persons as security personnel, the ALRC finds that the greater weight of the evidence establishes the Respondent did not comply with the requirements of this condition. Respondent admitted that didn’t always abide by this license condition. Furthermore, the Respondent failed to produce any evidence that the Respondent employed State of Wisconsin licensed security personnel;

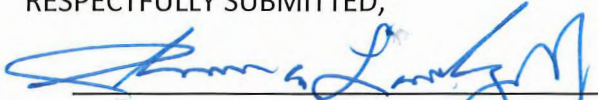
16. The Respondent violated Condition 4 and 8 of its licenses that state “Divine Orders Catering will end all events at 2122 Luann Lane by 10:00 pm. This establishment must be closed by 11:00 PM, and all attendees and staff shall clear the building and parking lot by 11:00 PM. Staff actively engaging in cleaning are allowed on the premises pursuant to Statute” and “Patrons of Divine Orders Catering at 2122 Luann Lane licensed premises shall not use neighboring buildings’ parking lots.” While the testimony was in dispute, the ALRC finds that the greater weight of the credible evidence established that the Respondent violated these conditions on multiple occasions;
17. The presence of this establishment in this location as it is being operated is counter to the health, safety, and welfare of the neighborhood;
18. For each of the foregoing reasons, the ALRC concludes that the Respondent committed multiple violations of its license conditions, each violation being a separate violation of §38.10(1)(a)(9), M.G.O.;
19. For each of the foregoing reasons, the ALRC concludes that the Respondent kept or maintained a disorderly or improper house in violation of §38.10(1)(a)(2), M.G.O.

CONCLUSION AND RECOMMENDATION

The ALRC carefully considered the licensing qualifications standards set forth in both the ordinances and the state statutes. The ALRC considered whether placing additional conditions on the license would be an appropriate remedy. Given this body's previous attempts to work with this respondent, including the conditions placed on this license at the separated renewal hearings in 2017 and 2018, the ALRC concludes that renewing this license, even with additional conditions, would not protect the health, safety, and welfare of the community. Therefore, the ALRC determines that the only appropriate remedy for this pattern of violations is to not renew that license. To allow otherwise would present a serious threat to the health, safety, and welfare of the community. To allow otherwise would also send an inappropriate signal to other license holders and applicants.

THEREFORE, it is the unanimous recommendation of the ALRC that Common Council NOT RENEW the Respondent's "Class B" Combination Alcohol License and the 21+ Entertainment license.

RESPECTFULLY SUBMITTED,



Thomas A. Landgraf, Chairperson

5/15/2019

Date



Sheri Carter, Alder Member

5/15/2019

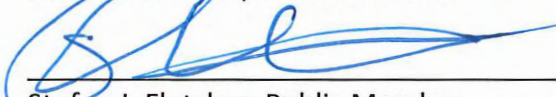
Date



Michael Vervoer, Alder Member

5/15/2019

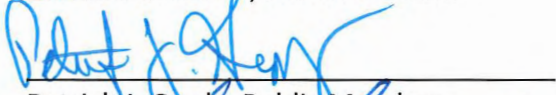
Date



Stefan J. Fletcher, Public Member

5/15/19

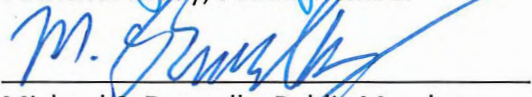
Date



Patrick J. Grady, Public Member

05/15/19

Date



Michael S. Donnelly, Public Member

5/15/19

Date

Alcohol License Review Committee
c/o City Clerk's Office
210 Martin Luther King Jr Blvd
Room 103, City-County Building
Madison, WI 53703

Drafted by Roger Allen, Assistant City Attorney
Wis. State Bar # 1020252