



TO: Milwaukee Common Council

FROM: Daniel S. Welytok

SUBJECT: Objection to the Report of the Utilities & Licensing Committee re: Andrea N. Chavis, Agent, Diamond Food & Beverages, Inc.

DATE: November 20, 2003

This memorandum sets forth the written objections to the 11/13/03 Report of the Utilities & Licensing Committee regarding the renewal application for Andrea N. Chavis, as agent for Diamond Food & Beverages, Inc. for a Class "B" Tavern license and Tavern Amusement (Cabaret / Nite Club) license for the premises located at 6222 W. Fond du Lac Avenue in the City and County of Milwaukee, WI ("Phoenix Bar & Grill").

In addition to considering these written objections, applicant respectfully requests the opportunity to address the Common Council to present an oral argument on the issues discussed below.

I. THE U&L COMMITTEE'S RECOMMENDATION OF A SIXTY DAY LICENSE SUSPENSION IS UNDULY HARSH IN LIGHT OF THE EVIDENCE

A. The U&L Committee Based its Determination on Incidents of April 5, 2003 and June 14, 2003¹

1. The April 4th Incident. The April 4, 2003 incident relied on by the Committee is a one-paragraph synopsis of a police report of a shooting in the vicinity of the licensed premises.² Although the report alleges that one or more of the parties involved were patrons of the licensed premises, it also notes that the licensee did not hear or see the incident, and that it happened outside of the premises.

The licensee denies that the incident described involved either the licensed premises or any of its patrons, and takes issue with the accuracy of the synopsis. Not having had a previous

¹ See 11/13/03 U&L Committee Report page 5, par. G.

² See 11/13/03 U&L Committee Report page 4, par. D.

opportunity to question the report, the licensee does so here, particularly because its contents are part of the basis of the U&L Committee's recommendation for suspension.

The synopsis is distilled from the full police report for the U&L Committee to be used against licensee, and as such is phrased in the light most favorable to the Committee's recommendation. However, neither the full report nor the synopsis have been subject to verification for accuracy. No substantiation or corroborative support (for example, by way of direct testimony, sworn statements, follow-up reports, etc.) was offered for the allegations made in police report concerning the April 4th incident (to the contrary, the report itself says that the licensee was unaware of the incident). No follow-up report was presented and no further report of the incident was produced.

In short, it is unjust for the U&L Committee to rely on a mere summary of unsubstantiated allegations, find them "to be true"³ and use them as the basis for a 60 day license suspension. Without credible substantiation, the synopsis is nothing more than questionable hearsay, upon which no just forum would rely.

2. The June 14th Incident. The June 2003 incident involved a bikini clad dancer who allegedly exposed her breasts while accepting a dollar bill from a patron. Citations were issued for (1) certain performances prohibited and (2) change in entertainment. At the initial appearance on these citations, the City offered to drop one citation in exchange for a guilty plea to the other. After considering the economics of defending against the citations, a decision was made to enter a guilty plea on the certain performances and costumes prohibited and pay a \$500 forfeiture; the change in entertainment citation was dismissed.

Notwithstanding the entry of a guilty plea, the licensee objects to use of this incident as a partial basis for license suspension. Licensee has a tavern amusement license which allows floorshows, dancing and cabaret style entertainment, and asserts that the dancing on June 14th was allowable under this license. Milwaukee Ordinance 90-33 does not specifically prohibit the type of dancing described; the fact that the application form for entertainment as prescribed by Milwaukee Ordinance 90-35-1 (e) has a box authorizing exotic dancing which was not checked off on the licensed premises permit does not alter the fact that the Ordinance does not prohibit such entertainment. Even if the activity described took place (which licensee contends it did not), it is not prohibited by Milwaukee Ordinance.

In the 2001 case of Blue Canary Corp. v. City of Milwaukee, the Seventh Circuit Court of Appeals acknowledged the vagueness of the ordinance at issue, but did not find it necessary to rule on its constitutionality, since the dispositive issue in that case was whether the operation of an establishment with exotic dancers was compatible with the normal activity of the

³ See 11/13/03 U&L Committee Report page 5, Conclusions of Law, last sentence, par. 2.

neighborhood in which the licensed premises was located. Therefore, no support for the constitutionality of the ordinance appears to exist.

To summarize, licensee is being punished under an ordinance which is so vague that it is subject to varying interpretation, making compliance and enforcement all but impossible.

B. The U&L Committee Presented No Adverse Evidence to its Members Other than The Police Report Summaries

At the U&L Committee hearing, Neighborhood Services was asked if it had any objections to license renewal, and answered "no." The same question was asked of the Health Department, which also answered "no."

No witnesses or neighborhood residents appeared at the hearing to voice their objections over license renewal. To the contrary, the licensee did have several witnesses and a neighborhood resident ready to testify in favor of renewal at the hearing, but during a short break it became apparent that they were very upset with the way the Alderman described the licensed premises and the neighborhood, and so the licensee decided that their testimony might be too confrontational and not help the Committee reach a decision.

In sum, no neighborhood objections were voiced at the hearing, other than the Alderman's own personal objection. The fact is that there are other establishments within a close proximity to the licensed premises that offer the same type of venue and entertainment, and the licensed premises has not posed a problem for area residents. Its clientele are respectable working people who enjoy visiting the licensed premises for food, drink and entertainment and no substantiated no criminal activity. To impose a 60 day suspension at the request of the Alderman without reported neighborhood objections is unfair and a hardship on the premises, its employees and operators.

II. THE RECOMMENDED LENGTH OF SUSPENSION OF THE APPLICANT'S LICENSE IS OUT OF LINE WITH THE ALLEGED VIOLATIONS AND WILL CAUSE HARDSHIP ON THE LICENSEE

The U&L Committee makes its recommendation to suspend the licensee's ability to operate for sixty days "In order to protect the health, safety and welfare of the citizens of the City of Milwaukee..."⁴ This basis seems ironic, since the neither the health department nor neighborhood services voice any objections to renewal.

To the contrary, the licensee has been proactive in helping Milwaukee police. To illustrate, licensee recently noticed an individual enter the licensed premises wearing a

⁴ See 11/13/03 U&L Committee Report page 5, Conclusions of Law, first sentence, par. 3.

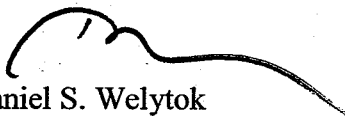
bulletproof vest. Licensee immediately called the police, who came to the scene, removed the individual and found several handguns in his automobile. Licensee has also assisted police on other occasions and has always been highly cooperative.

Operators of the licensed premises have been doing business in the greater Milwaukee area for over 30 years, and have never had a license suspended or revoked. The intent has always been to comply with the law and cooperate with the authorities.

To suspend the licensee's ability to operate for a 60-day period, covering the Christmas and New Years seasons, will impose an unduly harsh financial hardship on the licensed premises. Although not completely compatible with this objection, the old adage "let the punishment fit the crime" would seem to have applicability in the equities of this matter.

Based on the foregoing objections, the licensee respectfully requests the City of Milwaukee Common Council renew the license of Andrea H. Chavis without the conditional suspension of 60 days.

Respectfully submitted,



Daniel S. Welytok
on behalf of Andrea H. Chavis